

ORIGINAL

VOLUME I OF V

STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM EDGEFIELD COUNTY

R. Knox McMahon, Circuit Court Judge

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S.C. Supreme Court

THE STATE,

RESPONDENT,

V.

STEVEN BARNES,

APPELLANT

Appellate Case No. 2010-178247

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STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF EDGEFIELD —) 2005-GS-19-273
) 2005-GS-19-457

STATE OF SOUTH CAROLINA)
)
) vs. TRANSCRIPT OF RECORD
)
STEVEN LOUIS BARNES,)
) DEFENDANT

November 5, 2010
Edgefield, South Carolina

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, JUDGE.

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Official Court Reporter

I N D E X

PAGE

(There were no witnesses produced.)

EXHIBITS

(There were no exhibits marked.)

1 THE COURT: All right. We're here this morning
2 for the purpose of motion hearings on the State of South
3 Carolina versus Steven Louis Barnes.

4 It appears from the caption on the motions the
5 indictment numbers are 2005-GS-19-273 and 2005-GS-19-457.
6 The 457 indictment is an indictment for murder and the 273
7 indictment is an indictment for kidnapping.

8 It appears the defendant is present along with
9 his attorneys, Mr. Bob Harte and Mr. David Tarr. The
10 State is represented by Solicitor Myers and Assistant
11 Solicitors Young and Maye.

12 All right. Mr. Harte, Mr. Tarr, I'll be glad to
13 hear from you in whatever order you want me to hear these
14 motions.

15 MR. TARR: Thank you, Your Honor. I believe
16 there are about 13 motions, and I had four copies that I
17 clocked in along with the originals this morning, and I'm
18 hoping that they're all still in the same order. They're
19 not numbered, but if you need me to stop and give you a
20 chance to find something, just let me know.

21 THE COURT: All right.

22 MR. TARR: Also, at the end of these motions,
23 our client's indicated he had a matter he wanted to
24 address to the Court about some issue or issues at the
25 Department of Corrections.

1 THE COURT: All right. I'll certainly be glad
2 to take that up with him. You want me to do that after
3 the motions; is that correct, Mr. Tarr?

4 MR. TARR: Yes, Your Honor.

5 THE COURT: All right.

6 MR. TARR: I don't think it's anything that will
7 take much time.

8 THE COURT: All right, sir. I'll be glad to
9 take it up.

10 MR. TARR: Thank you, Your Honor.

11 Your Honor, the first motion -- and may I say
12 all these motions are couched in light of the fact that
13 this a potential death penalty case. It is a death
14 penalty case where the jury has a decision to make if they
15 find Mr. Barnes guilty and whether he will have life
16 without parole or the death penalty.

17 As such, the constitutional safeguards that are
18 in place, and in any criminal trial, are given a
19 heightened sense of scrutiny in death penalty cases and
20 courts have generally recognized that death is different,
21 and as such, all possible rights that the defendant may
22 have should be scrutinized and made sure that he receives
23 full benefit of those.

24 The first motion that we would have would be for
25 the Court to issue an instruction to the jury after

1 selection regarding the trial process in a potential life
2 without parole/death penalty case.

3 Obviously probably nobody who's sitting on this
4 jury will have ever sat on a capital case before, and most
5 of them probably never sat on any case, and they're
6 probably going to be confused and they're not going to be
7 familiar with the trial process, especially with the
8 bifurcated nature of a capital trial, and we just believe,
9 and we've included as Exhibit A, an instruction just in
10 general about the trial process and we feel like it's a
11 fair instruction to give, to advise the jury of what their
12 role is and what they can expect to happen.

13 And I don't know if Your Honor has an
14 instruction that you normally give in this case, but we
15 would suggest that if you did not, that you give this one,
16 or if you do have one, if you'd just review this one and
17 see if there's anything in it that you might wish to
18 include in your instruction.

19 THE COURT: All right. I do have one that I
20 give in a death penalty case to the jury to instruct them
21 on the trial process and certainly their duties and
22 responsibilities as jurors in the trial of the case.

23 I have looked at yours. It is similar. It's
24 not verbatim. I think both of them track the process,
25 though mine -- if I see anything different, I'll bring it

1 to your attention, Mr. Tarr, but I do have one that I use
2 in that regard. All right?

3 MR. TARR: Would it be possible to get a copy of
4 that to review?

5 THE COURT: Yes. I'm not sure I brought it with
6 me today because I didn't have copies of the motions, this
7 particular motion before I came down here, but I'll try to
8 get you a copy of it Monday.

9 MR. TARR: That would be helpful. That way if I
10 saw anything that we felt we needed to object to, we could
11 do it prior to giving it, and if we didn't, then we didn't
12 need to worry about it.

13 THE COURT: All right. Thank you, Mr. Tarr.

14 MR. TARR: Your Honor, the second motion, and
15 hopefully it's still in the same order on all these, is a
16 motion to limit conversation between the jurors and the
17 bailiffs and/or anybody who they come in contact with
18 that's keeping them and housing them and feeding them.

19 We're basically just asking the Court to
20 instruct those individuals to not have any conversation
21 regarding anything about this case.

22 You know, there have been instances in the past
23 where jurors have asked questions of their caretakers,
24 bailiffs and others, and they've been given answers and
25 cases have been overturned because of it.

1 So basically, obviously they need to talk with
2 them about housing and where they're going to be staying
3 and the process and logistical matters such as that, but
4 any conversation regarding anything about their role in
5 the case or anything about the case should be directed to
6 the Court and we believe there shouldn't be any type of
7 conversation of those matters.

8 THE COURT: I agree with that.

9 You don't have any objection to that, Solicitor?

10 MR. MYERS: No, sir.

11 THE COURT: I agree with that. I'll inform them
12 of that.

13 If the bailiffs have any conversations with the
14 jury about the case, I'm going to hold them in contempt.
15 They're not -- nobody's supposed to talk about the case.
16 The jurors themselves are not supposed to talk about the
17 case. But I will inform them of that and they'll be
18 sworn.

19 MR. TARR: Thank you, Your Honor.

20 THE COURT: All right.

21 MR. TARR: Your Honor, the next motion is a
22 motion for an order from the Court directing that any and
23 all -- and I believe we've talked about this, that we're
24 going to have three alternates -- that anybody who is
25 picked in the last three that would normally be considered

1 an alternate, that they not be identified as alternates
2 until right before deliberations. And I think it's kind
3 of common sense why: We want to make sure that everybody
4 on the jury is paying attention to what's going on and
5 feels like that they have an important role in this case.

6 And it's just human nature that if you have
7 already been told that you're going to be an alternate and
8 that there's a very good chance that you're not going to
9 be deliberating, that you may not take the case as
10 seriously and you may not listen as well as you would had
11 you not been identified as an alternate before the trial
12 started.

13 So we would ask that the Court not identify the
14 alternates as alternates.

15 THE COURT: Do you have any position on that,
16 Solicitor?

17 MR. MYERS: No, sir.

18 THE COURT: All right. I'll deny that motion.
19 I really have not observed jurors in South Carolina who
20 are alternates pay less attention to a case than
21 non-alternates. And certainly in a case such as this,
22 obviously at the conclusion of the guilt phase if the
23 defendant is found not guilty, that you wouldn't go to the
24 penalty phase, but if he's found guilty and you go to the
25 penalty phase, of course the alternates are sequestered

1 and they know at the end of the guilt phase who they are
2 anyway, and I just don't see the purpose in that. And I
3 like to keep up with the alternates and the numbers, too.

4 That could also give a tendency when you have 15
5 and I say 12 of you jurors, well, then the others could be
6 saying, Man, I may be an alternate, I might not have to
7 listen as much. So you could have kind of a reverse on
8 that, too, but I'm going to deny that motion.

9 You haven't seen any cases in that regard, have
10 you, Mr. Tarr?

11 MR. TARR: Nothing requiring it, no, Your Honor.

12 THE COURT: All right.

13 MR. TARR: It's just a motion to be made.

14 And we would object to the denial of that motion
15 under the Fourth, Fifth, Sixth, Eighth, and Fourteenth
16 Amendments.

17 THE COURT: I understand. Thank you.

18 MR. TARR: And we may renew that at that time.

19 THE COURT: Certainly.

20 MR. TARR: Your Honor, the next motion is a
21 motion that deals with the process of voir dire and the
22 selection of the jurors, and we would ask for individual
23 voir dire of the jurors and sequestration of the jurors
24 during voir dire so that nobody is in the same room or
25 around people who've already been questioned by the

1 attorneys and the Court.

2 THE COURT: That's my understanding of how it
3 would be done.

4 Madam Clerk, can you explain where the panels
5 would be and the process of how the jurors fixing to be
6 voir dired get from the panel out to the courtroom? Can
7 you explain that for me?

8 THE CLERK: Your Honor, we would have to hold
9 them in one of the rooms and then bring them in and we
10 would hold them in one of the attorney rooms or either the
11 Family Court judge's chamber and have different holding
12 spots before they're brought into the courtroom.

13 THE COURT: Yes, sir, Mr. Harte.

14 MR. HARTE: Your Honor, I don't know if you want
15 to do it this way or not, but the last one of these that I
16 was involved in, we actually had the jurors who were
17 waiting to be questioned in the courtroom and the voir
18 dire was handled in the grand jury room. This was in
19 Aiken. That way where the more people were, there was
20 more room; where there were fewer people, it was smaller.

21 And then after the questioning by the Court and
22 the lawyers, the potential jurors were asked to leave the
23 room, the decision was made whether that juror was
24 qualified or not, and that juror was either then excused
25 or given instructions to come back but does not go back

1 with the unquestioned.

2 THE COURT: That's correct. There's never --
3 now, I'm not going to do that. I'm going to do the voir
4 dire in the courtroom.

5 MR. HARTE: Okay.

6 THE COURT: But the panel -- or my thoughts
7 right now are to have four-person panels an hour apart.
8 And then you have one juror out here being questioned, you
9 have another juror sitting in a chair in another location,
10 the next one for voir dire. You have an opportunity to
11 continue to review the witness list and the category
12 questionnaire is what I call it. And after the
13 questioning by the Court, by the Solicitor, by the defense
14 attorney, the one in the courtroom, he or she will step
15 out of the courtroom to see what the position of the State
16 and the defense was as to that particular juror's
17 qualifications.

18 If both sides agree he or she is qualified,
19 they're brought back in the courtroom, they're given
20 further instructions of when to report and they leave the
21 courthouse.

22 MR. HARTE: With that smaller panel, that would
23 certainly work well.

24 In the case that I was involved with with Judge
25 Westbrook, I think he had 25-person panels and we needed a

1 bigger space.

2 THE COURT: Well, I'm just bringing four an
3 hour. Now it may stack up at four an hour, but that will
4 be up to just the time it takes you all to voir dire, the
5 attorneys. But a questioned juror, whether qualified or
6 not, would never go back into a room with jurors that have
7 not yet been questioned.

8 Is that the foundation for your motion?

9 MR. TARR: Yes, Your Honor.

10 THE COURT: All right. And that's granted. I
11 mean, that goes without saying, but that's certainly
12 granted.

13 MR. TARR: And, Your Honor, the State had a
14 motion. You had mentioned witness lists.

15 THE COURT: Yes, sir.

16 MR. TARR: They'd make a motion to require us to
17 divulge a witness list, that they were going to give one
18 for purposes of voir dire, and I've informed Solicitor
19 Myers before this hearing that we have no problem with
20 that.

21 THE COURT: All right. Thank you.

22 MR. TARR: Your Honor, the next motion is a
23 motion -- we're requesting that there be no judicial
24 rehabilitation of potential jurors regarding the
25 death/life qualification.

1 This motion is based on the fact that, number
2 one, the attorneys from both sides are going to be
3 hopefully adequately questioning the jurors as to their
4 ability to give meaningful consideration to both life or
5 death sentences as well as the fact that as a judge, your
6 stature commands respect, and I think that it's just human
7 nature that jurors may want to please the judge. And when
8 they hear questions from the judge, they can kind of imply
9 what the answer should be, that they feel like that they
10 should go along with what the judge is saying, and I think
11 that's less likely to occur when you've got a defense
12 attorney or solicitor trying to figure out whether this
13 juror can give meaningful consideration to both life or
14 death. And so we're asking in this motion that the
15 attorneys be the ones, the only ones doing any type of
16 rehabilitation and the Court not engage in judicial
17 rehabilitation.

18 THE COURT: I'm going to deny that motion since
19 I have the ultimate responsibility to determine whether or
20 not a particular juror is or is not qualified.

21 It's not my purpose to attempt to rehabilitate
22 any juror. It's generally my purpose is to understand
23 what a juror may have said or to better understand what a
24 juror may have said during the colloquy with the Court and
25 the attorneys.

1 If you have -- certainly if you have an
2 objection as to any particular juror when I do question
3 them, Mr. Tarr, you may certainly put that on the record,
4 but I think given the fact that it is my ultimate
5 determination and responsibility, that I will deny that
6 motion.

7 MR. TARR: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 MR. TARR: And, Your Honor, we would object also
10 under the Fourth, Fifth, Sixth, Eighth, and Fourteenth
11 Amendments regarding that ruling.

12 THE COURT: All right, sir.

13 MR. TARR: But also keeping in mind that we may
14 get into voir dire and there's nothing to object to.

15 THE COURT: Yes, sir.

16 MR. TARR: Your Honor, the next motion is a
17 motion to ensure that mitigating circumstances receive
18 their due weight and attention from the jury. And that's
19 a little misleading. I mean, you can't -- there's no way
20 to make sure that they take the mitigating circumstances
21 and give them their due weight and attention.

22 We're just asking that the Court, in its
23 instructions to the jury, advise the jury and instruct the
24 jury that they are to give the due weight and attention to
25 the mitigating circumstances in this case and that they

1 are important and they are something they could base a
2 life sentence verdict on.

3 THE COURT: Well, I certainly charge the law and
4 charge on mitigating circumstances, both statutory
5 mitigating circumstances and non-statutory mitigating
6 circumstances. And obviously they could give -- if there
7 were a penalty phase, they could give them a life sentence
8 for no reason at all. And I certainly do not minimize the
9 mitigating -- statutory or non-statutory mitigating
10 circumstances in that regard.

11 I don't know how to say I grant that motion. I
12 certainly don't deny that motion as to whether the jury
13 should not give mitigating circumstances their appropriate
14 due weight in that regard. Obviously through the penalty
15 phase they also have written forms in that regard that
16 would be covered by the Court. If you think -- if we get
17 to that point and I have not adequately covered it, you
18 can certainly object at that time.

19 MR. TARR: Your Honor, do you routinely give
20 your instructions to the attorneys to review prior?

21 THE COURT: I don't routinely do that.

22 MR. TARR: Would you be willing to do that?

23 THE COURT: I'll think about how much ability I
24 have to get them prepared.

25 MR. TARR: Yes, Your Honor.

1 THE COURT: If I can get them prepared promptly.
2 I don't have any objection to that. All right.

3 MR. TARR: Your Honor, the next motion is -- and
4 this is one that I don't even know if we're going to need
5 because my understanding is that our client, Mr. Barnes,
6 is going to be able to wear civilian clothing and not have
7 shackles on, but he will have a shock belt. It will not
8 be visible. So we did have a motion for an order
9 prohibiting Mr. Barnes from sitting in jail clothes or
10 shackles, but as I said, I don't think we need that.

11 THE COURT: And that's certainly granted. I've
12 talked with security about that and he will not be
13 exhibited at any time to the jury in jail clothes or
14 shackles in that regard.

15 They did speak to me, security this morning,
16 concerning today. I told them I had no objections as far
17 as today was concerned, but to make sure Mr. Harte or Mr.
18 Tarr knew so that if they objected about today, they could
19 bring it to my attention before we begin in court.

20 Of course, there are no non-law enforcement or
21 defense personnel in the courtroom today, nor did I think
22 there would be. So that's granted, and I think that won't
23 be an issue.

24 MR. TARR: Your Honor, the next motion is to
25 prevent prejudicial security measures. And I guess in

1 order to know whether or not we have an objection, we're
2 wondering if the Court could advise us on what security
3 measures were going to be taken in this case.

4 And also, in speaking with Mr. Barnes, we would
5 like to object on his behalf for the shock belt that
6 they're wanting him to wear.

7 He was tased in the Edgefield County Jail back
8 when he was being housed there prior to going to Lieber.
9 It was a traumatic experience for him, and he's absolutely
10 frightened of being shocked.

11 And, Your Honor, I think that his behavior has
12 been pretty good ever since he's been at SCDC over here at
13 McCormick and I don't think we're going to have any
14 problems with him in the courtroom. We're asking Your
15 Honor to consider not making him wear that belt.

16 THE COURT: I'm going to deny that request.

17 Whether or not he is shocked is within his
18 control, in his behavior. He's kind of the master of his
19 destiny in that regard. And I've authorized the officers
20 to maintain that belt on him. I think that's the least
21 intrusive method to make sure there is the appropriate
22 degree of security that should exist in a case such as
23 this without prejudicing him in any way in front of the
24 jury.

25 As far as security measures, I will be happy to

1 ask the chief or his designee of security to meet with me
2 first and perhaps with you all as far as the security
3 measures in that regard, but --

4 MR. TARR: And, Your Honor, I'm not
5 interrupting, but we're mainly concerned with the number
6 and location of uniformed police officers in the
7 courtroom.

8 THE COURT: Just the uniformed officers?

9 MR. TARR: Yes, sir. I mean, it's something
10 that we just don't want it looking to the jury like this
11 is somebody so dangerous that we've got to be protected by
12 all these different people with guns in the back.

13 THE COURT: I'll talk to the officers about that
14 and we'll see.

15 MR. HARTE: One other issue, Your Honor.

16 THE COURT: Yes, sir.

17 MR. HARTE: As you see, there's an SCDC person
18 sitting right here. We don't think that the jury should
19 be able to surmise anything about where he is during
20 the -- certainly during the guilt phase of the trial. So
21 if Your Honor will talk with them and discuss how the SCDC
22 people might be not so close on hand.

23 THE COURT: All right. I'll talk with the
24 security people. It would not be my ultimate conclusion I
25 don't think for the security detail to tell you all

1 entirely what their security is. That is not --

2 MR. TARR: That's not what --

3 THE COURT: That is not any indication of my
4 trustworthiness of you or Mr. Harte. It's not in that
5 regard. I don't know what all their security is, and I
6 don't need to know.

7 MR. TARR: It's just that we're objecting to
8 anything that looks obvious to the jury. If we don't
9 know -- we don't need to know what the security is, we
10 can't tell, then we're happy if the jury doesn't see it.

11 THE COURT: Well, I was trying to recall State
12 versus Hill, that that was an issue, a Georgetown case
13 where I think a Georgetown officer was actually killed and
14 there was an issue about the number of uniformed officers
15 in the courtroom.

16 I'll talk with security.

17 MR. TARR: Thank you.

18 THE COURT: Thank you.

19 MR. TARR: Your Honor, the next one -- and I'm
20 sure this is one that you normally get, especially in
21 cases like this -- is a motion for instruction to the
22 victim's family and other spectators to refrain from
23 showing emotion and having emotional outbursts in the
24 courtroom. And like I said, I'm sure you probably have
25 instructions already in that regard.

1 THE COURT: I would advise -- I don't know what
2 degree of spectatorhood we're going to have.

3 Solicitor, can you give me an indication?

4 MR. MYERS: No, sir. I don't anticipate that
5 many people being here, but up to this time they have been
6 fairly emotionless about the matter, pretty genteel about
7 it. I have no objection to you charging people in the
8 courtroom.

9 THE COURT: And I may give a general -- I'll
10 give some type of general instruction in that regard to
11 address to everybody kind of generally in the courtroom in
12 that regard. All right.

13 MR. TARR: Your Honor, the next two motions will
14 probably require a little bit of interaction on the
15 State's part.

16 We're asking in the first motion for the Court
17 to order that the State disclose any possible deals that
18 they may have between cooperating witnesses and the State.
19 It's my understanding there will be a number of witnesses
20 who were also co-defendants of Mr. Barnes in this case,
21 who potentially could be facing a capital punishment
22 trial, and it's our belief that the only way somebody
23 would come in here and testify when they're facing the
24 same charges is that they're planning on getting -- at
25 least getting something out of it, and we would ask Your

1 Honor to ask the State or order the State to disclose any
2 possible grant of immunity or any deals for lesser
3 sentences or reduced charges or -- and any type of
4 agreement, even if they're not express written agreements,
5 any type of, "Look, you're going to be okay if you
6 testify, we'll look out for you," anything like that for
7 any of the witnesses in this case.

8 THE COURT: All right. Solicitor.

9 MR. MYERS: No, sir. The only death notice
10 we've served in this case would have been on Mr. Barnes.
11 There have been no agreements of any type with any
12 co-defendants about their cases.

13 THE COURT: All right.

14 MR. MYERS: As to charges or sentences or
15 anything else.

16 THE COURT: As to charges or sentences or
17 anything else?

18 MR. MYERS: Yes, sir.

19 MR. TARR: And we'd also have a motion for --
20 this would include any deals that they've gotten from
21 other governmental agencies for their cooperation and
22 anything involving Mr. Barnes. I believe they've already
23 provided us with the plea deals from the Richmond County
24 and Columbia -- the Richmond County case.

25 MR. MYERS: I have not discussed this case with

1 any district attorneys in the state of Georgia. Whatever
2 deals were made over there, he's correct, are in the
3 written materials we have supplied from our transcripts.

4 THE COURT: All right. Does that answer your
5 inquiry, Mr. Tarr?

6 MR. TARR: It does, Your Honor. And there is
7 something in those deals that they have with Richmond
8 County where they've received 18 years for pleading
9 guilty. It requires them to be truthful in any other case
10 they may testify in, whether involving Mr. Barnes. In
11 that regard, I guess it kind of extends to this case as
12 well.

13 THE COURT: Are you going to question in that
14 regard?

15 MR. TARR: Yes, Your Honor.

16 THE COURT: You're going to cross-examine the
17 witnesses in that regard?

18 MR. HARTE: Yes, sir.

19 THE COURT: All right.

20 MR. MYERS: There again, I was not a party to
21 any deals in Georgia, never discussed any deals. As a
22 matter of fact, I never talked with any district attorney
23 in Georgia about any deals or any plea agreements they
24 have with any defendants in this case.

25 THE COURT: I guess the question is then,

1 Solicitor, do you object to them questioning them about
2 those deals? The way --

3 MR. MYERS: I would object unless I'm a party to
4 it, and I haven't been a party to it.

5 I tell you what: I withdraw that.

6 THE COURT: All right.

7 MR. MYERS: They can talk about anything that
8 happened in Georgia because I think all that's in the
9 transcripts of whatever happened over there and I can ask
10 reply questions.

11 THE COURT: I would agree with that. I think
12 you all could cross-examine them because it could have
13 been in their mind that it would affect any and all
14 proceedings -- I mean, they -- in which they testify
15 against Mr. Barnes, although the solicitor from South
16 Carolina was not involved in it, and I think the Solicitor
17 can then get up there and -- if you cross-examine them in
18 that regard and have the right to question them in that
19 regard of his involvement or lack of involvement in any of
20 those plea negotiations. All right.

21 MR. TARR: Yes, Your Honor.

22 The next motion is for the Court or the State to
23 disclose the substance of any prior inconsistent
24 statements of potential witnesses made to the State in
25 preparation for the trial.

1 This motion is mainly intended to have the State
2 disclose any of these witnesses that are coming over here
3 who they've interviewed in the last week or two in
4 preparation for trial, whether or not they've given
5 anything inconsistent from what they've already given in
6 prior statements.

7 THE COURT: All right. Solicitor.

8 MR. MYERS: Any inconsistent statements by
9 witnesses have been furnished to them with the matters
10 from Georgia and the statements they've made over there.
11 Nothing has been inconsistent since then to us. But any
12 inconsistencies are in the materials we have given them.

13 And I've told my staff, I want them to have
14 everything we have basically.

15 THE COURT: Does that answer your question?

16 MR. TARR: It does, Your Honor.

17 The problem that we have is that we had an
18 investigator interview at least one of the witnesses that
19 they've interviewed and he's saying things different from
20 what he said and that we have in the discovery, and so
21 we're assuming that he said the same things to them in the
22 last couple of weeks. And if that's true, that's
23 something that's required to be disclosed under Brady and
24 Kyles v Whitley.

25 And so, I mean, even if we know it on our own,

1 the State is required to give us any inconsistent
2 statements that are made to them.

3 THE COURT: I agree with you one hundred
4 percent, Mr. Tarr.

5 MR. TARR: That's why we -- that's mainly --

6 THE COURT: Well, the Solicitor said that there
7 have been none given to them since that time.

8 And, you know, sometime a witness has given a
9 statement contingent on the person he's talking to also,
10 Mr. Tarr.

11 But the Solicitor's saying, as I understood his
12 response, is that any prior inconsistent statements are in
13 the record in the materials they've already given you and
14 since that time there have been no prior inconsistent
15 statements given to the Solicitor by any of the witnesses
16 that they -- they, the Solicitor, the State -- has
17 interviewed in preparation of the trial.

18 Is that correct, Solicitor?

19 MR. MYERS: Yes, sir.

20 THE COURT: Is that a correct statement?

21 MR. MYERS: Yes, sir.

22 THE COURT: Does that answer your question?

23 MR. TARR: That answers the question.

24 THE COURT: All right.

25 MR. TARR: That's clear for the record.

1 THE COURT: All right.

2 MR. TARR: Your Honor, the next motion we
3 have -- and I think we've only got two more -- is a motion
4 for a hearing to determine the extent of allowable victim
5 impact testimony.

6 As the Court is aware under Tennessee versus
7 Payne, the Supreme Court has allowed limited admissibility
8 of victim impact testimony where it's normally in the past
9 may have been deemed to be irrelevant, but we're asking
10 the Court to ask the State what, if any, victim impact
11 testimony or evidence they're going to seek to admit in
12 this case so that we can make a determination or the Court
13 can make a determination whether it's admissible and we'd
14 have the ability to object if we feel like that it would
15 be unduly prejudicial.

16 THE COURT: All right. Solicitor.

17 MR. MYERS: We will have no victim impact
18 evidence similar to what occurred in State versus Bixby.

19 THE COURT: State versus?

20 MR. MYERS: Bixby, B-I-X-B-Y, where they put in
21 funeral processions.

22 THE COURT: Yes, sir.

23 MR. MYERS: We will have victims to testify in
24 accordance with the South Carolina cases of the impact
25 that the murder has on family members and the uniqueness

1 of the individual murdered, but for the Court's
2 information and the defense, the victim impact testimony
3 in this case is going to be very small. It will not be
4 lengthy at all.

5 THE COURT: And you said you had no testimony,
6 victim impact testimony similar to Bixby?

7 MR. MYERS: Absolutely not.

8 THE COURT: All right. Or Hazelton?

9 MR. MYERS: Probably not.

10 THE COURT: All right. Does that answer your
11 question to an extent, Mr. Tarr?

12 MR. TARR: Yes, sir, everything the Solicitor
13 said is obviously in accordance with the law, and if
14 that's the way it comes out at trial, then we have no
15 objection.

16 THE COURT: All right.

17 MR. TARR: Your Honor, the final motion is a
18 motion -- and I don't mean to intend any disrespect and
19 certainly not alleging that the Solicitor would engage in
20 prosecutorial misconduct, but it's a motion to prohibit
21 prosecutorial misconduct in terms of closing and opening
22 statements and we're just asking to limit the Solicitor's
23 opening and closing arguments, especially in the penalty
24 phase, to those matters that are proper to be argued by a
25 solicitor in front of the jury. And the motion is

1 basically just a laundry list of arguments that are
2 routinely made by solicitors in capital cases that have
3 been found to be improper. And I guess the basis of the
4 motion, we're just asking the Court to admonish the
5 Solicitor to refrain from such arguments. And obviously
6 if there are any made, that we will object at that time,
7 but, you know, we don't like to make objections during
8 opposing counsel's argument, but in a capital case if
9 things like the things that are listed in this motion
10 occur, then it's incumbent upon us to object.

11 THE COURT: Well, prosecutorial misconduct is
12 always prohibited in courts in South Carolina, whether
13 it's during opening statements or closing arguments or
14 throughout the trial.

15 To that extent, there's no need for a motion.
16 The Solicitor and his staff, like you and Mr. Harte, are
17 all officers of the court and they're required to follow
18 certain ethical rules and then the Solicitor has
19 additional ethical rules to seek justice.

20 But in that regard, all I can say is, and I've
21 heard attorneys say before, I don't like to object during
22 the openings or during the closing arguments, and all I
23 can say is, object. If you have an objection and you
24 think the argument is objectionable, object and I'll be
25 glad to rule on it at that time.

1 The Solicitor's, as we all know, a very
2 experienced trial, as you all are, so I don't see that
3 being an issue.

4 Is that correct, Solicitor?

5 MR. MYERS: Yes, sir.

6 THE COURT: And as I understand it, also on the
7 witness list issue, you have no objections to supplying
8 the witness list, the witnesses' names to the State,
9 preparing a witness list for juror voir dire?

10 MR. TARR: I assume we'll have those ready
11 Monday, the witness list?

12 MR. MYERS: Yes, sir.

13 THE COURT: All right.

14 MR. TARR: We'll bring it on Monday.

15 THE COURT: And I would ask someone to combine
16 just where you have a potential witness list for our
17 jurors to look at.

18 MR. MYERS: We can do that.

19 THE COURT: You have another position you want
20 to take?

21 MR. MYERS: No, that will be fine.

22 THE COURT: Just where the jurors can look at
23 it, where all the names are.

24 I think when you have two witness lists, and
25 you've got a defendant's witness list, that somehow

1 implies the defendants may have a burden to put up
2 witnesses and then you all can change your mind, you know,
3 for whatever reason.

4 MR. MYERS: We will -- and I'm just guessing
5 based on past cases, we'll probably have more witnesses
6 than the defense.

7 THE COURT: Yes, sir.

8 MR. MYERS: They may want us to give a generic
9 thing with the caption and not saying which side for all
10 these potential witnesses, we can put all those together.

11 THE COURT: That was my suggestion.

12 MR. MYERS: If they'll be able to supply
13 everything, we can have it ready Monday morning.

14 THE COURT: That was my suggestion, just have
15 potential witnesses in the trial of the case list. You'll
16 know who his are and he'll know -- you all will know, but
17 the jurors won't.

18 All right. Any other motions?

19 MR. TARR: I believe there's to be one other
20 motion maybe Monday.

21 MR. HARTE: I had indicated that there will be a
22 motion with regards to the ID, and I'll have that prepared
23 over the weekend and whenever you want to hear that. I'll
24 try to include as much in the motion and my argument as I
25 can --

1 THE COURT: All right.

2 MR. HARTE: And my client does wish to talk to
3 Your Honor.

4 THE COURT: All right. I'll get with him in
5 just a moment.

6 MR. HARTE: Yes, sir.

7 THE COURT: Any motions, Solicitor?

8 MR. MYERS: No, sir. The only motion we had was
9 about the witness list. That's the only one we had.

10 THE COURT: All right. Anything I haven't ruled
11 on that you need to rule on now, Mr. Tarr?

12 MR. TARR: No, Your Honor.

13 THE COURT: All right. Let's see. Now
14 Mr. Barnes, please stand for me. Tell me your full name.

15 THE DEFENDANT: Steven Barnes, Steven Louis
16 Barnes.

17 THE COURT: All right. You have an issue you
18 want to bring up in front of the Court?

19 THE DEFENDANT: Yes, Your Honor, I do.

20 THE COURT: Now, before you do that, you realize
21 the Solicitor and his staff's in the courtroom?

22 THE DEFENDANT: I understand that, and I'm going
23 to take time to do that, that situation. But first --

24 THE COURT: But you don't have any objections to
25 speaking to the Court in front of the Solicitor and his

1 staff?

2 THE DEFENDANT: Well, what I'm about to say, the
3 first motion I'm about to do, no. The second motion, yes.

4 THE COURT: All right. Let's talk about the
5 first motion. What's your first motion?

6 THE DEFENDANT: Okay. Yes, sir.

7 First and foremost, I would like to say that --
8 first and foremost, I'd like to say that, you know, Robert
9 Harte and David Tarr, they're excellent people, but, you
10 know, my life is on the line in this trial, and my first
11 motion would be that I would like to put in a Faretta
12 versus California motion.

13 THE COURT: A what motion?

14 THE DEFENDANT: Faretta versus California
15 motion.

16 THE COURT: All right. Faretta, yes, sir.

17 THE DEFENDANT: Basically the motion is that I
18 plan on in this trial representing myself.

19 THE COURT: You want to represent yourself?

20 THE DEFENDANT: Yes, sir. And I knowingly and
21 intelligently waive my right to counsel.

22 Now, the second issue will have to be ex parte
23 if you don't mind. I'd like to bring issues up by way of
24 ineffective assistance of counsel. Due to the fact of
25 attorney/client information and, you know, due to the

1 Solicitors, I'd like it to be in your presence.

2 THE COURT: Have you filed a written motion
3 under Faretta?

4 THE DEFENDANT: Well, sir, I'm in prison.

5 THE COURT: Yes, sir.

6 THE DEFENDANT: And, I mean, I hate to do it
7 orally. I apologize. I sincerely -- I mean I'm not
8 meaning disrespect to the Court, but I'm all messed up,
9 you know, and the only way I can even bring stuff to you
10 is by addressing you right now, because there's no other
11 way. There's no other way. I'm telling you the truth.

12 THE COURT: And what do you mean by the
13 statement "you're all messed up"?

14 THE DEFENDANT: Well, basically my condition,
15 you know, the situation that I'm in, you know, being
16 that -- I mean, I'm in shackles, being in prison where,
17 you know, you got to go through all these protocols and
18 you might not even get the stuff that you need.

19 Hell -- I mean, excuse me, I don't want to say
20 hell, but I've done filed many lawsuits trying to get
21 legal supplies and legal materials and stuff like that
22 and, you know, it's very difficult, you know, and
23 especially, you know, trying to get the address to get to
24 you and stuff like that. It's very difficult. That's
25 what I mean. That's the definition that I mean by that.

1 If you want me to elaborate and you want details
2 I'll do so, but that's what I mean.

3 THE COURT: All right. Mr. Harte.

4 MR. HARTE: Yes, sir.

5 THE COURT: Would you state into the record your
6 qualifications as an attorney and your qualifications
7 specifically as an attorney on death penalty trials?

8 MR. HARTE: Your Honor, I've practiced law in
9 the state of South Carolina for 36 years as of this month,
10 next week as a matter of fact. I have tried numerous
11 murder cases. I have prosecuted two death penalty cases
12 while I was Solicitor in the 2nd Judicial Circuit and I
13 have been appointed on two previous death penalty cases,
14 one of which went to trial. I have tried numerous felony
15 cases in multiple counties throughout state of South
16 Carolina.

17 THE COURT: You're certified by the Supreme
18 Court?

19 MR. HARTE: I am, Your Honor.

20 THE COURT: For appointment on death penalty
21 cases?

22 MR. HARTE: I am, Your Honor.

23 THE COURT: And Mr. Tarr?

24 MR. TARR: Your Honor, I've been in the practice
25 of law in this state for 15 years. This is my first death

1 penalty trial, but I'm second chair. I've handled a
2 capital PCR that lasted about nine years. I've worked for
3 a lot of people involved in the death penalty field. I've
4 tried lots of cases otherwise other than death penalty
5 cases. I've worked really hard on this case for four
6 years and I'm ready to go to trial.

7 THE COURT: Yes, sir, Mr. Barnes.

8 THE DEFENDANT: I don't mean to be
9 disrespectful.

10 THE COURT: You're not being disrespectful.

11 THE DEFENDANT: I think we pick the jury Monday;
12 is that correct?

13 THE COURT: We start with the jury Monday.

14 THE DEFENDANT: Okay.

15 THE COURT: We're not going to pick the jury
16 Monday. We're going to start with the jury Monday.

17 THE DEFENDANT: I understand that.

18 THE COURT: Yes, sir.

19 THE DEFENDANT: Okay. And I'm not doing this
20 for no delay tactics or anything like that. I do plan on
21 proceeding with the jury process Monday.

22 I also ask Your Honor for Counsel to hand over
23 any and all documents to my case so I can study them over
24 the weekend. So I can come through -- and if you want me
25 to write it down while in my cell I'll be glad to do so,

1 the motions, if necessary.

2 I do have, like I say, the second motion if you
3 would like me to do it today or do it tomorrow --

4 THE COURT: Well, I haven't --

5 THE DEFENDANT: Excuse me, Monday, excuse me,
6 but I'd like to do that in the presence of -- basically on
7 the grounds for ineffective assistance of counsel.

8 THE COURT: Ineffective assistance of counsel?

9 THE DEFENDANT: Yes, sir, and my grounds why
10 that they're ineffective basically.

11 THE COURT: And what --

12 THE DEFENDANT: Basically -- you go ahead, I'm
13 sorry.

14 THE COURT: No, sir, you go ahead.

15 THE DEFENDANT: Basically it's a Kimler versus
16 Morrison issue about, you know, certain pretrial matters,
17 things not being investigated, witnesses, and things like
18 that, of that nature.

19 Also while I'm here in the courthouse, I'd like
20 to also ask you if there's any way possible that you can
21 subpoena or get the Clerk of South Carolina to subpoena
22 the Hunsbergers here for this trial. That's one matter
23 that, you know, I would like to raise, Your Honor.

24 MR. TARR: Your Honor, we think this is probably
25 something that should be handled ex parte.

1 THE DEFENDANT: Yeah, that's what, you know, I'd
2 really like to comment ex parte, but it's in your
3 discretion.

4 THE COURT: All right. Do you have any
5 objection, Solicitor?

6 MR. MYERS: No, sir.

7 THE COURT: All right. I'll handle it ex parte.
8 I'm going to take about a 15-minute recess and
9 I'll come back. Thank you very much.

10 (A break was taken.)

11 THE COURT: All right. We're back on the record
12 in State versus Steven Louis Barnes. Mr. Barnes is
13 present along with his attorneys, Mr. Tarr and Mr. Harte.

14 The Solicitor's office is not present by
15 agreement as far as this stage of the proceeding, that it
16 may concern certain attorney/client privileges.

17 I take it the motion, though, that is still on
18 the table that these issues will go to is the motion
19 concerning the defendant's request to represent himself;
20 is that correct, Mr. Tarr, Mr. Harte?

21 MR. HARTE: Yes, sir.

22 MR. TARR: Yes, sir.

23 THE COURT: All right. I'll further advise that
24 since this does concern the attorney/client privilege,
25 that the officers in the courtroom and the other court

1 personnel with the Clerk's office are advised they're not
2 to discuss any of these matters amongst themselves or with
3 anyone else in that regard. Thank you very much.

4 Now, what was it you wanted to tell me further,
5 Mr. Barnes?

6 THE DEFENDANT: For the record, I'd like to make
7 a correction.

8 Yes, we have got two motions.

9 THE COURT: Yes, sir.

10 THE DEFENDANT: We have a motion to relieve
11 counsel, the Faretta motion --

12 THE COURT: Yes, sir.

13 THE DEFENDANT: -- and we have a second motion
14 for a motion for ineffective assistance of counsel.

15 THE COURT: A motion for what?

16 THE DEFENDANT: Ineffective assistance of
17 counsel. I would like to make sure that's on the record.

18 THE COURT: All right. Well, I've never heard
19 exactly of a motion for ineffective assistance of counsel.
20 The only time I've heard of the --

21 THE DEFENDANT: After trial, right?

22 THE COURT: Sir?

23 THE DEFENDANT: After trial, right?

24 THE COURT: The times I've heard of ineffective
25 assistance of counsel, it's generally through the

1 post-conviction relief process and the standard of
2 Strickland versus Washington.

3 So you can make that motion in that regard, but
4 the first thing is your request for me to allow you to
5 represent yourself.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. And so that's what I
8 need to resolve first; is that correct?

9 THE DEFENDANT: Okay. No problem. Yes, sir. I
10 just wanted it clear for the record that there's two
11 motions I want before the Court.

12 THE COURT: All right.

13 THE DEFENDANT: You ready?

14 THE COURT: Yes, sir, I'm ready.

15 THE DEFENDANT: Would you like me to incorporate
16 both things, both motions together?

17 THE COURT: Well, the first thing I need to
18 decide, Mr. Barnes, is whether or not I'm going to allow
19 you to represent yourself. So I think the first thing
20 perhaps I should do is have you placed under oath.

21 Madam Clerk, would you place him under oath?
22 You may do so from there.

23 THE CLERK: Yes, sir.

24 Please raise your hand.

25 THE DEFENDANT: Which one?

1 THE CLERK: Your right hand.

2 STEVEN LOUIS BARNES, after being duly sworn,
3 testified as follows:

4 THE COURT: Let me talk to you a little bit in
5 regard to self-representation.

6 How old are you, Mr. Barnes?

7 THE DEFENDANT: Well, I've got to tell you the
8 truth, I'm 32, but I always say I'm 30 due to the fact I'm
9 getting old, but yeah, I'm 32, sir.

10 THE COURT: So you're 32?

11 THE DEFENDANT: I'll be 33 in December.

12 THE COURT: When will you be 33?

13 THE DEFENDANT: December 22nd.

14 THE COURT: And you normally a lot of times tell
15 people you're 30?

16 THE DEFENDANT: It's a joke.

17 THE COURT: I understand.

18 How much education do you have?

19 THE DEFENDANT: Well, I'm self-educated. I went
20 up to the 11th grade in school. I'm something like
21 Einstein. Albert Einstein, he wasn't too great at school
22 himself, but when he got older, you know.

23 THE COURT: How much formal education do you
24 have?

25 THE DEFENDANT: To the 11th grade, sir.

1 THE COURT: Eleventh grade?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And that's high school?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you go to any trade schools or
6 any type of tech schools after high school?

7 THE DEFENDANT: No, I never did any tech schools
8 or anything after high school.

9 THE COURT: What type of work did you do?

10 THE DEFENDANT: Self-employed.

11 THE COURT: Doing what?

12 THE DEFENDANT: Well, I was co-owner of a car
13 business. I was co-owner of this little car wash. I sold
14 cars.

15 THE COURT: All right. Now, you've requested
16 that I allow you to represent yourself?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: What are you charged with before
19 this court?

20 THE DEFENDANT: Well, a serious capital offense
21 in South Carolina called murder.

22 THE COURT: And you have any other charge also
23 associated with that murder charge?

24 THE DEFENDANT: Kidnapping.

25 THE COURT: And what is the potential punishment

1 that you could receive for the murder if you were
2 convicted of murder?

3 THE DEFENDANT: Well, it's my understanding by
4 the statute death, life, and I believe it's something like
5 30 years, if I'm not mistaken.

6 THE COURT: And what about the kidnapping?

7 THE DEFENDANT: I believe according to my 2010
8 book over there, it says -- I think it says something
9 about 30 years. They don't really give a -- like some
10 statutes are two to 30 or something like. Just says
11 something about 30 years. I can go back through it.

12 THE COURT: Now, you've been before the criminal
13 courts in South Carolina before?

14 THE DEFENDANT: Well, sir, a lot of -- what do
15 you mean by that? You mean like continuances and stuff
16 like that?

17 THE COURT: No. As a defendant in other cases
18 have you been in court before?

19 THE DEFENDANT: Yeah, I was in front of you
20 also, if I'm not mistaken.

21 THE COURT: Well, we may know that, you and me
22 may know that, but our record doesn't know that. You
23 understand?

24 THE DEFENDANT: Okay.

25 THE COURT: That's why I know you've been before

1 the Court before, you know you've been before the Court
2 before, but if it's not put on that record, then if it
3 ever goes up on appeal, they don't know you've been before
4 the Court before. Do you understand what I'm saying?

5 THE DEFENDANT: Yes.

6 THE COURT: Did you represent yourself in that
7 case?

8 THE DEFENDANT: No, I had Greg Seigler with me.

9 THE COURT: So you had an appointed public
10 defender at that time?

11 THE DEFENDANT: Yes, sir. And I pretty much did
12 all the objections and told him what to object to and
13 everything. I pretty much handled that trial myself.

14 THE COURT: And did he pretty much follow your
15 directives?

16 THE DEFENDANT: Yes. Yes, sir. The best he
17 could due to the situation.

18 THE COURT: And you've been a criminal defendant
19 in other courts in other states?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Have you had attorneys in those
22 cases?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Have they always been of assistance
25 to you?

1 THE DEFENDANT: Speaking in general or do you
2 want me to just -- well, speaking in general, I would only
3 say so far one that I can really say that really tried
4 helping me the best he could do. And for the record, that
5 was Greg Seigler.

6 THE COURT: All right. That's Mr. Seigler.

7 All right. Now, you understand if I allow you
8 to represent yourself, you would be held to the same
9 standard as an attorney as far as the Rules of Court and
10 the Rules of Evidence?

11 THE DEFENDANT: I understand that, sir.

12 THE COURT: Have you studied the Rules of
13 Evidence?

14 THE DEFENDANT: I do have it on tap. I do know
15 it pretty well.

16 THE COURT: And you have what? I didn't
17 understand.

18 THE DEFENDANT: I said I do have it on tap,
19 meaning that I do know it.

20 THE COURT: And you've studied the Rules of
21 Evidence?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: What's Rule 803? Do you know what
24 that is?

25 THE DEFENDANT: Rule 803 -- well, first of all,

1 anything to do with the eight hundreds got to do with
2 hearsay. 803 has something to do with -- I believe like
3 if I'm not mistaken, I think it's in the realm of excited
4 utterances, present sense impressions.

5 THE COURT: That's 803(1), that's 803(3).

6 THE DEFENDANT: Yeah, 803, that's them.

7 THE COURT: All right. Now, you understand that
8 an attorney may know certain motions to make, certain
9 positions to take that you may not know just because of
10 your lack of training in the law?

11 THE DEFENDANT: And, sir, for the record,
12 according to case law that I'm just discussing with my
13 attorney, that I understand hybrid representation, you
14 know what I mean, in South Carolina, you know, is not
15 allowed, but due to the motion that I put in, they can
16 assist me if I run into problems with like some big words.
17 I want to make sure that the Clerk over there understands
18 me.

19 THE COURT: Now, I understand about hybrid
20 representation, and that is not allowed in South Carolina.
21 But my question was, you know, sometimes an attorney may
22 know a certain motion to make that you may not even know
23 to make it just because of your lack of training, not lack
24 of intelligence, but lack of training in the law.

25 THE DEFENDANT: Sir, at the time that it's

1 necessary, you know, like for instance, like directed
2 verdict, motion for mistrial due to prosecutorial
3 misconduct, I do believe that's going to happen in this
4 case, insufficiency of the evidence, and I'm willing to
5 make the motions if necessary in the course of trial.

6 THE COURT: I mean, do you understand that an
7 attorney can be of great assistance to you in a case, not
8 only a case such as this, but in any case?

9 THE DEFENDANT: And not to be disrespectful to
10 the integrity of the Court, I would never do that, but
11 also, you know, my rights is very important, too, and
12 that's why I come forth to bring it to you today for
13 adjudication as for representing myself.

14 THE COURT: Have you ever had to have any mental
15 evaluations, Mr. Barnes?

16 THE DEFENDANT: Sir, that taser incident was
17 traumatic. You know, I got a -- you know, I know what I
18 done was unprofessional.

19 THE COURT: And what was traumatic?

20 THE DEFENDANT: The taser incident that happened
21 to me.

22 THE COURT: Yes, sir.

23 THE DEFENDANT: And that's another thing, I'd
24 like to put in a motion, you know, about the taser issue,
25 by taking the position of representing myself, that really

1 bothered me for some time.

2 I'm mentally sound through this trial. I don't
3 have any mental health issues, Your Honor, regarding this
4 trial.

5 I have been through some type of mental health
6 while I was younger. And like I say, specifically in the
7 realm of this taser incident, I've been through some
8 counseling. I got off of it at Lieber. I got off of it.
9 I couldn't -- I healed myself slowly but surely, but I got
10 better.

11 But I am mentally sound and I do know what's
12 going on with the proceedings. I know what today is, I
13 know who the President is. I know that the Republicans
14 took over the Senate and the House and all that stuff like
15 that.

16 THE COURT: Do you take any medications?

17 THE DEFENDANT: No.

18 I take -- excuse me. When you're talking about
19 medications, I was thinking mental health medication, but
20 I do take Baclofen. That's for my health, my back pains,
21 Baclofen.

22 I do take sinus pills they call CPMs. I do take
23 Tylenol, high blood pressure.

24 I do use hydrocortisone for my face, tar shampoo
25 for my hair, fungus for my rash that I got on my rear

1 areas -- I don't want to get specific -- but that's it, I
2 think.

3 THE COURT: How many criminal trials have you
4 been previously involved in as a defendant?

5 THE DEFENDANT: Sir, Richmond County; you know,
6 here in I think March '08, like I say in the record in
7 front of you; and this one right here, sir.

8 THE COURT: And you're familiar with the
9 courtroom procedures?

10 THE DEFENDANT: To the best of my knowledge and
11 degree of understanding. I wouldn't want to go out there
12 and overboard with it, but I do have an understanding
13 enough to be able to defend myself.

14 THE COURT: Have you discussed the fact of
15 self-representation with either your attorney Mr. Tarr or
16 Mr. Harte or both?

17 THE DEFENDANT: For the record, yes. And also I
18 talked with David Tarr. And I don't know how to say it
19 because I'm not an emotional person, but he's emotional
20 about it.

21 Mr. Harte, he said that he would assist me
22 according to the law. He don't have any --

23 THE COURT: Are you making this motion in any
24 way to attempt to delay or manipulate the proceedings,
25 Mr. Barnes?

1 THE DEFENDANT: Sir, all I ask is for materials.
2 To make a long story short, I ask for materials to be
3 prepared over the weekend. Monday, the process of picking
4 the jury, I would like for that to occur if you don't
5 mind.

6 THE COURT: You would like what?

7 THE DEFENDANT: For the process of picking the
8 jury, because I've been trying -- I've been ready to go to
9 trial for this ever since I came over here on the
10 interstate agreement retainer back in '05. This case has
11 been going on ever since '01, '02, something like that.

12 THE COURT: And you're further asking that if I
13 do allow you to represent yourself, that I appoint standby
14 counsel?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And that would be Mr. Harte; is that
17 what you just stated?

18 THE DEFENDANT: I believe God will be in this
19 situation one hundred percent, so I'm going to go with Mr.
20 Harte.

21 THE COURT: What legal challenges could a person
22 raise --

23 MR. HARTE: Your Honor, based upon the amount of
24 work that Mr. Tarr has done on this case --

25 THE COURT: Well, I haven't made my decision,

1 Mr. Harte.

2 MR. HARTE: But if you are going to ask -- if
3 you choose to do standby counsel, I request that both of
4 us be allowed to stay.

5 THE COURT: You have no objection to that if I
6 do that?

7 THE DEFENDANT: Actually, that sounds good to
8 me.

9 THE COURT: All right. He mentioned you, but
10 that's fine. I just wanted to know if you --

11 MR. HARTE: I didn't know if that was excluding
12 him.

13 THE COURT: No, I wasn't attempting to do that
14 at all. I don't want to -- well, let me continue.

15 And you understand, you know you would be
16 required to comply with the rules of procedure at trial?

17 THE DEFENDANT: I'll try not to disrupt this
18 court. I plan on following everything.

19 THE COURT: You are required to do that as a
20 defendant, but I'm talking about you're required to comply
21 with the rules of procedure at trial. Do you understand?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Tell me what defenses a person can
24 put forward on a murder case.

25 THE DEFENDANT: Well, you have ultimate

1 discretion, so therefore in attempting to phrase the words
2 to use, but I plan on bringing forth another person.

3 THE COURT: Another person?

4 THE DEFENDANT: Third-party guilt.

5 THE COURT: Third-party guilt?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Have you looked at any of the
8 third-party guilt cases?

9 THE DEFENDANT: Yes. It's -- you know, it got
10 overruled back in '06 by the United States Supreme Court.

11 THE COURT: You talking about Holmes?

12 THE DEFENDANT: Yes, Holmes.

13 THE COURT: Tell me about Holmes.

14 THE DEFENDANT: Holmes was a situation where he
15 had a bunch of experts -- excuse me -- he had a lot of
16 forensic evidence, to make a long story short, and the
17 Supreme Court stated that the standard that was used was
18 arbitrary. They didn't give him basically the right to
19 prepare a defense based on the cases, pretty much the
20 standard that was used in South Carolina, that was used in
21 Greg, I believe, Greg versus - I mean I've got it all
22 here.

23 THE COURT: Gay?

24 THE DEFENDANT: Gay and all them cases right
25 there. I can go through it.

1 THE COURT: Is there a lot of forensics in your
2 case? I don't know.

3 THE DEFENDANT: No, no evidence. None
4 whatsoever in my case.

5 Okay. Right now I guess that's pretty much the
6 defenses I have.

7 THE COURT: Third-party guilt?

8 THE DEFENDANT: Third party.

9 THE COURT: Any other issues in your trial that
10 you think is important to bring before the jury as far as
11 the guilt phase is concerned?

12 THE DEFENDANT: Well, okay. The guilt phase,
13 with that -- I believe, what do you call it, the penalty
14 phase is once you get found guilty, right?

15 THE COURT: Yes, sir.

16 THE DEFENDANT: I just want to make sure -- in
17 voir dire, is that what you all call it? Is that the
18 proper way to say it, voir dire?

19 THE COURT: Voir dire, yes, sir.

20 THE DEFENDANT: There's an issue that I would
21 like to -- Witherspoon?

22 THE COURT: Yes, sir.

23 THE DEFENDANT: I would like to make sure that's
24 done, to make sure that none of the jury's going to
25 automatically vote for the death penalty.

1 THE COURT: But I'm talking about the guilt
2 phase, the determination of whether or not you're guilty
3 of murder. Are there any other issues you think that are
4 important to bring before your jury?

5 THE DEFENDANT: I'm innocent.

6 THE COURT: Well, I understand that, but any
7 other particular issue that you think's important to bring
8 before a trial jury in a murder case besides third-party
9 guilt?

10 THE DEFENDANT: See, that's what I'm saying, I
11 just had -- basically on my whole defense, Your Honor, is
12 that -- that inappropriate conduct by the State occurred
13 in my case, in which due to -- how can I say this --
14 there's been situations where, for example, Investigator
15 Roundtree, the lead investigator on this whole case --
16 matter of fact, I don't think I need to go into that due
17 to the fact that these officers --

18 THE COURT: But you're going to cross-examine in
19 regard to the quality of the investigation or --

20 THE DEFENDANT: Actually I'm going into the
21 defense part of it, basically when I present my defense,
22 the material part, the materiality part of my defense.
23 That's my point. I ain't going to say it out loud due to
24 the fact of these --

25 THE COURT: Well, I've advised all the officers

1 in here that they -- I don't want you to say it out loud
2 then, but I've advised all the officers in here that this
3 is an ex parte hearing, that there were attorney/client
4 privileges we were going to discuss and they're not to
5 discuss this with themselves or with anyone else. They're
6 not to disclose anything they've heard in this courtroom
7 during this ex parte hearing, and I've also advised the
8 Clerk's personnel of that.

9 THE DEFENDANT: Okay.

10 THE COURT: But that's fine.

11 Let me advise you of a few other things.

12 If you're a criminal defendant, you know, a
13 criminal defendant in South Carolina -- well, who has the
14 burden of proof?

15 THE DEFENDANT: Oh, you know, the State.

16 THE COURT: All right. And what is that burden,
17 what is that standard?

18 THE DEFENDANT: They've got to prove it beyond a
19 reasonable doubt.

20 THE COURT: And is a criminal defendant ever
21 required to prove his or her innocence?

22 THE DEFENDANT: No.

23 THE COURT: Are you required to testify?

24 THE DEFENDANT: No.

25 THE COURT: And you understand if you do not

1 testify, that you have the absolute right if you do not
2 testify that I would -- and you have the absolute right
3 not to testify -- I would tell the trial jury that they
4 could not hold that against you.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: That the fact that you did not
7 testify would not be held against you in any manner and
8 could not even be mentioned and should not even be
9 mentioned in the courtroom -- I mean in the jury room. Do
10 you understand?

11 THE DEFENDANT: Yes, sir, I understand all that.

12 THE COURT: Now, when you jump from a criminal
13 defendant to also a pro se defendant, you speak in the
14 courtroom, you're going to question these jurors, you're
15 going to question the witnesses as opposed to Mr. Harte or
16 Mr. Tarr, the jurors know you're the defendant, know you
17 have a stake in it and are going to -- I mean, have you
18 thought through that tactically, Mr. Barnes --

19 THE DEFENDANT: Tactically, Your Honor --

20 THE COURT: -- of what an effect that may have
21 on the jurors, on the witnesses, and on the outcome of the
22 trial?

23 THE DEFENDANT: Tactically I would -- voir
24 dire -- you know, I understand that on a regular trial, I
25 believe that normally in South Carolina, to my

1 understanding, and correct me if I'm wrong, that voir dire
2 is normally done by you.

3 THE COURT: That's correct.

4 THE DEFENDANT: And that's the same thing that
5 applies to capital trials, too?

6 THE COURT: Not capital trials, but the defense
7 has an absolute right to question the juror and the juror
8 cannot be sat unless the defense has exercised that right.

9 THE DEFENDANT: I plan on, if the Court will
10 allow me, to ask the jury do they feel any type of way
11 about me representing myself. If you allow those
12 questions or you can proffer something that you might
13 think that's necessary for somebody representing himself
14 or whatever the case may be.

15 THE COURT: Well, normally when I have a pro se
16 defendant, I tell the jury that they should not hold the
17 fact that an individual is representing himself for him or
18 against him, nor should they hold the fact that an
19 individual is representing himself for or against the
20 State of South Carolina.

21 THE DEFENDANT: And like I say, that sounds
22 excellent, but at the same time, if there's anything
23 additional that I would like for you to manifest to the
24 jury, I will put it in writing. And also if you deny it,
25 I will also put it in the record and object to it

1 according to the rules and preserve it for appeal, if
2 necessary.

3 THE COURT: Has your request to waive the right
4 to have an attorney resulted as a result of either
5 coercion or mistreatment of any kind? Has anyone forced
6 you or pressured you into waiving your right to an
7 attorney?

8 THE DEFENDANT: You know, Your Honor, when you
9 say force or coercion, you know, any time you bring up a
10 motion for ineffective assistance of counsel, I believe
11 that explains itself. But I believe that's the reason why
12 I proceeded to this stage where I'm at, with you ruling on
13 this matter before you.

14 THE COURT: You understand you give up many of
15 the traditional benefits associated with a right to
16 counsel if you give up your lawyers?

17 THE DEFENDANT: Yeah, I know, and that's why I
18 have to make sure I protect the record.

19 MR. TARR: Your Honor --

20 THE COURT: Give me just a moment.

21 Do you feel like you understand and have an
22 awareness of the dangers and disadvantages of
23 self-representation?

24 THE DEFENDANT: One more time?

25 THE COURT: Do you feel like you have an

1 understanding and appreciation of the dangers and the
2 disadvantage of self-representation?

3 THE DEFENDANT: That all goes back to the
4 compelling part why I said, the reason why I'm
5 representing myself due to the grounds that -- of
6 ineffective assistance of counsel. So I know I don't
7 appreciate the fact, but I need some writing that I have,
8 so I mean I have appreciated in that regard, but at the
9 same time, it's a compelling issue.

10 THE COURT: So your position is the only reason
11 you're requesting self-representation is because of
12 ineffective assistance of counsel?

13 THE DEFENDANT: It's a trust issue. It's a
14 trust issue.

15 THE COURT: Do you trust Mr. Harte or Mr. --

16 THE DEFENDANT: I trust my life to my own hand.
17 I don't mean to cut you off. Please excuse me.
18 I'm sorry. Go ahead.

19 THE COURT: But you trust Mr. Harte and Mr. Tarr
20 to be standby counsel?

21 THE DEFENDANT: Well --

22 THE COURT: You think they haven't worked in
23 your best interest?

24 THE DEFENDANT: You know, I like them. And if I
25 say this to you, Your Honor, I mean I know you might --

1 how can I say this -- being in the double-mind position --
2 I'm moving on faith, that due to when you hear the other
3 testimony that I will bring forth to you, that they will
4 try to help me due to my life is on the line. But in all
5 actuality, and I know this might sound crazy to you, but I
6 was thinking about -- I also had another option in mind in
7 regards to standby counsel. Actually there's two. And
8 it's a female lawyer -- I don't have her name. I think
9 her name's Karen Talbot or Target or something, or Greg
10 Seigler. But I do have faith that they will assist me.

11 THE COURT: What is it you want them to do as
12 far as in regard to ineffective assistance of counsel that
13 they have not done?

14 THE DEFENDANT: Well, the first part like I was
15 saying, subpoena.

16 THE COURT: Who do you want subpoenaed?

17 THE DEFENDANT: Hunsbergers.

18 THE COURT: Who is Hunsbergers?

19 MR. TARR: Your Honor, these are co-defendants
20 that are going to take the Fifth Amendment if they're
21 subpoenaed by either side. He wants them brought to court
22 and we have differing opinions about whether they would be
23 helpful to our case. We really don't know what they would
24 say, but we also feel like they would, on the advice of
25 their attorneys, would probably not testify.

1 MR. HARTE: They are co-defendants who are
2 presently serving sentences in the state of Georgia for
3 kidnapping, which is the same kidnapping that Mr. Barnes
4 is charged with. They were tried in Richmond County
5 because that's where the alleged kidnapping started, and
6 they were convicted over there.

7 We made a tactical decision that it would not be
8 beneficial to have them subpoenaed, so we've not asked for
9 out-of-state subpoenas. But my understanding is that
10 Steve would, if he represents himself, would request an
11 out-of-state subpoena for them. They are incarcerated in
12 Georgia.

13 THE COURT: I'll be glad to sign an
14 out-of-state -- how many people are we talking about, two?

15 MR. HARTE: Two.

16 THE COURT: I'll be glad to sign an out-of-state
17 subpoena and y'all can call them as witnesses in camera
18 and see if they're here solely for purposes of taking the
19 Fifth Amendment, because they cannot be called as
20 witnesses solely for purposes of taking the Fifth
21 Amendment.

22 MR. TARR: Correct.

23 THE COURT: Then if that resolves that issue --

24 MR. HARTE: I don't think that will change his
25 motion, but I wanted to tell you what that situation was.

1 THE COURT: Yes. But that's one -- if you all
2 have a tactical difference of opinion in regards to the
3 two Hunsberger witnesses, and I understand you're saying I
4 don't think that will change his position on
5 self-representation, but that is one issue he says is one
6 reason why he wants to represent himself.

7 MR. HARTE: Yes, sir.

8 THE COURT: All right. What's the next issue?

9 Mr. Tarr, did you want to say something?

10 MR. TARR: Your Honor, you're going over a lot
11 of things kind of in general terms with Mr. Barnes, one of
12 which was trying to decipher whether he is aware of
13 different procedures and Rules of Evidence and things like
14 that. And I just want to make sure that the Court makes
15 clear to him, especially with regards to impeaching
16 witnesses, this case is going to come down to credibility
17 of a few witnesses that the State has that the jury's
18 going to have to believe to convict.

19 We have a ton of impeachment evidence in this
20 case. And if he doesn't know how to get it in, it's not
21 going to come in. I just think he needs to be aware of
22 that. Because if he's trying to impeach a witness and he
23 doesn't know how to do it, then all of that evidence that
24 could be used may not be able to be used.

25 THE COURT: And I can't represent you.

1 THE DEFENDANT: Yes, sir, I understand that.

2 THE COURT: See, I don't know what the case is.
3 That's why I asked you what the defenses are.

4 I mean, I can kind of read between the lines --
5 they were talking about prior inconsistent statements --
6 but there is no question there's an art to
7 cross-examination, and there's an art to cross-examination
8 when there have been prior inconsistent statements and
9 there's an art to cross-examination when there's a wealth
10 of information there, both as to prior inconsistent
11 statements and perhaps other areas in which to impeach a
12 person, whether it's plea bargains or prior criminal
13 histories or what have you, and if you don't hit those
14 standards under the 600s, they won't come in.

15 THE DEFENDANT: And I was just about to go
16 there.

17 As to the issue -- just say, for example, the
18 Hunsbergers take the Fifth on the stand. Under Rule,
19 what, 804(3) or something, they can make a statement or
20 whatever that can be confirmed through the transcript --

21 THE COURT: I didn't track that, Mr. Barnes,
22 what you said.

23 MR. TARR: He's talking about unavailability.

24 THE DEFENDANT: Yeah, unavailability because --
25 unavailability means both ways, that the person cannot be

1 found or the person just pleads the Fifth, that means that
2 under unavailability you can bring the transcript in.

3 THE COURT: I don't -- I don't --

4 MR. TARR: The co-conspirators are not here
5 today anyway. So they would come in if that's something
6 you don't know --

7 THE COURT: If it's statements of
8 co-conspirators, it may be admissible.

9 THE DEFENDANT: See, once again as for --

10 THE COURT: We're already right here arguing
11 about it and you don't even have your adversary in the
12 courtroom, nor a witness.

13 THE DEFENDANT: But, you know, they saying in
14 regards to me not knowing the rules, I throw that out.
15 And then for another thing, for impeachment purposes you
16 can also bring in under, what, Rule Eight -- I wish I
17 could just go through and peel them all out for you -- but
18 just because one rule don't apply, the other rule apply.
19 You got more than one way to bring in certain evidence.
20 I'm aware of it.

21 THE COURT: And the witnesses that need to be
22 impeached, they're going to treat you much differently
23 than Mr. Tarr or Mr. Harte.

24 THE DEFENDANT: And that's why I was going to
25 ask for a limited instruction in regards to, you know,

1 them pointing at me disrespectful or whatever the case may
2 be. I was going to -- I mean if that's -- I mean if you
3 can --

4 THE COURT: Demeanor's part of the credibility
5 jurors may use to make his or her decision.

6 THE DEFENDANT: But what I was going to do, I
7 was going to refer to something like to the chair, you
8 know what I'm saying, as, you know, Defendant Barnes or
9 whatever the case may be or whatever strategy that I come
10 up with to try to --

11 THE COURT: See, that doesn't help when you have
12 to refer to yourself in third party in the courtroom.
13 That's my personal opinion.

14 THE DEFENDANT: That's just a danger I have to
15 take. That comes with representing yourself.

16 THE COURT: All right. You talked about
17 subpoenaing the Hunsbergers. What other issues do you
18 have on ineffective assistance of counsel?

19 THE DEFENDANT: Also the motion -- selective
20 prosecution. To my understanding, Counsel was trying to
21 tell me that selective prosecution can only be brought in
22 post-trial, but it can be brought in the beginning due to
23 the fact of the Hunsbergers were here in this state for
24 three years and they was never indicted and the Solicitor
25 never thought about seeking the death penalty, but when I

1 come over here on the IAD utilizing my protective conduct
2 under the statute, then they decide to seek the death
3 penalty in my case. So that was a motion that I planned
4 on bringing.

5 THE COURT: You all can put that motion on the
6 record. You can put that motion on the record. I'll be
7 glad to hear that motion.

8 THE DEFENDANT: Okay. The motion on --

9 THE COURT: Can I hear that motion, Mr. Tarr?

10 THE DEFENDANT: Well, there's one problem to
11 that motion. I need the newspaper article for '04.

12 THE COURT: Well, I'm not going to hear it
13 outside the presence of the State. That's not an
14 attorney/client issue.

15 THE DEFENDANT: Okay. Another issue, I found
16 out -- can I proceed to the next motion?

17 THE COURT: No, sir, I'm not finished with the
18 first motion. If you've got another issue on ineffective
19 assistance of counsel --

20 THE DEFENDANT: Yes, yes, that's right.

21 THE COURT: All right.

22 THE DEFENDANT: The in-state agreement retainer
23 issue, I specifically told my counsel, "Do not under no
24 circumstances file a continuance." Under no -- every
25 courtroom appearance that I have been through here in the

1 state of South Carolina, I specifically got up, just like
2 what I'm doing right now, and told the Court, "I'd like to
3 be tried immediately." My rights are very important to
4 me. So, anyway, to make a long story short -- and no
5 offense. I'm speaking that, you know, my rights are very
6 important. It's to every man, his own business, and my
7 feelings towards my rights is number one.

8 So with that said, I found out recently, and
9 that's really what hurt me, I had asked my attorney
10 numerous times, "Did you all file any continuance in the
11 case? No, no, no." And they even stated on the record,
12 and I'd hope they'd be truthful in the matter.

13 "Did you ever file any continuance in this case?
14 No." No, the State -- okay.

15 And recently I know -- I just -- just me, but
16 anyway, I found out recently that two continuances was
17 done, and that without -- you got to consult with me.
18 I'm -- listen, you can't just come up with my case and
19 think you just -- you going to let me know what's going
20 on. And just as well as I got to follow the Rules of
21 Court, they got to follow the rules as well, too. You see
22 what I'm saying?

23 And if I got a right, I expect for them to
24 perfect it. That's what they representing me for. That's
25 part of the Sixth Amendment incorporated into the

1 Fourteenth Amendment that makes it apply to the State.

2 So with that said, that really hurts me. That
3 really what threw the hammer down on me, me representing
4 myself. That really threw the hammer down.

5 The next issue is the agreement, the in-state
6 agreement of retainer.

7 First of all, Counsel was ineffective for not
8 making sure that the record was perfected everytime the
9 State and/or the Court, the government, went for an ex
10 parte continuance.

11 When they went on 5-24-05, when the Solicitor, I
12 believe it was Myers -- what's the one that's sitting in
13 that last chair right there, what's his name? The one
14 that's in the last chair at the end? Ervin Maye, if I'm
15 not mistaken. When he went for that continuance with John
16 Petrano or whatever his name, I think he's with the
17 Solicitor, but anyway, when they went for that
18 continuance, every continuance that they go for after that
19 supposed to be in open court, which it wasn't.

20 I was appointed counsel and this motion right
21 here, the next issue that's going to come forth that's
22 going to roll over to the part about how long it took for
23 the State of South Carolina to appoint me counsel, but
24 when I filed my motion in '04, sometime in February of
25 '04, specifically in the motion it stated -- I think it

1 was in '04 or '05, but anyway, in February of '05, excuse
2 me, it specifically stated in the motion for me to be
3 appointed counsel inside the package, the in-state
4 agreement detainer package that was sent to South
5 Carolina. So counsel was supposed to be already appointed
6 when I came here to South Carolina, period. So that's an
7 issue.

8 The next issue is the Barber versus Mingle
9 issue. That issue, I several times have informed counsel
10 that I'd like a motion for speedy trial filed in this case
11 as well. I was hard on about being tried. This case has
12 been going on since '01, okay? There's no excuse for it.

13 Okay. Once again, just like I just said in the
14 record, on 5-24-05, I was -- the State, excuse me, went
15 forward with a continuance.

16 On 9-1-05, Robert Harte was appointed. The
17 motion that Judge Keesley made threw out the in-state
18 agreement. They tried to make it like I came over here on
19 my own, just like they came got me.

20 On February 1st, 2006, David Tarr was appointed.

21 Somewhere around December of 2006, I was
22 indicted, okay?

23 So what happened in '07? What happened in '08?
24 And what happened in '09? It's 2010.

25 You just came on this case not too long ago.

1 Judge Maddox was on this case. What happened to those
2 times?

3 Another issue that I had to bring forth was the
4 due process issue, pre-delayed indictment or whatever you
5 call it. What's it called when they don't indict you in
6 court? Pre-indictment delay. This case has been going
7 on -- these people didn't indict me until '06.

8 THE COURT: I think it was '05.

9 THE DEFENDANT: Was it '05?

10 THE COURT: Looks like December 6th, 2005 to me
11 on the murder and looks like 8-10-05 on the kidnapping.

12 THE DEFENDANT: Okay.

13 THE COURT: On the dates on the indictments.

14 THE DEFENDANT: Okay. So with that said, they
15 waited all that time to indict me.

16 Now, according to case law -- it's kind of a
17 rocky situation according to case law. The main thing, I
18 have to show prejudice.

19 Well, once again, the State of South Carolina
20 didn't plan on prosecuting me, period, or they stated in
21 the newspaper article -- which I need in order to perfect
22 these motions -- they stated in the article back in '04
23 that they wasn't going to prosecute me unless I got
24 prosecuted in Columbia County and Richmond County in
25 Georgia. I initiated the process to come over here in

1 South Carolina. I didn't break no laws in filing rights
2 that's given to me that's made by Congress.

3 THE COURT: Well, all of this is under the
4 interstate agreement on detainer?

5 MR. HARTE: Yes, sir.

6 THE COURT: And I thought that's what we were
7 going to argue Monday?

8 MR. HARTE: Yes, sir.

9 THE COURT: So what does this have to do with
10 the motion on self-representation in regard to ineffective
11 assistance of counsel?

12 THE DEFENDANT: I'm glad you said that.

13 The issue that -- to my understanding that
14 Barber raised, that due to this critical stage in the
15 proceeding that I wasn't appointed counsel until 5-24-05,
16 that they violated my constitutional rights by me not
17 having counsel. That's the theory, which is wholly
18 incorrect. I just gave you the theory of the law and I'd
19 be glad to manifest it again for you in regards to the
20 IAD.

21 THE COURT: How does that affect, though, the
22 fact that Mr. Harte and Mr. Tarr are representing you at
23 trial?

24 THE DEFENDANT: Well, sir, just --

25 THE COURT: I mean, your complaint appears to

1 be, in that regard, against the State of South Carolina
2 generally and Assistant Solicitor Maye more specifically.
3 How does it affect the fact that Mr. Tarr and Mr. Harte
4 are representing you at trial?

5 THE DEFENDANT: I'll be glad to repeat myself
6 again, Your Honor.

7 It's a trust thing. And once again, I know I'm
8 being double-minded because I know you're going to say,
9 you're going to say, Well, Mr. Barnes, you got -- you
10 asking them to be standby counsel. I mean, you trust them
11 to represent you in your trial and they already didn't do
12 what they supposed to do.

13 Once again, faith.

14 Now, like I say, it's all in the discretion of
15 you, you can deny this whole motion, but I just laid out
16 the blueprint in regards to my claims of ineffective
17 assistance of counsel.

18 And the case law I'm using of Kimler versus
19 Moore, due to my counsel's failure to file the necessary
20 pre-trial motions and, two, due to failure to call
21 essential jury witnesses in my case, and three, due to the
22 destruction of the IAD process, and four, my right to a
23 speedy trial.

24 Let me make sure I covered everything. Whatever
25 else I forget, I know this lady over here's typing pretty

1 well and I know she's got it down. Appreciate it.

2 Those are the grounds.

3 THE COURT: All right. Thank you, Mr. Barnes.

4 THE DEFENDANT: Thank you, sir.

5 THE COURT: Mr. Tarr, anything further you would
6 like me to cover with Mr. Barnes in regard to his right to
7 represent himself?

8 MR. TARR: I think you've covered it, Your
9 Honor.

10 THE COURT: Mr. Harte.

11 MR. HARTE: Your Honor, I think you have
12 thoroughly gone through it.

13 MR. TARR: One other thing, Your Honor.

14 As far as him representing himself Monday and
15 wanting all of his file, just the discovery alone is 5,833
16 pages and then you've got other hundreds of pages of
17 documents that we've got on our own, so you're talking
18 close to 6,500 pages of documents that he needs to
19 understand that he's got to be able to absorb within two
20 days.

21 THE COURT: Mr. Barnes.

22 THE DEFENDANT: Sir, I understand.

23 THE COURT: Stand up, Mr. Barnes.

24 THE DEFENDANT: I'm sorry. Forgive me.

25 I understand -- how can I say this -- I

1 understand how he feels, but I can't help that. What I'm
2 going to do? I mean, I can study over the weekend, knock
3 it out, get ready for trial. I'm not trying to delay this
4 thing. I'm not.

5 THE COURT: Given that volume, you'll be ready
6 for trial Monday?

7 THE DEFENDANT: I'm ready.

8 MR. TARR: It's going to take time just to get
9 it copied, Your Honor. I mean, I don't know how fast the
10 copy shop could even copy it. It may be tomorrow before
11 it's ready, I don't know.

12 THE COURT: I would suspect the defendant, this
13 defendant knows as much about this case as anybody. That
14 is not to minimize the hard work that I can tell you and
15 Mr. Harte have done in the case, that's not to minimize
16 that. He might not have seen documents and such like
17 that, but he's had court appearances, he's had good
18 lawyers over the years, he's talked with his lawyers over
19 the years. He appears to have a grasp of the case.

20 He said it's not for purposes of that. He wants
21 a trial, he doesn't want a continuance, he's never wanted
22 a continuance, and I'm sure now that the State's ready to
23 give him a trial. But I appreciate your position in that
24 regard, Mr. Tarr.

25 You may be seated, Mr. Barnes.

1 I have tried to review those factors in Faretta.
2 It appears, and is well settled, that an accused has a
3 right to counsel, but he may waive that right and proceed
4 pro se under Faretta versus California.

5 Although a defendant's decision to proceed pro
6 se may be to the defendant's own detriment, it must be
7 honored out of the respect for the individual, which is
8 the lifeblood of the law also citing Faretta.

9 The right to proceed pro se must clearly be
10 asserted by the defendant prior to trial. The trial judge
11 has the responsibility to ensure that the accused is
12 informed of the dangers and disadvantages of
13 self-representation and makes a knowing and intelligent
14 waiver of the right to counsel.

15 Mr. Barnes, let me ask you -- stand again.

16 Knowing the dangers and disadvantages of
17 self-representation, do you knowingly wish to waive your
18 right to counsel?

19 THE DEFENDANT: Yes, sir, according to the law.

20 THE COURT: Sir?

21 THE DEFENDANT: Yes, sir, according to the law,
22 yes, sir.

23 THE COURT: And you make that waiver knowingly
24 and intelligently?

25 THE DEFENDANT: Yes, knowingly and

1 intelligently.

2 THE COURT: Of your own freewill and accord?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any questions?

5 Yes, sir.

6 THE DEFENDANT: Keep in mind that the compelling
7 part of it, why I am proceeding pro se.

8 THE COURT: Well, that's the compelling part to
9 you. It's not particularly compelling to me because I
10 could have the two witnesses subpoenaed and the other
11 motions could be placed on the record and you still would
12 be totally and completely protected on the record in
13 regard to those motions --

14 THE DEFENDANT: Well, you see --

15 THE COURT: -- and you could have any time
16 during the trial the opportunity, if you request, to
17 consult with your attorneys. So I wrote them down: As I
18 say, subpoena the Hunsbergers, selective prosecution, the
19 IAD motion, the continuance issues, and the other issues
20 that you brought up, you could be totally and completely
21 protected in that regard and still be represented by those
22 attorneys. All of that, that could be done. I say that
23 could be done. That is my opinion.

24 I think you're making a mistake, but you have
25 the right to make a mistake. I think you're making an

1 unwise choice, but you have the right to make an unwise
2 choice.

3 I would advise you not to do this. I think it
4 is to your detriment personally to take this position and
5 to not continue to be represented by Mr. Tarr and Mr.
6 Harte. Because you'd still be fully protected, all those
7 issues could be protected on the record in that regard.
8 And that's just my position in the matter.

9 You know, even experienced trial attorneys
10 because of the way voir dire is in South Carolina, only
11 limited to capital cases, don't voir dire jurors very
12 often. And I don't know any that remember it from time to
13 time because you do it so rarely. It's a very unique
14 process I find in our courts.

15 That in and of itself I think -- I think you're
16 making a foolish decision. It would be my position to ask
17 you to reconsider their position, your position, and to
18 take a few minutes to discuss it with your attorneys while
19 they're still your attorneys.

20 Yes, sir.

21 THE DEFENDANT: You know, Your Honor, Daniel in
22 the Bible, you know, he was thrown in the lions' den and
23 the people that throw him in there, right, they thought he
24 was going to be dead, you know. But when they came back
25 to check, you know, the way I look at it he suffered with

1 it.

2 See, right now, Your Honor, I say that to say
3 this right in acknowledgment: Right now I'm in the lions'
4 den. And my faith, my faith in God, I'm sure, I assure
5 you I am protected. So with that said, I know what I'm
6 doing.

7 THE COURT: And your faith and your faith in God
8 I don't think is diminished in any manner if you're
9 represented by competent attorneys. I just don't agree
10 with that, Mr. Barnes.

11 THE DEFENDANT: And the rights is two-fold,
12 meaning that the right to self-representation, to
13 represent yourself is also something I'm entitled to and
14 something that should be respected.

15 THE COURT: That's the first thing I said is
16 it's well settled that a criminal defendant has the right
17 to self-representation.

18 THE DEFENDANT: So with that said, and I
19 understand your experience as the Court, I understand
20 that.

21 THE COURT: And I'm asking you to take a few
22 minutes before I make my ruling to discuss that issue with
23 your attorneys.

24 THE DEFENDANT: I do that, sir.

25 THE COURT: All right. Well, let's take about a

1 ten-minute recess and you can discuss that issue with your
2 attorneys and then I'll come back in.

3 Thank you very much. Court will be in recess
4 for about ten minutes.

5 (A break was taken.)

6 THE COURT: I'm going to ask a couple more
7 questions.

8 You've been thinking about this for a while,
9 Mr. Barnes?

10 THE DEFENDANT: When you say "for a while?"

11 THE COURT: Representing yourself.

12 THE DEFENDANT: Are you talking about now?

13 THE COURT: I'm talking about have you been
14 thinking about making a motion to represent yourself and
15 thinking about the motion for a while?

16 THE DEFENDANT: You know, back in '06 there was
17 a pretrial motion that was put in. As a matter of fact,
18 there was a motion already put in right along with the
19 dismissal of the IAD, I put in for a Faretta motion back
20 then. I did.

21 THE COURT: Was it ever heard?

22 THE DEFENDANT: I'm not sure.

23 THE COURT: Well, did you ever have a motion
24 before Judge Maddox?

25 THE DEFENDANT: Yes, it was a motion filed in

1 the court on December 6th.

2 THE COURT: Did he give you a Faretta motion?

3 THE DEFENDANT: I can't really recall the
4 proceedings that day. I really can't recall and I'm not
5 going to perjure myself in front of the Court.

6 THE COURT: Either one of you all recall? Sir?

7 MR. HARTE: I don't recall a Faretta motion, no.
8 I'm sure one was not heard.

9 THE COURT: All right. So there's no order from
10 Judge Maddox?

11 MR. HARTE: No, sir.

12 THE COURT: I'm going to hold this issue under
13 advisement until Monday.

14 First, I would like you all to get discovery to
15 him and allow him the weekend to view that discovery and
16 see if his position is the same on Monday as it is now in
17 regard to self-representation with the volume of materials
18 that you have. And there's some other issues that I would
19 like to look at.

20 I did not realize that this motion was coming.
21 I take it they didn't receive a filed motion, didn't get
22 notification from the attorneys.

23 I take it you all did not either, Mr. Harte?

24 MR. HARTE: That's correct, Your Honor.

25 MR. TARR: No, Your Honor.

1 THE COURT: I guess what I have to say then,
2 review the material over weekend, I'll take it under
3 advisement for Monday morning.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right.

6 THE DEFENDANT: One more thing. They've got
7 some tapes. I'm trying to figure out how to be able to
8 hear those tapes at the Department of Corrections.

9 MR. HARTE: They're making copies now.
10 Solicitor Myers just told me that he'll be able to get
11 those copies to me today.

12 THE COURT: All right. Does that take care of
13 all the motions today?

14 THE DEFENDANT: So far, for right now.

15 THE COURT: All right. I'm going to take it
16 under advisement.

17 Let me get the solicitors out here to make sure
18 before we get off the record.

19 Again, you all observe my order that this is not
20 to be discussed with anyone, including the motion for
21 self-representation.

22 (Solicitors came back into courtroom.)

23 THE COURT: All right. Solicitor, before we
24 went off the record, I have heard a motion in regards to
25 Faretta regarding self-representation. I have not ruled

1 on that motion. I've taken it under advisement. I'm
2 going to rule on it Monday morning. However, before we
3 broke today I wanted to make sure there's nothing further
4 that the State wants to put on the record in regard to any
5 proceedings today.

6 MR. MYERS: Yes, sir, there is one thing, Your
7 Honor.

8 THE COURT: Yes, sir.

9 MR. MYERS: In prior cases, we've had certified
10 documents from other counties, such as convictions and
11 indictments and things like that. Usually we were not
12 required to bring a clerk from, let's say, Dillon County
13 over here to testify because they have certified those
14 documents. And I would like some direction from the
15 defense and from the Court whether I need to get certain
16 record keepers coming in while I have certified documents.

17 THE COURT: I think the best -- well, let me
18 hear from Mr. Harte and Mr. Tarr at this time.

19 MR. HARTE: I think we would want to have the
20 people come and testify as to the authenticity of the
21 documents.

22 THE COURT: All right. Thank you very much.
23 Anything further, Solicitor?

24 MR. MYERS: No, sir.

25 THE COURT: All right. Thank you very much.

1 Court will be in recess until 9:30 Monday
2 morning.

3 And I would like to discuss with you all the
4 procedure. We can do it on the record or we can do it in
5 chambers as far as Monday morning or we can do it quick
6 right now.

7 MR. HARTE: I think in light of the Faretta
8 motion, we ought to do it on the record.

9 THE COURT: All right. We can do it right now.

10 I've advised the Clerk to call the roll, then we
11 would do the general qualifications, then she would
12 prepare the list by placing the jurors in panels of four.
13 Monday we will begin with the first panel of four at
14 11:30, a panel at 12:30. We'll break for lunch.

15 We'll come back at -- I figure it will take
16 about an hour a panel. And then we would have a panel at
17 2:30, 3:30, 4:30, 5:30. So that will be 24 Monday.

18 We'll start at 9:30 on Tuesday morning through
19 12:30. That will be 16 Monday (sic) morning. From 2:30
20 through 5:30, that will be 16 Tuesday afternoon. The same
21 thing for Wednesday.

22 We'll probably have the balance of the panel
23 qualified and then report back at 9:30 Thursday morning
24 for jury selection.

25 If we have not enough, I would like then to

1 qualify 42 through the end of the day Wednesday. We would
2 have available for us 88 to attempt to get the 42 out of.
3 So I don't think we'll need that other panel to come back.
4 We'll have to tell them something anyway.

5 The way I did voir dire is we have a
6 questionnaire and we'll have the generic witness list back
7 there and have it in here, sign the questionnaire with
8 whether or not they're category one, two, or three, and
9 then voir dire the first juror out.

10 I will speak with them momentarily about the
11 questionnaire and I'll allow the Solicitor to voir dire
12 and then the defense attorney. The second comes out, I'll
13 reverse it: I'll let the defense go first and then the
14 Solicitor, so it just goes back and forth.

15 The order set as far as striking the jury for
16 the remainder that's qualified, if Juror No. 18 is the
17 first one qualified, you'll know that's the first one
18 called as a juror, and so everybody kind of -- everybody
19 after those four will remain to be struck.

20 So anything to add to that, Solicitor?

21 MR. MYERS: That's fine with us.

22 MR. HARTE: That's fine, Your Honor.

23 THE COURT: All right.

24 MR. MYERS: One housekeeping matter.

25 THE COURT: Yes, sir.

1 MR. MYERS: When are you planning on striking
2 the jury?

3 THE COURT: I would think Thursday morning. You
4 have a different opinion?

5 MR. MYERS: No, sir. I would just like some
6 time when we strike the jury, I'd like a little bit of
7 time to kind of get organized. We've had to rearrange,
8 and I'm sure they have, different people working on stuff.

9 Could we take a small break or something before
10 we start into it?

11 THE COURT: Well, you know, outside the distance
12 of travel, many times we've struck the jury, got them set
13 up in the motel, came back and started that afternoon.

14 Does the distance in this case from the
15 courthouse to the motel agree with that or is that too
16 much time?

17 MR. MYERS: That would be fine.

18 THE COURT: Mr. Harte?

19 MR. HARTE: That's fine.

20 THE COURT: Madam Clerk, does that work, if we
21 struck the jury at 9:30 Thursday morning, take them and
22 get them settled, feed them lunch, bring them back, head
23 back to the courthouse say at 2 o'clock Thursday, does
24 that give you enough time and the sequestration team
25 enough time?

1 THE CLERK: Yes, sir, they're coming in Sunday
2 night.

3 THE COURT: Say that again?

4 THE CLERK: SLED's coming in Sunday night.

5 THE COURT: But I'm saying to get the jury
6 struck Thursday morning at 9:30, leave by 10 o'clock, and
7 they'd get them to the motel, get their stuff in the
8 motel, get them fed and back in the courthouse by 1
9 o'clock.

10 THE CLERK: It's only about a 20-minute drive.

11 THE COURT: Would that be all right, Solicitor?

12 MR. MYERS: Yes, sir.

13 THE COURT: Mr. Harte?

14 MR. HARTE: Yes, sir.

15 THE COURT: Thank you very much. Court will be
16 in recess until 9:30 Monday morning.

17 (The proceedings were concluded for the day.)

18 *** END OF REQUESTED TRANSCRIPT OF RECORD ***
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1 CERTIFICATE OF REPORTER
2
34 STATE OF SOUTH CAROLINA)
5 COUNTY OF EDGEFIELD)
6
78 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Edgefield County, South Carolina, on the 5th day of
15 November, 2010.16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18
19

20 February 28, 2011

21 
2223 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF EDGEFIELD	—)	2005-GS-19-273
		2005-GS-19-457

STATE OF SOUTH CAROLINA	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	VOLUME 1
STEVEN LOUIS BARNES,	)	
DEFENDANT	—)	

November 8, 2010
Edgefield, South Carolina

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, JUDGE.

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

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ERVIN J. MAYE, ASSISTANT SOLICITOR
H. FRANKLIN YOUNG, III, ASSISTANT SOLICITOR
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ROBERT J. HARTE, ESQ.
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Attorneys for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

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EXHIBITS

(There were no exhibits marked.)

1 THE COURT: All right. Court will come to
2 order, please.

3 Good morning, ladies and gentlemen of the jury
4 panel. My name is Knox McMahon. I'm a Circuit Court
5 judge. It is my pleasure and privilege to be assigned to
6 this term of Edgefield County Court of General Sessions by
7 the South Carolina Supreme Court.

8 I wanted to come out timely this morning because
9 I realize I'm about a week late. I apologize to you for
10 not being with you last Monday, Monday morning. I'll
11 certainly be happy to share with you after this term of
12 court the reason that I was not in attendance. I assure
13 you it is not an interesting nor pretty story whatsoever,
14 but I do apologize for not being present last Monday.

15 Our purpose this morning is to determine your
16 general qualifications, your general qualifications to
17 serve as jurors in this court.

18 In South Carolina, there are three sources from
19 which names are selected for jury service. Each of you is
20 here because at least one of these three sources apply to
21 you.

22 If you are a registered voter, or if you are a
23 licensed South Carolina driver, or if you have a South
24 Carolina identification card from the Highway Department
25 then you are subject to jury service.

1 We understand the inconvenience jury service
2 causes to your personal and your professional lives and
3 thank you for being here. We will do our best to minimize
4 your inconvenience and hopefully make this an educational
5 experience for you.

6 Ladies and gentlemen, jury qualification is done
7 in several stages. Further, I realize each of you has
8 previously filled out and submitted a questionnaire to the
9 Court for jury qualification purposes.

10 The first stage of the jury qualification this
11 morning will be simply the roll call. Since you have
12 already provided your occupation, your spouse's occupation
13 and such, all we need to know, all we need to verify is
14 that you are present, who is present, and then we'll deal
15 with those jurors that may not have been able to appear at
16 this time.

17 After that, I will ask you the questions
18 concerning general qualifications.

19 Madam Clerk, would you please place the panel
20 under oath.

21 THE CLERK: Please stand.

22 (Jury panel sworn at 9:45 a.m.)

23 THE CLERK: Please be seated.

24 Is there any member of the jury panel that was
25 unable to take the oath? Please stand.

1 No one stood.

2 THE COURT: Thank you.

3 Would you call the roll please, Madam Clerk.

4 THE CLERK: Yes, sir.

5 (At this time roll call and jury qualification
6 reported but not transcribed.)

7 THE COURT: All right, Solicitor, you may call
8 your first case for trial.

9 MR. MYERS: Thank you, Your Honor.

10 Your Honor, the first charge is 2005-GS-19-273,
11 the State versus Steven Louis Barnes, an indictment for
12 kidnapping.

13 The second is 2005-GS-19-457, the State versus
14 Steven Louis Barnes, an indictment for murder.

15 The State is ready for trial.

16 THE COURT: Thank you very much.

17 Ladies and gentlemen of the jury panel, if you
18 would please give me your complete and undivided
19 attention. We're going to continue through the process of
20 selecting a trial jury for the trial of the case that has
21 now been called for trial by the State of South Carolina.
22 As part of this process, I am going to publish or read to
23 you the indictments.

24 Now, ladies and gentlemen, the indictments, what
25 are they? The indictments are the charging documents,

1 they're the formal documents by which an individual is
2 placed on notice of the charges that have been brought
3 against him or her. They contain mere allegations and are
4 in no way any evidence of the allegations contained
5 therein.

6 The reason I publish these documents to you,
7 these indictments, is because of certain questions that I
8 will have to ask you thereafter concerning your potential
9 knowledge about this case.

10 So please note, the indictments are no more than
11 formal charging documents. They're not any evidence of
12 the allegations contain therein.

13 The evidence will consist of that which is
14 presented by the testimony of sworn witnesses testifying
15 under oath from this witness stand and any diagrams or
16 exhibits that may be introduced as part of the record.

17 The State has the burden of proving its case
18 beyond a reasonable doubt. A criminal defendant in South
19 Carolina, regardless of the seriousness of the charges, is
20 never required to prove himself or herself innocent. They
21 are presumed to be innocent. That is not just a legal
22 phrase or a legal theory, but it is a substantial right to
23 which each and every criminal defendant is entitled to in
24 South Carolina.

25 The first indictment I come to is

1 2005-GS-19-273. The indictment reads that Steven Louis
2 Barnes did in Edgefield County on or between
3 September 3rd of 2001 and September 4th of 2001,
4 unlawfully seize and confine, inveigle, decoy, kidnap,
5 abduct or carry away one Samuel J. Sturup, S-T-U-R-R-U-P,
6 without authority of law and without consent by the
7 following means: To wit, Steven Louis Barnes, with the
8 use of physical force, did hold Samuel J. Sturup against
9 his will in violation of Section 16-3-910 of the Code of
10 Laws of South Carolina, 1976, as amended. That is an
11 indictment for kidnapping.

12 The next indictment, 2005-GS-19-457, reads that
13 Steven Louis Barnes did in Edgefield County on or between
14 September 3rd of 2001 and September 4th of 2001,
15 feloniously, willfully, and with malice aforethought kill
16 one Samuel J. Sturup by means of shooting him, and that
17 the said victim, Samuel J. Sturup, died in Edgefield
18 County as a proximate result thereof, in violation of the
19 common law and as defined in Section 16-310 of the Code of
20 Laws of South Carolina, as amended. That is an indictment
21 for murder.

22 The State in this case is represented by
23 Solicitor Donald Myers.

24 Solicitor Myers, would you stand and introduce
25 yourself and any members of the office that may assist you

1 in the prosecution of this case?

2 MR. MYERS: Yes, Your Honor.

3 Ervin Maye of the Solicitor's office.

4 THE COURT: Stand for me, please, Solicitor.

5 MR. MYERS: And Frank Young of the Solicitor's
6 office.

7 THE COURT: Thank you very much, Solicitor.

8 Is there any member of the jury panel related by
9 blood or marriage, or close personal friends, or have any
10 business or personal relationships with Solicitor Myers,
11 Maye or Young? If so, please stand.

12 (There was no response.)

13 THE COURT: Has any member of the jury panel
14 ever been, or any member of your immediate family, ever
15 been represented by or prosecuted by Solicitor Myers,
16 Maye, Young, or any member of the Edgefield County
17 Solicitor's office? If so, please stand.

18 Yes, ma'am, just your number and name, please?

19 THE JUROR: 226, Janie L. Robinson.

20 THE COURT: 226. Thank you. You may be seated.

21 Yes, ma'am, your number and name, please?

22 THE JUROR: 66.

23 THE COURT: Say it again?

24 THE JUROR: 66, Janet A. Cumbee.

25 THE COURT: All right. Thank you. You may be

1 seated.

2 Yes, sir.

3 THE JUROR: 86, James Edward Folker, Jr.

4 THE COURT: Thank you. You may be seated.

5 Yes, sir.

6 THE JUROR: Martin Garrett, No. 95.

7 THE COURT: 95, No. 95?

8 THE JUROR: Yes, sir.

9 THE COURT: Thank you very much. You may be
10 seated.

11 (Pause.)

12 THE COURT: If he's not a juror, he shouldn't
13 be -- he is a juror?

14 Yes, sir, your number and name, please?

15 THE JUROR: Charles Booker, No. 24.

16 THE COURT: Say it again?

17 THE JUROR: Charles Booker, No. 24.

18 THE COURT: No. 24. Thank you very much. You
19 may be seated.

20 Any others?

21 Yes, ma'am.

22 THE JUROR: Alice Doren, No. 77.

23 THE COURT: No. 77. Thank you very much. You
24 may be seated.

25 All right. Mr. Barnes, would you please stand

1 and face the jury panel?

2 This is Mr. Steven Louis Barnes, Mr. Bob Harte,
3 Mr. David Tarr.

4 Thank you very much, Mr. Barnes.

5 Mr. Barnes is the defendant in the case.

6 Is any member of the jury panel related by blood
7 or marriage, close personal friends, or have any personal
8 or business associations with Mr. Steven Louis Barnes? If
9 so, please stand.

10 (There was no response.)

11 THE COURT: Is any member of the jury panel
12 related by blood or marriage, or close personal friends,
13 or have any business relationship with either Mr. Bob
14 Harte or Mr. David Tarr, attorneys? If so, please stand.

15 Yes, ma'am, your number and name, please?

16 THE JUROR: 205. I know Mr. Harte.

17 THE COURT: All right. Thank you very much.
18 You may be seated.

19 Any others?

20 (There was no response.)

21 THE COURT: Has any member of the jury panel
22 ever been represented by, or any member of your immediate
23 family ever been represented by either Mr. Harte or Mr.
24 Tarr? If so, please stand.

25 Again, that's Ms. Padgett, correct? All right.

1 No. 205.

2 Any others?

3 (There was no response.)

4 THE COURT: Has any member of the jury panel
5 ever been a party to a lawsuit in which either Mr. Harte
6 or Mr. Tarr represented the opposing parties? If so,
7 please stand.

8 Yes, ma'am, your number, please?

9 THE JUROR: 157.

10 THE COURT: 157. And was it Mr. Harte or Mr.
11 Tarr?

12 THE JUROR: I'm not sure, but the gentleman in
13 the glasses looks familiar. I think it was him.

14 THE COURT: Thank you. Thank you very much.
15 You think it was Mr. Tarr. Thank you very much.

16 Any others?

17 (There was no response.)

18 THE COURT: Ladies and gentlemen of the jury
19 panel, as you heard, I did publish these indictments.
20 They allege an incident involving a kidnapping and a
21 murder of one Mr. Samuel J. Sturup allegedly between
22 September 3rd and September 4th of 2001, in Edgefield
23 County.

24 Does any member of the jury panel have any
25 knowledge about the case? If so, please stand.

1 (There was no response.)

2 THE COURT: Has any member of the jury panel
3 heard or know anything about the case from any source
4 whatsoever? If so, please stand.

5 Yes, your number, please, name and number?

6 THE JUROR: 217, Rebecca Puetz.

7 THE COURT: 217?

8 THE JUROR: Yes.

9 THE COURT: All right. Thank you. You may be
10 seated.

11 Any others?

12 (There was no response.)

13 THE COURT: All right. Ladies and gentlemen,
14 the State having called this case for trial, Steven Louis
15 Barnes, let's talk about the specific case to be tried and
16 the continuing process we will follow for the selection of
17 the fair and impartial jury in the trial of this case.

18 In this case, ladies and gentlemen, the State is
19 seeking the death penalty against the defendant. Because
20 the State is seeking the death penalty, the law requires
21 that I address certain issues and matters with you.

22 Please understand that I have no opinion about
23 the facts of this case. The Constitution of South
24 Carolina prohibits a trial judge from making any comment
25 to a jury about the facts of the case. So please do not

1 infer from anything that I say that I have any opinion
2 about the facts of this case. I do not. That ultimately
3 will be the job of the jury that is to be the judges of
4 the facts of this case.

5 A criminal case as you've heard comes to the
6 court by way of this legal document which we call an
7 indictment. Again, the indictment is not evidence of any
8 kind. An indictment merely contains the charge or charges
9 against an individual. An indictment is merely the
10 vehicle which allows the case to come to the circuit court
11 to be tried.

12 And as you've heard in this case, there are two
13 indictments: The first charging the defendant with
14 kidnapping, the second charging the defendant with the
15 offense of murder.

16 Again, ladies and gentlemen, I remind you that
17 the indictments are not proof of any kind. They are
18 simply a piece of paper that has the charges written down
19 on it.

20 To the charges contained in the indictment, or
21 the indictments, Steven Louis Barnes has pled not guilty
22 and has requested a jury trial. That plea or those pleas
23 of not guilty places the burden on the State to prove the
24 allegations and each and every element of the offenses in
25 each of the indictments beyond a reasonable doubt.

1 A defendant will always be presumed to be
2 innocent of the crime or crimes for which he is charged
3 unless his guilt is proven by evidence satisfying you, the
4 jury, of that guilt beyond a reasonable doubt.

5 The law in South Carolina provides that the
6 State cannot seek the death penalty in every murder case.
7 That is not permitted. The State can only seek the death
8 penalty in a case where there is a murder and the murder
9 is accompanied by at least one aggravating, statutory
10 aggravating circumstance.

11 The term "statutory aggravating circumstance" is
12 a term of art in the law, and statutory aggravating
13 circumstances are specifically identified by our
14 legislature in the Code of Laws of South Carolina.

15 The State then can only seek the death penalty
16 in a case where there is a murder and the murder is
17 accompanied by at least one statutory aggravating
18 circumstance identified in the law.

19 By the term "aggravating," we mean to worsen or
20 to exacerbate, to increase the enormity of the crime or
21 the circumstances.

22 A case such as this, ladies and gentlemen, is
23 tried or may be tried in two phases. There are two
24 phases. It is a bifurcated trial. Or there may be two
25 phases.

1 Obviously the first phase would be the
2 determination of whether or not the defendant is guilty or
3 not guilty of the crime of murder and kidnapping. The
4 State would have the burden of proving the defendant
5 guilty beyond a reasonable doubt of the crime of murder.

6 If the defendant were found not guilty at the
7 conclusion of the guilt phase, the case would end.
8 Obviously if the defendant is found not guilty at the end
9 of the guilt phase, there would be no need for the
10 sentencing phase. It is only when a defendant is found
11 guilty at the conclusion of the guilt phase that it would
12 be necessary to go to the second phase of the trial or the
13 sentencing phase of the trial.

14 Under our law, if we go to the second phase or
15 the sentencing phase, the jury is required to consider any
16 statutory mitigating circumstance, or circumstances, any
17 non-statutory mitigating circumstances, or -- of any
18 nature whatsoever.

19 Mitigation means to lessen, to reduce the fault
20 or culpability, to reduce the punishment.

21 If we reach the second phase or the sentencing
22 phase, the jury, after consideration of all the evidence,
23 could impose the death penalty only if the jury
24 unanimously found the existence of a statutory aggravating
25 circumstance.

1 The jury is never required, even upon a finding
2 of a statutory aggravating circumstance, to return a
3 sentence of death.

4 In the event that the jury under the law
5 unanimously determines that the death penalty is
6 appropriate, it would be required that each member sign
7 his or her name to the verdict form.

8 The jury further would have the authority to
9 sentence the defendant to life imprisonment.

10 I reiterate to you that we reach the second or
11 sentencing phase only if the defendant is found guilty of
12 murder in the first phase or the first part of the trial.
13 If a defendant is not convicted of murder, that would
14 conclude the trial.

15 I speak to you about the death penalty now only
16 because it would be an issue if you first find the
17 defendant guilty of the crime of murder.

18 Now, because of that possibility, ladies and
19 gentlemen, we must take time to question you individually
20 and privately and under oath. It may take a couple of
21 days to go through this process.

22 Thus far I have only asked you questions
23 regarding your general eligibility to serve as jurors in
24 circuit court and these few questions concerning your
25 knowledge of the parties involved in the trial and perhaps

1 your knowledge about the case.

2 When you are questioned individually, we will be
3 discussing specific questions: For example, whether or
4 not you're related or acquainted with any of the witnesses
5 in the case; whether or not you may have been exposed to
6 any publicity about the case, if there were any.

7 Our ultimate goal, ladies and gentlemen, is to
8 seek a fair and impartial juror in the trial of this case
9 on behalf of the defendant and on behalf of the State.

10 For those of you who will serve in this case,
11 you must accept and apply the law as I state it to you.
12 It would be further part of your oath to find the truth or
13 determine the credibility of the witnesses from the
14 evidence presented in the courtroom, and you are not to be
15 permitted to be swayed by anything occurring outside the
16 courtroom, such as any publicity regarding this case.

17 Ladies and gentlemen, you are also to be
18 questioned regarding your views on the death penalty.
19 Please understand that there are no right or wrong
20 answers. I trust that each of you understand that we must
21 have a full and honest disclosure from you to be able to
22 select that fair and impartial jury.

23 Now, in the individual questioning, ladies and
24 gentlemen, what we will do momentarily is the computer
25 will randomly select your names. You will be placed in

1 panels of four and given a time to report back to the
2 jury -- to the courthouse. We will begin this process of
3 individual voir dire, or individual questioning, this
4 afternoon. So the first panel of four would report back
5 at 3 o'clock this afternoon. We will probably have a
6 3 o'clock panel, a 4 o'clock panel, and a 5 o'clock panel.

7 Thereafter, the next panels would begin in the
8 morning at 9:30, 10:30, 11:30, 12:30, start back again at
9 2:30, 3:30, and 4:30, and it would continue on in the same
10 manner and the same method both this afternoon, Tuesday,
11 and all day Wednesday.

12 I would probably advise those that are qualified
13 and all other jurors that are not selected for those first
14 two and a half days of panels to report back at
15 9:30 Thursday morning.

16 I realize Thursday is a holiday, and a very
17 important holiday on each and every year that it's
18 celebrated, whether or not our nation finds itself at war.
19 Obviously we do find ourself at war this year as we've had
20 many other years in the recent future. However, given the
21 serious nature and circumstances of this case, I do intend
22 to work a full schedule Thursday. I further intend to
23 work a full schedule Saturday and further intend to work a
24 half a schedule Sunday.

25 Ladies and gentlemen, in a trial such as this,

1 it is very important. We have followed in South Carolina
2 for many years this process, and we have a great deal of
3 experience in this process. I do intend to sequester the
4 trial jury that is chosen or selected for the trial of
5 this case.

6 What that means, and I may be being somewhat
7 optimistic with the hope that we will be selecting our
8 jury panel Thursday morning -- as I say, I may be somewhat
9 optimistic. If it takes more time, we will take more
10 time. But what that means is come Thursday, the 12
11 individuals selected for the primary jury and the three
12 individuals selected as alternates will be sequestered.
13 That means that you will remain as a group, that you will
14 be housed in a motel guarded by the jury sequestration
15 team at the expense of the county, that your meals will be
16 provided at the expense of the county, that your movement,
17 that your exposure to news media and other outside
18 influences will be somewhat limited during the duration of
19 this trial.

20 I anticipate that to last seven to ten days, or
21 at least advise you to be prepared for sequestration if
22 you are selected as a member of the trial jury or as an
23 alternate for sequestration for seven to ten days.

24 Prior to this, I'm going to advise you of some
25 of your duties and responsibilities as a juror and give

1 you certain instructions. I'm assuming that you will
2 follow my instructions so that I do not have to sequester
3 the entire jury panel now until such time as we select
4 those 15 individuals.

5 From here on out, do not discuss this case with
6 anyone. That includes your family, your fellow jurors,
7 your friends, or anyone else. If anyone tries to talk
8 with you about this case, please try to get their names
9 and let me know immediately.

10 Further, I would advise you do not watch, listen
11 to, or read any news accounts, if there should be any, or
12 news reports about this case.

13 I would further advise you that you may not use
14 a computer, a cellular phone, or other electronic device
15 with communication capabilities, or any other method to
16 obtain or disclose any information about this case when
17 you're not in court.

18 Information about the case includes, but is not
19 limited to, the following: Information about a party, a
20 witness, an attorney, or a court officer; news accounts of
21 the case, whether present or past; information collected
22 through juror research on any topic raised or testimony
23 offered by any witness, or information collected through
24 juror research on any other topic the juror might think
25 would be helpful in deciding the case.

1 In other words, ladies and gentlemen, in this
2 age of information technology, you can't go out and get on
3 your laptop and begin researching this case, begin
4 researching these parties, do any investigation on the
5 Internet, or do any investigation personally. You can't
6 put a name in there and Google it and find out who he or
7 she is, or whether it's a person or whether it's a legal
8 concept. You have to try the case based on the evidence
9 and the testimony presented in this courtroom and the law
10 as I tell you the law is.

11 Madam Clerk, if you would now randomly select
12 the jurors for the panels and the assign times according
13 to my instructions. That would be four per panel. Let's
14 do -- what did I say -- let's do a 3, 4, and 5 o'clock
15 panel for today.

16 (Pause.)

17 THE CLERK: As I call your name, please come up
18 front.

19 Panel 1: Juror 282, Shirley J. West; Juror 157,
20 Lynn M. Koenig; Juror 75, Thomas J. Devilbiss; Juror 152,
21 Otis M. Key.

22 THE COURT: Just stand up here by the Clerk's
23 desk. Side by side will be fine.

24 All right. Ladies and gentlemen, y'all are
25 Panel No. 1. I guess somebody has to be first, so it

1 appears that it's y'all.

2 If you would please follow the instructions.

3 Understand you're under oath.

4 Do you have any questions about my instructions
5 to you?

6 (There was no response.)

7 THE COURT: If you'd please report back at
8 3 o'clock this afternoon.

9 Madam Clerk, where will they report to?

10 THE CLERK: They will report to the jury room.

11 THE COURT: Do they know where that's at?

12 THE CLERK: No, sir.

13 THE COURT: Would you have a bailiff, please,
14 show them where the jury room's at, where they're supposed
15 to report.

16 Please follow my instructions and please report
17 back promptly at 3 o'clock.

18 Thank you very much. You may go with the
19 bailiff to your right.

20 Solicitor and Mr. Harte, do you all have a copy
21 of the list?

22 MR. MYERS: Yes, sir.

23 MR. HARTE: Yes, sir.

24 THE CLERK: Panel No. 2: Juror No. 19, Emily S.
25 Blackburn; Juror 146, Steven F. Jordan; 265, Margaret M.

1 Thompson; Juror 11, Aaron J. Asforis.

2 THE COURT: If you all would please report back
3 at 4 o'clock today. The bailiff will show you where to
4 report back to.

5 Any questions concerning my instructions to you?

6 (There was no response.)

7 THE COURT: All right. Madam Bailiff, if you
8 would show them where to report back. That would be at
9 4 p.m. today.

10 Thank you very much, Panel No. 2.

11 THE CLERK: Panel No. 3: Juror 250, Christopher
12 L. Stansell; 140, William A. Jennings; Gayle G. Garry, No.
13 97; 111, Phillip B. Griffin.

14 THE COURT: All right. If you all would please
15 report back at 5 p.m. this afternoon. The bailiff will
16 show you where to report back to.

17 THE CLERK: Did you want them at 5?

18 THE COURT: 5 p.m. this afternoon, yes, ma'am.

19 When did you think I wanted them?

20 THE CLERK: Tomorrow morning.

21 THE COURT: No, 5 this afternoon.

22 Any questions concerning my instructions?

23 (There was no response.)

24 THE COURT: All right. See you at 5 o'clock.

25 Thank you very much. The bailiff will show you

1 where to report back to.

2 Now we'll go to Tuesday morning at 9:30.

3 THE CLERK: Juror No. 228, Joseph B. Rowland;
4 Juror 33, Alexis C. Brunson; 224, Tasha L. Robertson; 183,
5 Kanette V. Miller.

6 THE COURT: This is Panel No. 4. If you'd
7 report back at 9:30 in the morning, please, 9:30 in the
8 morning.

9 Any questions concerning my instructions to you
10 all?

11 (There was no response.)

12 THE COURT: All right. The bailiff will show
13 you where to report back to. Thank you very much.

14 THE CLERK: Panel No. 5: Juror 190, Sherene H.
15 Moore; No. 12, Charles A. Bafford; 173, Diann W. Mccary;
16 222, Joseph Robbins, Jr.

17 THE COURT: This is Panel 5, Madam Clerk?

18 THE CLERK: Yes, sir.

19 THE COURT: 10:30 tomorrow morning?

20 THE CLERK: Yes, sir.

21 THE COURT: All right. If you all would report
22 back at 10:30 tomorrow morning.

23 Any questions concerning my instructions to you?

24 (There was no response.)

25 THE COURT: If you'll report back to the jury

1 room. The bailiff will show you where to report. Thank
2 you very much.

3 THE CLERK: Juror 129, J. Christian Hoffmann;
4 210, Dennis D. Peterson; 156, Tammy Renee Kirby; 191,
5 Valerie Moore.

6 THE COURT: 11:30 Tuesday, tomorrow morning.

7 Any questions?

8 (There was no response.)

9 THE COURT: The bailiff will show you where to
10 report back to. Thank you very much.

11 THE CLERK: Juror 52, Bryan J. Carroll; 215,
12 Nancy Jean Price; 42, Ruby L. Bussey; 244, Kaitlin S.
13 Smith. Panel 7, 12:30.

14 THE COURT: 12:30 tomorrow.

15 Any questions?

16 (There was no response.)

17 THE COURT: The bailiff will show you where to
18 report back to. Thank you very much.

19 THE CLERK: Juror 270, David W. Tuttel; 300,
20 Samuel Young, Jr.; 249, Nancy B. Snodgrass.

21 THE COURT: Two forty what?

22 THE CLERK: Two forty-eight.

23 THE COURT: Two forty-eight. All right. Thank
24 you.

25 THE CLERK: Sixty-five, John S. Culbreath.

1 Panel 8 at 2:30.

2 THE COURT: 2:30 tomorrow afternoon.

3 Any questions?

4 (There was no response.)

5 THE COURT: Thank you very much, Madam Clerk.

6 Madam Bailiff, if you'd show them where to
7 report back to.

8 THE CLERK: Juror 212, Ronnie Posey; 217,
9 Rebecca L. Puetz; 252, Tessa Diane W. Steed; 32, Joseph G.
10 Brown.

11 Panel 9 at 3:30.

12 THE COURT: 3:30 Tuesday afternoon; is that
13 correct, Madam Clerk?

14 THE CLERK: Yes, sir.

15 THE COURT: All right. Any questions?

16 THE JUROR: Yes, sir. I'm sorry.

17 THE COURT: It's okay.

18 THE JUROR: So we're not supposed to discuss
19 anything about this pretty much, say, as far as work and
20 places we're supposed to be for the weekend?

21 THE COURT: Well, you can certainly tell them
22 that you've been called for jury service and you're in the
23 jury selection process.

24 THE JUROR: Okay. I figured we were allowed to
25 say something.

1 THE COURT: It's not like the CIA like you just
2 disappear from work and home.

3 THE JUROR: Oh, I know. No, no. I know.

4 THE COURT: But you may certainly do that, yes,
5 ma'am.

6 THE JUROR: Because I knew we could say, oh, I
7 can't be at work at such and such time and I have to be
8 for jury duty, but I didn't know how much we're allowed to
9 explain.

10 THE COURT: You may certainly do that, yes,
11 ma'am.

12 THE JUROR: Thank you.

13 THE COURT: If you have any problems, just get
14 with the Clerk.

15 THE JUROR: Okay.

16 THE COURT: Thank you very much. See you all
17 tomorrow afternoon. Thank you.

18 THE CLERK: Panel No. 10: Juror 158, Scott
19 Landers; 267, Randall C. Thrower; 93, Katherine W.
20 Gallagher; 283, Richard M. Wheatley.

21 Panel 10 at 4:30.

22 THE COURT: All right. 4:30 tomorrow afternoon.
23 Any questions?

24 (There was no response.)

25 THE COURT: The bailiff will show you where to

1 report to.

2 Thank you very much. Have a good evening.

3 THE CLERK: Panel 11: Juror No. 94, Sean M.
4 Gamble; Juror 131, Elizabeth H. Holmes; Juror 26, Don R.
5 Boyd, Jr.; No. 37, Crystal B. Busbee.

6 Panel 11 at 5:30.

7 THE COURT: This is 9:30 Wednesday; is that
8 right?

9 THE CLERK: Was this one at 5:30?

10 THE COURT: No, 9:30 Wednesday.

11 THE CLERK: So Panel 11 is at 9:30?

12 THE COURT: Yes, ma'am. I stopped at 4:30.

13 THE CLERK: You're going to stop at 4:30?

14 THE COURT: 4:30 Tuesday afternoon, yes, ma'am.

15 All right. 9:30 Wednesday morning.

16 Any questions?

17 (There was no response.)

18 THE COURT: Thank you very much. The bailiff
19 will show you where to report back to.

20 THE CLERK: Panel 12: No. 62, Matthew C. Cox;
21 112, Christie M. Gullledge; No. 10, Allene Andrews; No.
22 264, Charles R. Thomasson.

23 This is Panel 12 at 10:30.

24 THE COURT: 10:30, correct?

25 THE CLERK: Yes, sir, Wednesday.

1 THE COURT: All right. Any questions?

2 (There was no response.)

3 THE COURT: All right. The bailiff will show
4 you where to report back to. Thank you very much.

5 THE CLERK: Panel 13: Juror 102, Glenn Gobat;
6 Juror 223, Pamela C. Roberson; Juror 7, Jermaine Allen;
7 Juror 2, Eric R. Abney.

8 11:30 Wednesday.

9 THE COURT: This is 11:30 Wednesday, right,
10 Madam Clerk?

11 THE CLERK: Yes, sir.

12 THE COURT: Any questions?

13 (There was no response.)

14 THE COURT: All right. Thank you very much.
15 The bailiff will show you where to report back to.

16 THE CLERK: Panel 14: Juror 89, Joseph E.
17 Friar; 203, Karen D. Padgett; Juror 90, Bryant J. Fulmore;
18 and No. 25, Donald E. Bowen.

19 Panel 14 at 12:30.

20 THE COURT: All right. 12:30 Wednesday, right
21 Madam Clerk?

22 THE CLERK: Yes, sir.

23 THE COURT: Any questions?

24 (There was no response.)

25 THE COURT: All right. Thank you very much.

1 The bailiff will show you where to report to at 12:30
2 Wednesday afternoon.

3 Now, Mr. Bowen needs to remain with us until we
4 get his questionnaire today.

5 If you would remain with us and let's get your
6 questionnaire completed before you leave today, Mr. Bowen.
7 Why don't you sit back out there with the jury panel right
8 now and we'll get that completed.

9 Thank you, Mr. Bowen.

10 All right.

11 THE CLERK: Panel 15: Juror 119, Lacey
12 Harrison; 136, Crystal R. Hughes; 151, Danny L. Key; 201,
13 Mary E. Ouzts.

14 THE COURT: Now this is 2:30?

15 THE CLERK: Yes, sir.

16 THE COURT: Wednesday.

17 All right. Any questions?

18 (There was no response.)

19 THE COURT: All right. The bailiff will show
20 you where to report back to at 2:30 Wednesday.

21 THE CLERK: Panel 16: Juror No. 80, Brenda L.
22 Dugar; No. 77, Alice J. Doren; 103, Frank D. Gordon, Jr.;
23 242, Amy C. Skinner.

24 Panel 16 at 3:30.

25 THE COURT: All right. This is 3:30 Wednesday,

1 Madam Clerk?

2 THE CLERK: Yes, sir.

3 THE COURT: Any questions?

4 (There was no response.)

5 THE COURT: All right. The bailiff will show
6 you where to report back to at 3:30 Wednesday.

7 THE CLERK: Panel 17: Juror 134, Linda M. Hook;
8 Juror 145, David B. Jones; Juror 272, John E. Verdery; and
9 66, Janet A. Cumbee.

10 THE COURT: This is 4:30 Wednesday?

11 THE CLERK: Yes, sir.

12 THE COURT: All right. Any questions?

13 (There was no response.)

14 THE COURT: The bailiff will show you where to
15 report back to. Thank you very much.

16 All right. Those of you remaining that were not
17 fortunate enough to be selected in the first 17 panels,
18 please do not give up hope. I'm going to ask you if you
19 would please report back at 9:30 Thursday morning. At
20 9:30 Thursday morning if you would please report back to
21 the courthouse, to where you're at now.

22 Again, please follow my instructions concerning
23 your jury service for the remainder of the week and please
24 report back promptly 9:30 Thursday morning, 11-11-10.

25 Any questions?

1 (There was no response.)

2 THE COURT: All right. Thank you very much.
3 You're excused from your jury service for the remainder of
4 the day until 9:30 Thursday morning.

5 (The remaining jury panel members were excused
6 from open court at approximately 12:39 p.m.)

7 THE COURT: All right. Are there any jurors in
8 the courtroom?

9 THE CLERK: Yes, sir, one.

10 THE COURT: All right. Madam Clerk, would you
11 find a private location for Mr. Bowen perhaps to complete
12 his questionnaire?

13 Thank you, Mr. Bowen. You may go with the
14 bailiff.

15 All right. Now are there any jurors in the
16 courtroom? If so, please stand. Or if you're standing,
17 please sit. Make some kind of movement so I can identify
18 you.

19 (There was no response.)

20 THE COURT: All right. I had my law clerk just
21 type up a plain piece of paper to attach to the witness
22 list requesting the jurors to review the witness list
23 prior to coming out for the individual voir dire.

24 I'm also, as far as the questionnaires are
25 concerned, I will instruct one of the bailiffs when the

1 first panel gets back to take the first juror, No. 282, it
2 has instructions to please read and circle one and sign
3 and put their juror number on there, as far as what
4 category they're in; one, two, or three. That's how I
5 intended to do that.

6 Is there anything else I need to cover with the
7 jurors?

8 MR. HARTE: Your Honor, I do have some
9 additional names for the witness list that I'll give to
10 the Solicitor's office and they'll type them in.

11 THE COURT: All right. Well, he has typed a
12 generic one, so if we can add it to where -- if they're
13 not on there, we can add it before they get back that
14 would be best. I don't want different lists floating
15 around.

16 MR. HARTE: That's fine. Yes, sir.

17 THE COURT: All right. If you'll just get with
18 the Solicitor. Whatever final list you all give me is
19 what I'm going to use.

20 Now, as I understand it, I still have to revisit
21 the Faretta issue and there is additional areas that I
22 must examine in regard to Faretta; is that correct?

23 MR. HARTE: Yes, sir.

24 THE COURT: Well, I'm bringing the first panel
25 back at 3 o'clock. Unless there's anything else, why

1 don't we take about an hour recess and we'll start back
2 with that issue at 1:45. Do you think that would give us
3 proper time?

4 MR. TARR: Yes, Your Honor.

5 THE COURT: All right. Do you have anything
6 prior to the jury, Solicitor?

7 MR. MYERS: No, sir.

8 THE COURT: Now, what is the defense's position
9 as far as the Faretta issue is -- are there
10 attorney/client privilege issues in regard to that motion?

11 MR. TARR: Yes, Your Honor. I believe we
12 started it on Friday ex parte and we would like to
13 continue that way. And I've spoken with Solicitor Myers
14 and he didn't have an objection.

15 THE COURT: Do you have any objection to that,
16 Solicitor?

17 MR. MYERS: No, sir. I'll be glad to do
18 anything you all want me to do.

19 THE COURT: Be glad to what?

20 MR. MYERS: Do anything you all want me to do.

21 THE COURT: All right. I appreciate that,
22 Solicitor.

23 All right. Well, in that regard, we'll start
24 back with that at, say, 1:45.

25 And as far as the Solicitor's concerned, if that

1 panel gets back a little early, I may bring them all out
2 here as a group and give them a little instruction about
3 the witness list and the questionnaire. If not, we'll
4 just be ready to go at 3 o'clock, I hope, Solicitor.

5 MR. HARTE: Your Honor, I did -- I'd indicated
6 Friday I was going to file a motion with regards to the
7 Interstate Agreement on Retainers. I did that this
8 morning and that does not need to be heard before we start
9 jury voir dire.

10 THE COURT: All right. We'll be in recess then
11 until 1:45.

12 Thank you very much.

13 MR. TARR: I have one question, Your Honor.

14 THE COURT: Yes, sir.

15 MR. TARR: My client's had a problem in the
16 past. He does not like Edgefield County jail food. Do
17 you have a problem -- would you allow me to get him food
18 and bring it to him?

19 THE COURT: I will allow security -- if security
20 doesn't object to that. I don't run security or anything
21 like that, Mr. Tarr, so I'm not going to tell them that
22 they're required to do that. If security says it's fine,
23 that's fine. If they say no, we think that's a security
24 risk, I'm just not going to tell them how to do their job.

25 MR. TARR: Who would be the appropriate person

1 for me to speak to, do you know?

2 THE COURT: I believe Captain Marsh and
3 whoever's in command with SCDC.

4 But if you'll check with them. I don't have any
5 objection, but I'm not going to tell them what to do.

6 Thank you very much. Court will be in recess
7 until 1:45.

8 (A lunch break was taken.)

9 THE COURT: Mr. Harte, you wanted this hearing
10 ex parte?

11 MR. HARTE: Yes, sir.

12 THE COURT: All right. So if anyone else is
13 associated with the prosecution, I'd ask you to please
14 leave the courtroom at this time.

15 (Solicitors leave the courtroom.)

16 THE COURT: Those officers that remain, you're
17 ordered that you may not disclose any of the information
18 that's the subject of this hearing, testimony or
19 otherwise, to any other party, nor discuss it.

20 All right. Mr. Harte.

21 MR. HARTE: I believe Mr. Tarr is going to
22 handle it.

23 THE COURT: All right. Mr. Tarr.

24 MR. TARR: Thank you, Your Honor.

25 We began a hearing on Friday after Mr. Barnes'

1 motion to represent himself and I believe the Court took
2 that under advisement and we're here today again to
3 discuss Mr. Barnes' decision to represent himself.

4 I did find a case over the weekend, Indiana
5 versus Edwards, a 2008 Supreme Court case. It stands for
6 the proposition that the United States Constitution
7 permits states to insist upon representation by counsel
8 for those who are competent enough to stand trial but may
9 not have the competency to waive their right to counsel.

10 I bring this up because a couple of the
11 different experts that we've hired to evaluate Mr. Barnes
12 for purposes of the sentence phase are of the opinion that
13 he is very competent to stand trial, but he lacks the
14 competency to waive his right to counsel and conduct the
15 proceedings on his own.

16 And in that regard, Your Honor, I do have Dr.
17 David Price here today who's prepared to testify to that
18 extent.

19 THE COURT: All right. You may call Dr. Price.

20 THE DEFENDANT: Your Honor, may I speak?

21 THE COURT: Yes, sir, certainly, Mr. Barnes.

22 THE DEFENDANT: I object to Dr. Price getting on
23 the witness stand due to the fact that it's doctor/client
24 relationship and it's privileged information.

25 See, to the extent that my conversation with Dr.

1 Price, it's my understanding, was for the penalty phase
2 only. If I'd have known that he was going to be adverse
3 to me, I wouldn't have talked to him. You see what I'm
4 saying? Because there's no guarantee that a conviction is
5 going to happen in this case.

6 The case that they cited, Edwards versus --
7 Indiana versed Edwards, that case is about a guy, that he
8 was already in front of the judge for a competency
9 hearing. He had about, I believe it was like three of
10 them, two or three in front of that judge, and that was
11 the issue then.

12 In this case here, you know, this was never an
13 issue. I brung forth to you -- I explained to you in
14 detail when you asked me questions the last time we spoke
15 and I brought forth everything, you know, just like you
16 asked me to do. And the Edwards case is totally different
17 from the factual situation of my case.

18 And I object to Dr. Price getting on the stand,
19 because, like I say, I'm not giving him no permission to
20 say anything in regards to me, talking about me, because
21 like I say, my attorneys, that's part of my defense, you
22 know, when we get to the penalty phase. Once we get to
23 that phase, then, you know, I consent for him to furnish
24 that information to the jury for migation (sic).

25 THE COURT: So you're asking me to make a

1 decision without having adequate information about you,
2 Mr. Barnes?

3 THE DEFENDANT: Well, sir, what I'm saying --

4 THE COURT: Answer my question, please,
5 Mr. Barnes.

6 THE DEFENDANT: Okay.

7 THE COURT: You're asking me to make a decision
8 about whether or not you knowingly and intelligently waive
9 the right to representation without me adequately and
10 completely having information concerning you, Mr. Barnes?

11 THE DEFENDANT: Well, if I could explain, yes.
12 Yes, if I could explain otherwise I'll explain it to you
13 for the record why I say yes.

14 Due to the fact that -- if they say I was
15 incompetent from the beginning, I'm saying that, you know,
16 it's due process; you've got the procedural parts or you
17 can send me to Columbia or whatever the case may be. But,
18 see, I'm objecting to the extent that this is
19 doctor/client relationship.

20 I'm not giving no permission for this man to get
21 up here and talk about things that been in my medical
22 records for years. Nobody would have had my medical
23 records if this was a regular murder case or whatever or I
24 would have objected to this being as migration. He's the
25 migration part -- he's part of the migration part of the

1 penalty phase only.

2 So with that said, I object to the doctor on the
3 grounds of doctor/client relationship, that if he's saying
4 anything in regards to me talking about that, that's part
5 of the penalty phase only.

6 He represents me in this case just like he
7 represents me in this case. And, see, under the Edwards
8 versus Indiana case or the Indiana versus Edwards case,
9 it's specifically stated that if a person wants to
10 represent himself, he can. And, you know, like I said,
11 everything -- and another thing under South Carolina law,
12 State versus Brewer, it states that a person can represent
13 himself. That's 492 SE2d 97.

14 THE COURT: Yes, I know. We discussed that
15 Friday. And I really don't want to replot the same
16 grounds. I don't mind plowing new grounds, but I don't
17 like to replot old grounds.

18 But if you look at State versus Starnes, 698
19 SE2nd 604, it stands for the proposition that the South
20 Carolina Constitution provides that every criminal
21 defendant has the right to represent himself and makes no
22 distinction between capital and non-capital defendants.

23 Additionally, the United States Supreme Court
24 has interpreted the United States Constitution as
25 providing a right to self-representation citing Faretta.

1 The right to self-representation, however, is not
2 absolute. The constitution allows states to prohibit
3 defendants from waiving their right to counsel if they are
4 not competent to conduct trial proceedings by themselves.
5 See *Indiana versus Edwards*, 554 U.S. 164, a 2008 case,
6 holding a defendant may be competent enough to stand trial
7 but not competent enough to waive his Sixth Amendment
8 right to counsel and represent himself.

9 It appears to me that on September 22nd, 2010 --
10 actually August 16th of 2010, this case was decided and
11 rehearing denied September 22nd, 2010. The South Carolina
12 Supreme Court through dicta accepted *Indiana versus*
13 *Edwards*.

14 So the question becomes if you are competent to
15 conduct trial proceedings by yourself. I'm not sure that
16 issue has been fully and completely examined by this
17 Court. And that's my understanding, I would take it, of
18 what Dr. Price would address is competency --

19 MR. TARR: Yes, Your Honor.

20 THE COURT: -- competency to conduct trial
21 proceedings by himself.

22 MR. TARR: Yes, Your Honor. And Dr. Price nor
23 Mr. Harte nor I are trying to be adversarial to
24 Mr. Barnes, but in order for the Court to make a ruling on
25 this issue, the Court has to be aware of all relevant

1 information, and so we're just bringing that to the
2 Court's attention. We're not taking a position what
3 should happen, and that's the basis of what we're doing
4 here today, Your Honor.

5 THE COURT: Yes, sir.

6 THE DEFENDANT: Can I speak? I can speak?

7 THE COURT: Yes, sir.

8 THE DEFENDANT: What I'm saying is it's a matter
9 of due process, you know. And when he's asking the Court
10 to take this man for migration purposes only, you see what
11 I'm saying, that's for the penalty phase, because like I
12 say, if you appoint a state official to conduct that
13 review, then that's a different story. You see what I'm
14 saying?

15 THE COURT: I don't know of such a review. I
16 know of a review for competency to stand trial.

17 THE DEFENDANT: Okay. I understand.

18 THE COURT: I know of no review whereby I
19 appoint a state official to determine competency for
20 self-representation. I understand competency to stand
21 trial under Drope, D-R-O-P-E, and Dusky, but I don't know
22 of any standard proceeding to determine an individual's
23 competency to waive his right to an attorney and to
24 represent himself.

25 Do you, Mr. Tarr or Mr. Harte?

1 MR. HARTE: Your Honor, I think one of the
2 problems -- and I remember the dissenting opinion in
3 Edwards very specifically talked about the fact that the
4 Court in their decision, in the majority decision, was
5 finding that the constitution permits the state to limit a
6 defendant's self-representation right by insisting upon
7 trial counsel when he lacks the mental capacity, but the
8 Court in subparagraph C of that opinion failed to give any
9 standard by which to determine that and, in fact,
10 specifically rejected Indiana's proposed standard. So I
11 don't know how you can order something that there is no
12 standard for.

13 It's somewhat baffling why the Court would say
14 there is a right but we're not going to say what the
15 standard is.

16 THE DEFENDANT: See, what I'm saying, Your
17 Honor, is this, that in this case, like I say --

18 THE COURT: In this case what? I couldn't
19 understand you.

20 THE DEFENDANT: In this case the record was
21 already reflected in front of the judge. This man had two
22 competency hearings in front of the judge. Apparently he
23 was already sick.

24 THE COURT: I understand that he was
25 schizophrenic, that he had other competency hearings and

1 such like that. I'm citing Starnes for the proposition
2 that our Supreme Court cited Edwards. And there are two
3 different standards. The standard for waiving the right
4 to counsel and self-representation is different than the
5 standard for competency to stand trial. And it leads me
6 to believe when a defendant stands up and says, Well, I
7 object to this testimony, then either, A, I make a
8 decision without all the facts; and, B, I question why a
9 defendant would take that particular position in this
10 matter unless his decision to represent himself and waive
11 his attorney is fueled by something other than knowledge
12 and intelligence. I don't quite understand taking that
13 position.

14 All I'm trying to do is, and I take it all the
15 attorney's trying to do is place the facts before the
16 Court so that the Court can make an informed decision as
17 to your right to represent yourself, which is not
18 absolute.

19 THE DEFENDANT: I just explained for the record
20 like, once again, I say that when we spoke -- when was it,
21 Friday? It was Faretta grounds. So all of a sudden today
22 you come with Edwards grounds.

23 THE COURT: No, sir, it's not a different
24 ground. Faretta is very much addressed in Edwards.

25 THE DEFENDANT: Okay.

1 THE COURT: Very much addressed. In fact, they
2 want -- Indiana attempted to have Faretta reversed.
3 Faretta's still the law. That doesn't mean Edwards is not
4 the law, it doesn't mean Brewer is not the law, doesn't
5 mean Starnes is not the law. We're not looking at a
6 different standard. We're just looking at the information
7 so that the Court can make an informed, knowledgeable
8 decision.

9 THE DEFENDANT: Once again, like I said, the
10 migration (sic) part, that's what he's wanted for. If I'd
11 have known that he was going to try to use whatever my
12 past reports, I would have never talked to him.

13 THE COURT: Well, are there past reports,
14 Mr. Starnes (sic)?

15 THE DEFENDANT: Mr. Barnes.

16 THE COURT: Mr. Barnes, are there past reports?

17 THE DEFENDANT: I'm saying whatever I --

18 THE COURT: Are there past reports?

19 THE DEFENDANT: I mean, of course.

20 THE COURT: Well, why didn't you share that with
21 me when I asked you Friday concerning prior mental state?

22 THE DEFENDANT: Prior mental state?

23 THE COURT: Yes, sir. I asked you about mental;
24 I asked you about physical. Why didn't you share that
25 with me Friday?

1 THE DEFENDANT: So I didn't tell you about that
2 at Lieber that I was on medication for post-traumatic
3 syndrome? I didn't tell you that?

4 THE COURT: From the taser.

5 I'm not going to sit here and debate with you
6 what you did or did not tell me. I'm asking you, why
7 didn't you share with me the fact that there are prior
8 reports concerning your mental state?

9 THE DEFENDANT: Because that -- the question --
10 when you posed that question to me, that's how I took it.
11 That's how I took it.

12 I am competent to stand trial. Everything that
13 I told you Friday, I answered all your questions, and it's
14 on the record. I hope so. But I object to the
15 doctor/client privilege.

16 THE COURT: All right. Your objection is noted
17 and overruled.

18 You may call your witness solely for the limited
19 purpose for which this hearing is being conducted.

20 MR. TARR: We'd call Dr. David Price.

21 THE CLERK: Raise your right hand, please.

22 DR. DAVID PRICE, after being duly sworn,
23 testified as follows:

24 THE CLERK: Have a seat. State your full name
25 and spell your last name, please.

1 THE WITNESS: David Richard Price, P-R-I-C-E.

2 MR. TARR: Your Honor, I would like some
3 guidance through the Court. Would you like for me to go
4 into his qualifications?

5 THE COURT: Generally and briefly.

6 MR. TARR: Thank you.

7 THE COURT: Yes, sir. And you may lead. I have
8 no objections to that in that regard unless Mr. Barnes
9 does.

10 THE DEFENDANT: I object.

11 THE COURT: All right. Then go into it fully
12 and completely.

13 IN CAMERA DIRECT EXAMINATION

14 BY MR. TARR:

15 Q Dr. Price, could you state your educational
16 background?

17 A Certainly. I have a CV if you'd like to see it.

18 Q I believe I have one here.

19 A I have a doctoral degree in clinical psychology from
20 Auburn University. I'm a licensed clinical psychologist
21 by the State of South Carolina and have been licensed
22 since 1983.

23 I have been recognized as an expert in forensic
24 psychology, clinical psychology, and neuropsychology in
25 federal and state courts across the country. I've never

1 not been identified as an expert.

2 I have over 200 professional presentations, over
3 40 professional publications.

4 I'm on the faculty of the Medical University of
5 South Carolina and of the University of South Carolina
6 Upstate as a psychological professor.

7 Q Have you been published in your work in these fields?

8 A I've been published over 40 times, yes, sir.

9 Q And how many times would you say you have been
10 qualified in the courts, in the state courts of South
11 Carolina?

12 A Well over a hundred since 1983.

13 Q And would that be both as a prosecution and a defense
14 expert?

15 A That's correct.

16 MR. TARR: Your Honor, at this time we would
17 offer Dr. Price as an expert in clinical psychology,
18 forensic psychology, and forensic neuropsychology.

19 THE COURT: All right. Mr. Barnes, do you have
20 any questions in regard to Dr. Price's qualifications?

21 THE DEFENDANT: Well, Your Honor, it's a
22 continuing objection.

23 THE COURT: Do you have any voir dire you would
24 like to ask Dr. Price in regards to his expertise in
25 clinical --

DR. DAVID PRICE - In Camera Direct Exam by Mr. Tarr

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1 THE DEFENDANT: That's pretty much clear.

2 THE COURT: -- neuro and forensic psychology?

3 THE DEFENDANT: I don't have any questions.

4 THE COURT: No questions. All right. Thank
5 you.

6 You may continue, Mr. Tarr.

7 BY MR. TARR:

8 Q Dr. Price, were you retained by Mr. Harte and I to
9 help us with the Steven Barnes case?

10 A Yes, sir.

11 Q And do you remember when that was?

12 A It was in October.

13 Q And since that time, how many times have you seen
14 Mr. Barnes?

15 A I've seen Mr. Barnes on five different occasions for
16 approximately 14 hours.

17 Q Okay. And have you been provided documents related
18 to prior mental health assessments on Mr. Barnes?

19 A I've reviewed thousands of pages of records of
20 Mr. Barnes regarding prior assessments and psychiatric
21 treatment. I've also talked directly with Dr. Tora
22 Brawley, who administered neuropsychological tests to him,
23 whose findings I reviewed, as well as Dr. Schwartz-Watts
24 who has also evaluated him.

25 Q And do you recall how many prior mental health

1 diagnoses he's had in the past?

2 A He has had 16 different psychiatric diagnoses
3 throughout his lifetime.

4 Q And has he had any hospitalizations for any mental
5 health issues?

6 A He's had six involuntary admissions, psychiatric
7 admissions.

8 Q Do you know how long those were for?

9 A They varied in length, but some of them are lengthy.

10 Q Upwards of a month maybe, some of them?

11 A That's correct.

12 Q Okay. Are you aware of any cognitive deficiencies
13 Mr. Barnes may have in terms of understanding?

14 A Mr. Barnes failed to finish high school. He has had
15 IQs tested in the seventies to Dr. Brawley had an IQ of
16 82, which would be in the borderline range of intellectual
17 functioning to at the very low part of the low/average
18 range of intellectual functioning.

19 On the neuropsychological tests administered by
20 Dr. Brawley, of concern would be the impairment in memory
21 test which would have him at the first percentile, in the
22 very impaired range, so I would have some cognitive
23 concerns for Mr. Barnes.

24 Q And have you made a diagnosis of Mr. Barnes in this
25 case?

1 A I've diagnosed Mr. Barnes with a post-traumatic
2 stress disorder, which is also the diagnosis that's
3 maintained by the South Carolina Department of Mental
4 Health and which Dr. Schwartz-Watts agrees with me on.

5 I would also give him a diagnosis of cognitive
6 disorder not otherwise specified which reflects the
7 cognitive deficits as noted on those neuropsychological
8 tests.

9 Q Do you believe that he is competent to stand trial?

10 A I do.

11 Q Okay. So no question about that?

12 A No question.

13 Q Okay. What do you believe about his competency to
14 waive his Sixth Amendment right to counsel in this case?

15 A I believe that that's impaired, and I have four
16 reasons for that actually.

17 Q Okay. Could you state those reasons for the record?

18 A Number one, he has a pretty significant psychiatric
19 history as we've just commented on.

20 The issue revolving around those psychiatric
21 disorders, the psychiatric admissions and the
22 post-traumatic stress disorder have involved conflict with
23 authority and as well as distrust and paranoia and feeling
24 betrayed. I think that's one of the issues he has with
25 you guys is feeling some betrayal. I'm sure he's feeling

1 that for me testifying today as well.

2 This paranoia when he gets under stress as with
3 the approachment of this trial causes him to feel he's
4 being betrayed and paranoid over what's being done and
5 wanting to take control.

6 This is not the first time this has happened.
7 In 2003 in his trial in Georgia he fired counsel on two
8 occasions and threatened the third counsel, and counsel
9 called that to the Court's attention. I think it's the
10 same reflection of that conflict today that has gone on in
11 the conflict with authority.

12 I think that, secondly, and this is more
13 difficult for me to evaluate, something that mitigates
14 that paranoia is he's obviously been in contact with some
15 other attorneys. He told me yesterday that he had a
16 letter from a -- wouldn't tell me the person's name, but
17 told me it was from a member of the South Carolina Bar who
18 was advising him to have you guys fired and for him to
19 hire that person and he had a clear plan when I talked to
20 him yesterday of that person being the first chair and the
21 second chair. Because of his reticence to discuss that,
22 it's very hard to evaluate the effect that's had on his
23 decision regarding counsel, but it certainly indicates
24 some difficulty in cooperating with counsel, planning with
25 counsel and that nature.

1 The third thing, the cognitive issues, I noticed
2 this. I've seen this before, but this was clear yesterday
3 which is an issue, is that he loses trains of thought and
4 he would just basically blank out and say, "Well, what
5 were we talking about?" or at times he would go into where
6 he would just lapse into prayer and not realizing he'd rub
7 his thumb and you'd see his lips moving. His solution for
8 that for trial purposes was that he'd keep track by
9 writing down everything the prosecutor was saying so he
10 would not lose track, which obviously would not be an
11 efficient, nor pragmatic way of managing that, but that
12 indicates a cognitive lapse and could well be related to
13 the memory problems detected by Dr. Brawley.

14 The issues of those three things produces a
15 fourth problem and that's problem in judgment and the
16 ability to abstract about decisions. When I was talking
17 with him yesterday about if you did this, he has no answer
18 for such things as how would you prepare witnesses while
19 you're incarcerated, how would you research this, how
20 would you read 6500 pages of discovery, and he was telling
21 me he could be ready in four hours, which obviously would
22 indicate some impairment.

23 So it would be those four issues interacting
24 with each other.

25 Q Would you consider the making up of the ability to

1 review that many pages to be grandiose?

2 THE COURT: Say that again. I apologize.

3 BY MR. TARR:

4 Q Would you think that his saying that he could read
5 thousands of pages in just a few hours and be ready to go,
6 would that be an example of a grandiose way of thinking?

7 A Well, it has some grandiose elements in it. It also
8 has some difficulty to comprehend how arduous a task that
9 would be.

10 Q So basically for those four reasons that you've
11 stated and all your time spent with him and all the
12 records you've reviewed, it's your opinion that he is not
13 competent to waive his right to counsel in this case?

14 A That would be correct.

15 MR. TARR: That's all we have on this issue.

16 THE COURT: Thank you.

17 Mr. Barnes, would you have any questions of Dr.
18 Price?

19 THE DEFENDANT: Yes, I've got several questions.

20 IN CAMERA DIRECT EXAMINATION

21 BY THE DEFENDANT, MR. BARNES:

22 Q You said you read the transcript, right, to the
23 Columbia County trial?

24 A Correct.

25 Q And you said in that transcript that I fired, what,

1 two counsels, or what did you say I did?

2 A If my memory serves me correct, two counsels and had
3 a conflict with the third.

4 Q Had conflict with the third.

5 Well, if you read the transcript correctly, it
6 stated that the first counsel, we had a conflict of
7 interest as to financially. And the second counsel, he
8 tried to accuse me of -- and that was never on the record,
9 this was something another lawyer said which would be
10 hearsay -- saying that I supposedly had threatened him.
11 And the third lawyer was due to the fact that he wouldn't
12 raise the motions, which I brought up Friday, the grounds
13 that I wanted them to assist.

14 THE DEFENDANT: Okay. So, Your Honor, can I say
15 something?

16 THE COURT: Yes, sir.

17 THE DEFENDANT: Nobody knows this case like I
18 do. I've been -- I had motion discoveries when I was at
19 Richmond County Jail. So when he's saying that I
20 supposedly can't read 7,000 some documents, which all
21 these documents are mine, that don't make no sense. The
22 only documents that's substantial to me was the Hunsberger
23 trial. That's it. He's saying I can't be ready with
24 7,000 documents, in which all these documents is mine.
25 The majority of the documents come from Edgefield County,

1 all the paperwork I done filed and this stuff like that.

2 I mean, basically what I'm trying to say is that
3 he's misrepresented the facts. When he come to me and he
4 talked to me, what he's saying is totally -- it's just
5 like it's for the purposes of this hearing. For him.

6 I'm feeling betrayed because this is my counsel
7 and he never -- I mean, I never in my life even thought
8 that a man -- that these people right here that represent
9 me would take a person that's also on my team, on my
10 defense team, and have you -- I mean, if I'd have known
11 something like that, I would have never brought forth that
12 type of defense, period.

13 I never thought anything about this. I know for
14 a fact that if you do make your decision in this case, in
15 which I already know what you're going to do because -- I
16 mean, I can understand by you hearing it, the testimony
17 from this doctor and his degrees and stuff like that,
18 whatever your decision is, but I assure you, one, I'm
19 looking at a medical malpractice suit on this doctor right
20 here; two, a legal malpractice suit on these lawyers.
21 Because how are you going to sit here and use a doctor
22 that's on my case, although you gave the authorization, I
23 don't understand that, but he never consulted me about
24 these matters.

25 Well, you know, we're going to have a mental

1 hearing and a competency hearing to see if -- you know,
2 we'll try to work this thing out. All of a sudden, boom,
3 this hearing.

4 Whatever happened to me in the past don't have
5 nothing to do with right now. Every question you asked
6 Friday I answered. I can represent myself in this trial.
7 It's just to have this man right here, the man, he
8 taking -- he asked me a question. It's just like saying,
9 Man, you know, you going to eat a sandwich? And you say,
10 Yeah, I'm going to eat a sandwich. Yeah, I'm going to eat
11 a sandwich. And I come in the courtroom and say, Yeah. I
12 said, He say he going to eat a sandwich. I mean, the man,
13 he manipulated me. I mean, he's getting on this stand and
14 saying things that's totally what I didn't even say, took
15 it all out of proportion for this hearing.

16 What questions can I say to this man? He done
17 got these big degrees and this, that, and the third. Yes,
18 he went through my medical history for the purpose of the
19 penalty phase.

20 I just feel that this hearing's unfair. And
21 whatever your decision is, I would like to file an
22 interlocutory appeal to the appeal court of South Carolina
23 because I feel that this hearing is unfair and it's not
24 right, although I know what your decision will be, but I
25 have no control over that, Your Honor.

1 THE COURT: Mr. Barnes, do you have any other
2 questions you'd like to ask Dr. Price?

3 THE WITNESS: Your Honor, could I respond to the
4 question he started asking me?

5 THE COURT: Just a moment.

6 Do you have any other questions you would like
7 to ask Dr. Price?

8 THE DEFENDANT: Your Honor, I just matter of
9 fact for the record pretty much, because what questions
10 could I ask him?

11 THE COURT: All right. Thank you very much.

12 Yes, sir, you may respond to his question.

13 THE WITNESS: Your Honor, that's one of the
14 difficulties he just exhibited with him representing
15 himself is the distractibility. He went from asking me a
16 question about the conflict of the attorneys to being
17 distracted to talking to you about the records to being
18 distracted to talking about sandwich eating to being
19 distracted to come back and make another comment about
20 malpractice suits and that type thing. It's that
21 distractibility which is part of the cognitive issue and
22 part of the conflict issue.

23 THE COURT: Yes, I see Mr. Barnes has his hand
24 up.

25 THE DEFENDANT: See, I wasn't never prepared for

1 this hearing. If I'd have known something like this was
2 going to happen, I could have had a rebuttal psychiatrist
3 or whatever in regards to this man.

4 I never knew this was going to happen. So I'm
5 not prepared. I mean, I don't even have no expert reports
6 of this man. I mean, I don't even know. I mean, this is
7 a surprise to me, you know. Like I said, I feel like this
8 is a violation of my rights, I really do, this hearing.
9 So that's the reason why I talked to you about this
10 situation because you, the judge, you got the almighty
11 discretion over this matter. And the only way your cases
12 get overturned, your ruling get overturned is abuse of
13 discretion.

14 And I just feel that, like I said, my attorneys
15 didn't consult with me with this matter. You see what I'm
16 saying, that something like this was going to happen?

17 I'll talk about David Tarr. He didn't consult
18 with me with this matter. You see what I'm saying? I
19 don't even have nothing to rebut. I'm just a poor man
20 trying to --

21 THE COURT: Just a what? I'm sorry. Poor man
22 what?

23 THE DEFENDANT: I'm just a poor man that don't
24 even have no -- I mean, what I'm saying is this, Your
25 Honor: I don't even -- what can I rebut? I mean, I can't

1 make no -- I can't make no phone call and say, Yeah, you
2 know, can I get so-and-so to come and see me and rebut
3 this man or so-and-so and so-and-so? I can't do that.
4 This man has been compelled by my lawyers -- you agree to
5 this?

6 MR. HARTE: I voiced an objection.

7 THE DEFENDANT: Okay. Well --

8 MR. HARTE: I voiced some concerns about it.

9 THE DEFENDANT: Well, this man got this Dr.
10 Price to get on the stand and testify about things that
11 was privileged.

12 See, this is what I'm trying to tell you, Your
13 Honor. I never knew that this man was going to turn
14 basically on me. He supposed to be representing me.
15 That's what I'm trying to say.

16 So if somebody's mentally incompetent for
17 forcing his opinions and concerns or something, that this
18 man supposed to be -- this conversation that me and him
19 have was in private for the penalty phase, then I guess
20 I'm incompetent to go to trial then if that's the case.

21 THE COURT: All right. Thank you. Anything
22 further, Mr. Barnes?

23 THE DEFENDANT: Your Honor, what I'm trying to
24 say is this: You know like I know, you've got to have
25 things in front of you in order to challenge a person.

1 And once again, I have spoken to the man and he has --
2 went through records, okay? But what I'm saying is this:
3 If I had known that this man would get on this stand on me
4 and testify about matters that was privileged, I would
5 have never told him nothing. He'd just have to go off the
6 records. Matter of fact, there would have been no records
7 if I'd have known that my lawyer, David Tarr, was going to
8 do something like that. I would have never hired any
9 migration (sic) people, period, with family members and
10 stuff like that for migration purposes or whatever
11 statutory migration. I would have never hired any
12 psychologists or whatever the case may be, I would have
13 never hired none.

14 And from this day on I'm not going to talk to
15 him, period. We have no relationship. That's what I'm
16 saying, Your Honor.

17 THE COURT: Anything further, Mr. Tarr?

18 MR. TARR: No, Your Honor.

19 THE COURT: All right. And, Dr. Price,
20 obviously the issue before the Court is whether or not the
21 defendant has the ability mentally based on those various
22 factors that you've responded to the Court to knowingly
23 and intelligently waive his right to counsel.

24 And I know Mr. Tarr kind of asked you a question
25 whether or not you thought he was competent. Well, he did

1 ask you a question specifically is he competent to stand
2 trial and you said "certainly" or "yes."

3 THE WITNESS: Yes, sir.

4 THE COURT: And then is he competent to
5 represent himself and I believe you said "no."

6 How do you relate that to the knowledge and
7 intelligence factor of waiving his right to counsel?

8 THE WITNESS: Well, I'm concerned about the
9 distractibility, the memory impairment he's demonstrated,
10 intellectual function, the difficulty in being able to
11 abstract and apply that.

12 To use an example, one thing Mr. Barnes did not
13 mention in his response was I met with him for three hours
14 yesterday to discuss these issues and how he would be able
15 to represent himself and the problems he would have. He
16 thought he would have no problems with his witnesses and
17 now he says today, Well, I'd have difficulty calling
18 witnesses, which obviously he would be incarcerated in
19 McCormick. He didn't appreciate the implications of
20 trying to manage -- he just doesn't understand the
21 implications of trying to manage a trial from a
22 correctional institute 20 miles away and being prepared
23 for examination and cross-examination.

24 He also can't effectively examine or
25 cross-examine with his degree of distractibility as I've

1 just commented on that he displayed today.

2 THE COURT: You feel like his opinion is -- his
3 position is based or founded on his issues of PTSD and
4 cognitive disorders?

5 THE WITNESS: Yes, sir. Related to the PTSD is
6 the paranoia and distrust and feeling like he's going to
7 be betrayed. And I think that that paranoia is sort of
8 heightened by some kind of involvement with attorneys that
9 are not here.

10 THE COURT: And do you feel like with that
11 paranoia and it appears he exhibits traits of,
12 characteristics of having paranoia, would that affect the
13 knowledge of waiving that right?

14 THE WITNESS: I think it does affect the
15 knowledge of waiving that right, particularly when
16 compounded with being intellectualized.

17 THE COURT: And does that also affect the
18 ability to waive that right intellectually?

19 THE WITNESS: Yes, sir.

20 THE COURT: In your opinion, Doctor, he has not
21 knowingly and intelligently waived his right to counsel?

22 THE WITNESS: That's correct.

23 THE COURT: And I will say, Doctor, Friday I
24 asked him questions, mainly non-open-ended questions, and
25 he responded, the record will reflect that I would say,

1 for the most part appropriately.

2 All right. Thank you, Doctor.

3 Anything to follow up with the doctor, Mr. Tarr?

4 MR. TARR: No, Your Honor.

5 THE COURT: Mr. Barnes, anything to follow up
6 with the doctor?

7 THE DEFENDANT: Not with the doctor.

8 THE COURT: I'm going to ask the doctor to
9 please step down.

10 Thank you very much, Doctor.

11 THE WITNESS: May I be excused from the
12 courtroom?

13 THE COURT: Any objections?

14 MR. TARR: No, Your Honor. He is under subpoena
15 for the trial.

16 THE COURT: Any objections to him being excused
17 from the courtroom, Mr. Barnes?

18 THE DEFENDANT: No, sir.

19 THE COURT: All right. You had your hand raised
20 again, Mr. Barnes.

21 THE DEFENDANT: Your Honor, what I was trying to
22 say about him misrepresenting the facts, like I said, I
23 didn't say nothing about no having problems with
24 cross-examining my witnesses on my trial. I was speaking
25 to the extent of how in the world I can cross-examine this

1 man and not have nothing to refute him with.

2 I didn't call no people from the outside. I've
3 got no resources myself to refute this man. No other
4 psychological opinions from other doctors and stuff like
5 that. I have nothing. That's what I'm saying. He going
6 to say otherwise like I was saying for my trial, but
7 that's what I got from what he's saying.

8 THE COURT: Thank you, Mr. Barnes.

9 Anything further, Mr. Tarr?

10 MR. TARR: No, Your Honor.

11 THE COURT: Anything, Mr. Harte?

12 MR. HARTE: No, Your Honor.

13 THE COURT: All right. Without reciting all the
14 various points in the record that were cited during
15 Friday's hearing concerning the foundation of the
16 constitutional right to self-representation, both on a
17 federal and state level, and reciting State versus Brewer,
18 and then coming forward to State versus Starnes which
19 cites with approval Indiana versus Edwards, it's obvious
20 that the right to represent oneself is not absolute.

21 It appears there were several factors that were
22 looked at by the Indiana court, including the question of
23 whether or not the constitution permits the State to limit
24 a defendant's right to self-representation by insisting
25 upon trial counsel when the defendant lacks the mental

1 competency to conduct his trial defense unless
2 represented.

3 It appears that jurisprudence somewhat leans
4 that way by setting forth the standard that focuses
5 directly upon the defendant's ability to consult with his
6 lawyer under Dusky and Drope. It assumes representation
7 by counsel and emphasizes counsel's importance, thus
8 suggesting, though not holding, that choosing to forego
9 trial counsel presents a very different set of
10 circumstances than the mental competency determination for
11 a defendant to stand trial.

12 As we all know, the nature of mental illness is
13 not static and is not a unitary concept, but it can vary
14 in degrees at different times and different stressors and
15 different circumstances.

16 Also, self-representation at trial will not,
17 quote, affirm the dignity, unquote, of the defendant who
18 lacks the mental capacity to conduct his defense without
19 assistance of counsel and may undercut the most basic of
20 constitutional criminal law objectives, which is providing
21 a fair trial.

22 I have had the opportunity to observe Mr. Barnes
23 in the past during a trial in which he was represented by
24 counsel. He conducted himself well in that particular
25 situation. He appeared to consult with counsel at

1 appropriate times concerning the defense of that case. He
2 appeared to be respectful to the Court and those around
3 him.

4 Although he answered questions appropriately
5 this past Friday, I am concerned about the information
6 that was provided to the Court today.

7 It appears that he has had 16 prior psychiatric
8 diagnoses, six involuntary commitments, some of lengths of
9 up to a month. You've had cognitive deficits with IQ
10 ranging from the 70s to 82, which would be borderline, low
11 average range to borderline. Further, it appears he has a
12 memory impairment, placing him in the one percent category
13 of those with memory, has a current diagnosis of
14 post-traumatic stress and an unspecified cognitive
15 disorder.

16 Although competent to stand trial, Dr. Price
17 pointed out four areas of concern: His impairment based
18 on prior psychiatric history; his conflict with authority;
19 his distrust; his belief in betrayal by those that appear
20 to be acting on his behalf; his paranoia and wanting to
21 take control; the history of activity such as this in
22 prior trials in which he had tried to fire other lawyers,
23 although there's been no showing that he's ever been
24 allowed to represent himself; that he has continuing
25 conflicts with authorities.

1 . Further, there appears somewhat lingering in the
2 background that he has had correspondence or claims to
3 have correspondence, whether true or not, with other
4 attorneys besides those appointed by the Court, Mr. Tarr
5 and Mr. Harte; that these other attorneys have advised him
6 to fire Mr. Tarr and Mr. Harte and that this other
7 attorney would take over as first and second chairs, which
8 does no more than degrade the judicial and legal process
9 and profession and add fuel to the distrust and betrayal
10 Mr. Barnes feels; also his cognitive issues where he loses
11 his train of thought, forgets what he's talking about.

12 I would agree and I find Dr. Price to be
13 credible. That if Mr. Barnes' manner in keeping up with a
14 trial is to write down everything the prosecutor says to
15 keep on point to compensate for any memory problems is
16 just not realistic. And further, if he lapses into
17 prayers at times, that would obviously be inappropriate
18 and not exercising the ability one would need to conduct a
19 trial of any, but particularly of this magnitude.

20 Further, his judgment. Preparation is the key
21 to victory. Regardless of whose documents those are, 6500
22 pages requires intense, extensive preparation. You can
23 say, Well, those are my documents. They still must be
24 reviewed. The prepared criminal defense lawyer should
25 know everything in every document better than anyone else

1 in the courtroom. The prepared trial attorney should do
2 that in each and every case he tries. The prepared
3 attorney should have the ability to meet with witnesses,
4 prepare witnesses, prepare cross-examinations of
5 witnesses. With the background of 6500 pages, it's just
6 not possible, in my opinion, to say, I'm prepared with
7 those pages, in this brief amount of time.

8 Looking back at Starnes, it states, quote, "The
9 right to self-representation is not absolute. The
10 constitution allows states to prohibit defendants from
11 waiving their right to counsel if they are not competent."

12 Starnes requested a pro se ruling forbidding
13 capital defendants from representing themselves, stating
14 that that would violate both the South Carolina and United
15 States Constitution. Our Supreme Court declined to adopt
16 such a rule.

17 Given that there is no pro se ruling forbidding
18 capital defendants, it does appear that the Court would
19 have authority in the appropriate case to prohibit the
20 right of self-incrimination.

21 Given the doctor's testimony and his expert
22 opinion that the defendant has not knowingly and
23 intelligently waived his right to counsel, I find the
24 defendant does not have a clear understanding of the
25 dangers of self-representation in the guilt nor the

1 sentencing phase of the trial.

2 I further find that the defendant does not
3 knowingly, intelligently understand the dangers inherent
4 in self-representation. I feel like I would not be
5 fulfilling my responsibilities under the law to an
6 individual that deserves a fair trial if I allow on this
7 record, and I might add, my observations of Mr. Barnes.

8 Mr. Barnes has always been during these
9 proceedings respectful to this Court and I've noted him to
10 appear to be respectful, although not necessarily pleased
11 at times, with his attorneys. However, he is prone to
12 ramble. He's prone to act extra-judicious, and by that I
13 mean not appropriate, but to act as if he were conducting
14 his defense on the streets, so to speak, and as we all
15 know, the courtroom is not the place for that kind of
16 decorum or demeanor. I think it would be abuse of my
17 discretion to allow him to represent himself in trying to
18 do all I can do to make sure Mr. Barnes in this very
19 serious matter gets a fair trial. So I'm denying your
20 motion.

21 And I might add, I have not seen anything but
22 his attorneys acting in his best interest throughout these
23 proceedings, both during requests or expertise, motion
24 hearings, status conferences and otherwise.

25 Further, I would find that it appears Dr. Price

1 also to be acting not in Dr. Price's best interest but in
2 Mr. Barnes' best interest.

3 With that being said, I will deny Mr. Barnes'
4 motion under Faretta versus California and deny his right
5 to self-representation and reaffirm the Court's
6 appointment of Mr. Tarr and Mr. Harte.

7 Mr. Tarr, any other motions?

8 MR. TARR: I don't have any other motions. I
9 think Mr. Barnes might have.

10 THE COURT: Mr. Harte?

11 MR. HARTE: Not ex parte, Your Honor.

12 THE COURT: All right. And you may want to
13 confer with your client. You are now his attorney. If he
14 wants you to make a motion, I'll be glad to hear it.

15 MR. TARR: I believe he just wants to object,
16 Your Honor.

17 THE COURT: All right. Certainly.

18 MR. HARTE: Your Honor, I'll place on the record
19 that I do object to your ruling regarding Mr. Barnes.

20 THE COURT: Thank you very much, Mr. Harte.

21 MR. HARTE: He also wants me to put on the
22 record his ineffective assistance of counsel motion that
23 he made on Friday.

24 THE COURT: All right. And as to that motion,
25 of course I would find ineffective assistance of counsel

1 is a creature that would be addressed under
2 post-conviction relief if there is any conviction. If
3 there is no conviction, there won't be post-conviction --
4 there will be no need for relief in that regard, but I
5 find that is a creature of statute under South Carolina
6 and under Stickland versus Washington.

7 Any other matters, Mr. Harte?

8 MR. HARTE: He wants me to place on the record
9 that he objects to that ruling, but I don't think that's
10 necessary.

11 THE COURT: He objects to?

12 MR. HARTE: To your ruling.

13 THE COURT: Yes, sir, I thought you did that.
14 If you did not, it's certainly on the record.

15 MR. HARTE: On the ineffective assistance of
16 counsel.

17 THE COURT: All right. Yes, sir. That's also
18 on the record.

19 MR. HARTE: That's all, Your Honor.

20 THE COURT: All right. Why don't we take just a
21 few minutes recess. Why don't we take about ten minutes
22 and then we'll get everybody resembled right before the
23 jury gets here. Thank you very much.

24 (A break was taken.)

25 THE COURT: You had another matter you say, Mr.

1 Harte?

2 MR. HARTE: Yes, Your Honor. I made a motion
3 this morning under the interstate agreement on detainers,
4 which is Section 17-11-10, et seq. By way of factual
5 background in making my motion, Your Honor, I point out
6 that it appears that an offer for custody under the IAD
7 was dated February 12th, 2005. On May 27th, 2005, the
8 Honorable William Keesley ordered an extension of time
9 exceeding the statutory 180 days to try the case under the
10 IAD. Under the statute, Your Honor, a delay can be
11 granted if it is necessary or reasonable. This case from
12 that time forward was not scheduled for trial until some
13 three years later, and at no time was there an additional
14 request for an extension, at no time was there an
15 additional showing made to the Court. In Judge Keesley's
16 order he did not specify how long the extension or the
17 continuance was to be granted.

18 In March of '08, we learned that our mitigation
19 specialist was not certified and we therefore requested a
20 continuance at that time. It's our position that under
21 the statute, Your Honor, that by that time, March of '08,
22 some not quite three years after Mr. Barnes had been
23 brought over to be tried by the State of South Carolina,
24 the reasonable extension had been far exceeded by almost
25 36 months, 34 months. In addition, Your Honor, even after

1 that, the case was never rescheduled for trial until it
2 was scheduled for this trial here today. And this is now
3 more than 26 months, 30 months, two years four months, 28
4 months from the last scheduled trial. We believe, Your
5 Honor, that that violates the interstate agreement on
6 detainers. The State did not seek additional delays in
7 terms of reasonableness and just made the delay on their
8 own. And based upon that and the violation of the IAD, we
9 would move that the case be dismissed.

10 THE COURT: All right. Solicitor.

11 MR. MAYE: May it please the Court, Your Honor.

12 We were actually forwarded the interstate
13 agreement on detainers demand February the 12th of 2005.
14 I don't think our office actually received it until
15 sometime the following week. The first time that we were
16 able to schedule it within 90 days was when we went before
17 Judge Keesley over in Lexington. Some days later on
18 May the 27th of 2005, Judge Keesley issued the following
19 order, which I have here and I'll hand up to the Court in
20 this case. Judge Keesley's order specifically addressed
21 the interstate agreement on detainers issue, and he
22 pointed out in the order that it just would not be
23 practical to be able to dispose of this case within 180
24 days and continued the matter beyond that which
25 effectively tolled this interstate agreement on detainers

1 180-day clock. Since that time, the State has done
2 everything -- the Solicitor's office, Solicitor Myers has
3 made a repeated request for this case to be tried. Judge
4 Toal appointed Judge Cordell Maddox on October 31st of
5 2005. Solicitor Myers continually pressed to have a trial
6 date set. It was not done and finally Your Honor was
7 appointed on this case, Your Honor, and we're here this
8 week for trial of this case.

9 The defense would have to make some sort of
10 showing of prejudice. The mere passage of time doesn't do
11 anything in this regard. There would have to be some sort
12 of showing of prejudice. The only cases that I can find
13 in South Carolina where any case has ever been dismissed
14 for this interstate agreement on detainers issue was where
15 the State took absolutely no action within 180 days.

16 In this case we sought his return as quickly as
17 we could. He was back here after we received, sometime in
18 late February, the demand. He was back here May 18th of
19 2005.

20 He was down before Judge Carpenter addressing
21 his bail on 5-19 of 2005. The notice was served on him
22 that this was to be a capital case well within that
23 180-day time period.

24 The State has complied certainly with the
25 interstate agreement on detainer. Pursuant to State

1 versus Finley, which is 277 SC 548, the Court clearly has
2 the authority to toll the running of this time period. It
3 was done in that case. And in order to seek any sort of
4 dismissal, there would have to be some showing on the part
5 of the defense that there was somehow prejudice by this.

6 Also, I'd note in the interim on 3-13 of 2008,
7 the defendant was convicted of throwing body fluids here
8 in Edgefield County and he was sentenced to 15 years and
9 all during this time period, he was sentenced
10 December 15th of 2003 and given a life sentence over in
11 Georgia for armed robbery and kidnapping in '03 and did
12 not serve this interstate agreement on detainers paperwork
13 on us until February of 2005.

14 THE COURT: Thank you.

15 Do you care to respond, Mr. Harte?

16 MR. HARTE: Your Honor, I disagree that the
17 defense is required to show prejudice. I agree that the
18 Court can certainly toll the 180 days, but I disagree that
19 that can be an indefinite tolling for an unreasonable
20 amount of time, which is clearly what we have here.

21 THE COURT: All right. Your position is that
22 the State could -- the Court could toll the 180, and they
23 did, and that's valid, but the time is still unreasonable?

24 MR. HARTE: That's correct, Your Honor.

25 THE COURT: The passage of time.

1 MR. HARTE: That's correct, Your Honor.

2 Also, Your Honor, while case law states that the
3 rights under the interstate agreement on retainers do not
4 raise to the level of constitutional rights, I would raise
5 the issue that Mr. Barnes did not have an attorney present
6 at the hearing in May of 2005 and that had there been an
7 attorney present, perhaps there would have been the
8 argument made, Judge, we need to have some limit put on
9 this tolling. But the fact that -- and I don't doubt the
10 solicitor tried to get it scheduled. The fact is, it went
11 three years without being heard.

12 THE COURT: When was Judge Maddox appointed?

13 MR. MAYE: Judge Maddox was appointed by Judge
14 Toal October the 31st of 2005, and I know that Solicitor
15 Myers repeatedly pressed to have a trial date set after he
16 was appointed.

17 THE COURT: October would have been within 180
18 days of the May hearing before Judge Keesley.

19 MR. HARTE: Yes, sir.

20 MR. MAYE: Yes, sir, absolutely. Everything
21 that we had at our disposal to do we did within the
22 180-day time period.

23 THE COURT: And then it really becomes, or
24 experientially it's been my experience it then becomes a
25 matter of the Court conferring with the attorneys to set a

1 trial date.

2 MR. HARTE: Yes, sir.

3 THE COURT: Basically in these type of cases.

4 MR. HARTE: Yes, sir. And there were various
5 times when there was a discussion about a trial date, but
6 only one time was a trial date set.

7 THE COURT: That was '08.

8 MR. HARTE: That was in June of '08. I believe
9 it's June. It might have been May.

10 THE COURT: That's when the mitigation expert
11 issue came up?

12 MR. HARTE: Yes, Your Honor.

13 THE COURT: All right. Thank you, Mr. Harte.

14 I'm going to deny the motion on the interstate
15 agreements on retainers. I certainly understand the
16 position on the passage of time from February of '05 and
17 here we are in November of 2010; is that right, 2010?
18 You're certainly protected on the record in that regard,
19 Mr. Harte.

20 Anything further?

21 MR. HARTE: Yes, Your Honor. One motion that I
22 did not file, and I meant to do it. The defense would
23 move for sequestration of the witnesses and that they be
24 sequestered from each other, and that those law
25 enforcement authorities responsible for those people be

1 told that they are not to communicate with each other
2 before, during, or after testifying.

3 THE COURT: I always allow the chief
4 investigating officer to remain. I always allow the
5 custodian of evidence to remain. It just causes such a --
6 I don't know the volume of physical evidence, but I always
7 allow those two to remain.

8 I will grant that motion. They can talk with
9 each other, they just can't talk with each other about the
10 trial. I mean, it's kind of hard to sequester everybody
11 in different little compartments.

12 MR. HARTE: I'm specifically talking about the
13 State's witnesses that are in custody.

14 THE COURT: All right. Well, the State
15 witnesses in custody. I thought you were talking about
16 officers.

17 They should be sequestered also, Solicitor. I
18 don't imagine they're going to be sitting in the courtroom
19 during the trial.

20 MR. MYERS: I didn't plan on bringing them.

21 MR. HARTE: I just don't want them communicating
22 over at that detention center, Your Honor, before, during
23 or after their testimony.

24 MR. MYERS: We've got some here, some in other
25 jails. We'll give them a specific request to keep them

1 separated and not have them together.

2 THE COURT: All right. And if would you follow
3 up on that, Solicitor. Thank you very much.

4 Any other matters?

5 MR. HARTE: Yes, sir. I noticed that when my
6 client was brought in for the jury qualification this
7 morning, on two occasions he was followed immediately by
8 five armed officers. It created a parade.

9 I mentioned on Friday that I didn't want an SCDC
10 labeled person close to him, and that person's right where
11 they were Friday.

12 I believe, Your Honor, there's a real danger
13 that the jury's been tainted by this and may be further
14 tainted by the fact that the only way an SCDC officer
15 would be here is if he's in custody for some other reason
16 other than this offense, and we can't assume the jurors
17 don't know that.

18 THE COURT: And we can't assume that they do.
19 But let me follow up on that.

20 I spoke with the sheriff this morning concerning
21 both the number of uniformed officers in the courtroom and
22 South Carolina Department of Corrections officers.

23 As you know by now, my habit and custom is to
24 allow the officers to handle security and to fulfill their
25 duties and responsibilities under the law.

1 The sheriff did limit the number of uniformed
2 officers I understand in that regard, and the Department
3 of Corrections is required to have their officers present
4 with this or any other individual that they're
5 transporting. They must be present and be within the
6 sight of the prisoner in the courtroom.

7 After he was brought in and, quite frankly, I
8 thought he would have been in here in place prior to that
9 time, but after he was brought in, two of the three
10 officers with the South Carolina Department of Corrections
11 actually went to the back of the courtroom. They didn't
12 remain. For example, this one officer here's on the first
13 row outside of the rail. They didn't even remain in that
14 position. They were at the very back of the courtroom.

15 There was one over here. I recall that.

16 MR. HARTE: And for record purposes, I would say
17 that's probably five feet.

18 THE COURT: I'd say you need to get a tape
19 measure, but it's the first chair in the -- I guess that's
20 the grand jury box, or used to be, closest to the
21 defendant's table.

22 MR. HARTE: Yes, sir.

23 THE COURT: I do not find that that caused any
24 prejudice to the defendant.

25 Now, perhaps, Sheriff, if we could have him in

1 place before jurors come in, which won't be a problem
2 except Thursday morning because you won't have the full
3 panel back until Thursday morning anyway.

4 Now, I do not find that caused any prejudice.
5 If at some point in time you want me to give any kind of
6 instruction to the jury that they're not to infer or imply
7 anything against this defendant given the fact that there
8 are officers from the South Carolina Department of
9 Corrections present in the courtroom, I'll be glad to do
10 so, Mr. Harte. I will allow you to cogitate on that.

11 MR. HARTE: I don't think that's necessary.

12 THE COURT: All right. Anything further?

13 MR. HARTE: No, sir.

14 THE COURT: Solicitor?

15 MR. MYERS: No, sir.

16 THE COURT: All right. Is our first juror
17 present? Is it time?

18 THE CLERK: Yes, sir.

19 THE COURT: If she's present and it's time, if
20 you'd bring me, please, Ms. Shirley J. West, the first
21 one.

22 Madam Clerk, would you swear our juror.

23 THE CLERK: Raise your right hand, please, and
24 place your left hand on the Bible.

25 SHIRLEY J. WEST, after being duly sworn,

1 testified as follows:

2 THE CLERK: Have a seat. State your full name
3 and spell your last name.

4 THE JUROR: My name is Shirley J. West, and it's
5 W-E-S-T.

6 EXAMINATION

7 BY THE COURT:

8 Q Ms. West, if you get comfortably seated and turn
9 where, unfortunately, you'll have to look at me but where
10 me and you can see each other.

11 Did you have an opportunity to fill out that
12 form?

13 A Yes, sir.

14 Q Could you hand it up to me, please?

15 A (Juror complies.)

16 Q Thank you very much.

17 Now I noticed that you read it, but you didn't
18 check A, B, or C. Did you have an opportunity to read it?

19 A I read it. I just read it.

20 Q All right. Did you place yourself in any one of
21 those three categories?

22 A No, sir.

23 Q All right. Well, let's talk about it a few minutes,
24 all right?

25 A All right.

1 Q And please don't be nervous and please understand
2 there's no right or wrong answers in this regard.
3 Whatever your answers are are the right and correct
4 answers. Do you understand?

5 A Yes.

6 Q Now, you understand the State has called this case
7 for trial and it is a murder case and potentially there
8 could be two phases to this one trial. You understand
9 that?

10 A Yes, sir.

11 Q And the first phase would be the guilt phase where
12 the jury would solely be focused on whether or not the
13 defendant is guilty or not guilty. You understand that?

14 A Yes, sir.

15 Q If the defendant were found not guilty, there would
16 be no reason, no purpose for the second phase, for the
17 sentencing phase. You understand that?

18 A Yes, sir.

19 Q But you understand that we must ask you certain
20 questions now about your beliefs concerning the death
21 penalty because this is the only opportunity that we would
22 have to do so. Do you understand?

23 A Yes, sir.

24 Q Now, on this particular form there's three types of
25 jurors.

1 The first juror is the type of juror that once
2 the crime of murder has been proven by the State and the
3 juror is considering punishment, the juror feels that she
4 would be required to give the death penalty in each and
5 every case. This juror simply feels that once a murder
6 has been committed, the death penalty is the most
7 appropriate punishment, no matter what the circumstances
8 of the case. Do you understand that's the first category?

9 A Yes.

10 Q The B category is that type of juror that, although
11 the guilt of the defendant has been determined, under no
12 circumstances could the juror ever give the death penalty.
13 The juror would not need to hear what the facts and
14 circumstances of aggravation or mitigation in a particular
15 case were because the juror would have made up her mind
16 concerning the punishment no matter what and would
17 always -- or could never give the death penalty, would
18 always give a life sentence. Do you understand that?

19 A Yes, sir.

20 Q So that first category is always death, the second
21 category is always life.

22 The third category, or the C type of juror, is
23 the type of juror who, although the guilt of the defendant
24 has been determined, would not have made up her mind in
25 advance concerning punishment. The juror would need to

1 hear the facts and circumstances in aggravation and in
2 mitigation and would want to listen and would follow the
3 law as the judge told the jury the law was before she
4 could make up her decision regarding the punishment. And
5 if the facts were such that the death penalty were
6 warranted, the juror could bring back a verdict of death.
7 And if the facts were such that life without parole was
8 warranted, the juror could bring back a life sentence. In
9 other words, if the facts presented and the circumstances
10 presented, that juror under the appropriate circumstances
11 could vote for the death penalty or for life in prison.

12 Do you understand that?

13 A Yes, sir.

14 Q Now those are the three categories: Always death;
15 always life, never death; or life or death depending on
16 the circumstances.

17 Which category do you think you would fit in,
18 Ms. West?

19 A Well, I would consider what -- you know, the evidence
20 and stuff, I would consider all that. I would take a look
21 at that and why was the crime committed and why would that
22 person do that to another person. I would consider all
23 that before I make my decision.

24 Q So if the facts so warranted in a crime of murder,
25 aggravated murder, if you thought it was appropriate, you

1 could vote for the death penalty?

2 A If I thought it was appropriate I would, but like I
3 said, I would have to listen to the evidence.

4 Q And you wouldn't make that decision before you
5 listened to all the evidence and testimony in the case --

6 A No, sir.

7 Q -- both in the guilt phase and the penalty phase --

8 A Yes, sir.

9 Q -- and all the law as the judge told you the law was
10 before you could make that decision?

11 A Yes, I would go by the evidence.

12 Q By the evidence. But you would follow the law?

13 A Yes, sir.

14 Q All right. And when you say you'd go by the
15 evidence, that would be the facts that you as the jury
16 determine the facts were, but following the law as the
17 judge told you the law was?

18 A Yes, sir.

19 THE COURT: All right. I believe you would fit
20 in that C category.

21 All right. Now these gentleman may have a few
22 questions for you.

23 Solicitor.

24 DIRECT EXAMINATION

25 BY MR. MYERS:

1 Q Mrs. West, the judge asked the jury panel this
2 morning did anybody know anything about this case, and I
3 don't think anybody stood up. So that means you don't
4 know anything about this case?

5 A No, sir.

6 Q Now, Mrs. West, in trying this case, the judge also
7 told the jury they have to base their verdicts only on
8 what they heard in this courtroom. Could you do that?

9 A Yes, sir.

10 Q And he also told you that there could be two parts of
11 this case. Did you understand that?

12 A Yes, sir.

13 Q The first part would be guilty or not guilty. And if
14 the jury found the defendant guilty, then we'd have to go
15 into that second part. Do you understand that?

16 A Yes, sir.

17 Q And that second part is where the sentencing comes
18 in. If the jury found the defendant guilty, the jury's
19 going to hand down the sentence in this case. Not the
20 judge but the jury. Do you understand that?

21 A Yes, sir.

22 Q And it's two charges: Life imprisonment or the death
23 penalty. You understand that?

24 A Yes, sir.

25 Q Now, I couldn't hear very well when you were talking

1 because I was back over there, but in a case where life or
2 the death penalty's involved, you said what about those
3 two options now?

4 A I would listen to the evidence. I would have to hear
5 the evidence, go by the evidence.

6 Q Right. So I take from that there's nothing about
7 you, your religious or moral beliefs or anything, that
8 would interfere with you voting for life imprisonment?

9 A No, sir.

10 Q And the same way, anything about you that would keep
11 you from voting for the death penalty?

12 A No, sir.

13 Q Now, Mrs. West, our law gets a little funny
14 sometimes, but they passed a law that says in a death
15 penalty case, that if the jury decided the death penalty
16 was the necessary sentence, the appropriate sentence, then
17 every juror would have to sign that death penalty form.

18 Is there anything about having to sign a death
19 penalty form that would prevent you from voting for the
20 death penalty?

21 A No, sir.

22 Q You would have to listen to everything?

23 A Yes, sir.

24 Q And then decide what the appropriate punishment is?

25 A Yes, sir.

1 MR. MYERS: That's all we can ask of you.

2 Thank you very much.

3 THE COURT: Thank you, Solicitor.

4 Mr. Harte.

5 MR. HARTE: May it please the Court.

6 CROSS-EXAMINATION

7 BY MR. HARTE:

8 Q Ms. West, my name is Bob Harte. How are you this
9 afternoon?

10 A Fine.

11 Q I have just a couple of questions for you, ma'am.

12 I notice that you have a nine-year-old son.

13 A Yes, sir.

14 Q And I'm a little unsure, do you work now at Delta
15 Apparel or are you now just a housewife?

16 A No, sir, I haven't worked for six years.

17 Q Okay. You're a housewife?

18 A Yes, sir.

19 Q And you've been married 17 and a half years?

20 A Eighteen, yes.

21 Q Good for you.

22 I know we asked if there was any hardship or
23 anything. You understand that you're going to be
24 sequestered in this case?

25 A Yes.

1 Q And if you're chosen on the jury.

2 A Yes, sir.

3 Q But the jury will be sequestered. Do you have
4 somebody that can care for your son in the circumstances
5 if you are sequestered for a few days?

6 A I would have to work that out with my husband.

7 Q But you believe you could do that?

8 A Yes, sir.

9 Q Now, I want to -- without repeating what others have
10 already said, I want to make sure that we're clear that
11 before you would ever get to the penalty phase, the jury
12 will have to determine whether or not Mr. Barnes is guilty
13 or not. And the fact that we ask you questions about the
14 penalty phase should not imply to you that he is guilty in
15 any way. Can you put aside the fact that we've talked
16 about what the penalty might be in the guilt phase and
17 fairly and honestly try it as a fair trial?

18 A Yes, sir.

19 MR. HARTE: Thank you very much.

20 THE COURT: Thank you.

21 Ms. West, I'm going to hand you back your form
22 that you handed up to me where you didn't circle the
23 category you were in. I believe you indicated to me you
24 would be in that C category. If that is correct, would
25 you circle that for me, please?

1 (Juror complies.)

2 THE COURT: Thank you very much, Ms. West. And
3 if you would just step around and step right outside into
4 the hallway for a moment, I should have you right back in
5 the courtroom.

6 (Juror leaves courtroom.)

7 THE COURT: All right. Solicitor.

8 MR. MYERS: I believe she's qualified.

9 THE COURT: Mr. Harte.

10 MR. HARTE: No question she's qualified.

11 THE COURT: All right. I believe she is
12 qualified. That would be qualified number one.

13 All right. If you'd bring Ms. West back in for
14 me, please. And she may stand.

15 If somebody would bring Ms. West in. And she
16 can stand.

17 (The juror re-enters the courtroom.)

18 THE COURT: You can stand right there for me,
19 Ms. West. You don't have to come back around.

20 I have found you are qualified to be in a pool
21 of jurors from which we're going to select the trial jury
22 in this case.

23 With that in mind, I'm going to ask you to
24 please return to the courtroom at 9:30 Thursday morning.
25 Have with you, but you can keep it in your automobile,

1 enough personal effects and supplies to last you for a
2 stay with us for about seven to ten days. I hope it won't
3 be that long, but preparations like that.

4 Please remember, do not discuss the case with
5 anyone during this time. Do not watch or listen to any
6 news reports. Do not do any independent investigation or
7 any investigation on the Internet.

8 Do you have any questions?

9 THE JUROR: No, sir.

10 THE COURT: 9:30 Thursday morning. Thank you
11 very much.

12 How does she leave, Madam Clerk? Where does she
13 go?

14 THE CLERK: She can go back out that way.

15 THE COURT: All right. Thank you very much.

16 (Juror leaves the courtroom.)

17 THE COURT: All right. If you would please
18 bring me Lynn M. Koenig, K-O-E-N-I-G, Juror No. 157.

19 Ms. Koenig, if you'd just come around, please,
20 to the witness chair.

21 THE CLERK: Raise your right hand, please, and
22 place your left hand on the Bible.

23 LYNN M. KOENIG, after being duly sworn,
24 testified as follows:

25 THE CLERK: Have a seat. State your full name

1 and spell your last name.

2 THE JUROR: Lynn M. Koenig, K-O-E-N-I-G.

3 THE COURT: And pronounce your name for me
4 again, please.

5 THE JUROR: Koenig.

6 THE COURT: Koenig. I've been mispronouncing it
7 all day. I apologize.

8 THE JUROR: That's all right.

9 EXAMINATION

10 BY THE COURT:

11 Q Ms. Koenig, good afternoon. Did you have the
12 opportunity to review the categories of jurors?

13 A Yes, sir.

14 Q Do you have that document with you?

15 A I do.

16 Q Hand it to me, please.

17 All right. I see you have signed it and placed
18 your juror number there, and you have placed yourself in
19 Category C; is that correct?

20 A Yes.

21 Q And as I understand Category C, that is the type of
22 juror that, although the guilt of the defendant had been
23 determined, would not have her mind made up in advance
24 concerning punishment; is that correct?

25 A That's correct.

1 Q That this juror would need to hear the facts and the
2 circumstances in aggravation and mitigation and would want
3 to listen and follow the law as the judge charges the jury
4 before she could make her decision regarding punishment;
5 is that correct?

6 A Yes, sir.

7 Q And if the facts presented so warranted, this juror
8 could bring back a verdict for life without parole,
9 correct?

10 A Yes, sir.

11 Q Also, if the facts presented so warranted, the juror
12 could bring in a verdict for the death penalty; is that
13 correct?

14 A Yes, sir.

15 Q And it would depend on the facts and circumstances?

16 A Exactly.

17 Q And the law as the judge told you the law was?

18 A Yes, sir.

19 Q And you understand this type of trial potentially is
20 a two-part trial?

21 A Yes.

22 Q The first part, the jury would be solely focused on
23 whether or not the defendant were guilty or not guilty.
24 You understand that?

25 A Yes, I do.

1 Q And if the defendant were found not guilty, obviously
2 there'd be no need for the penalty or sentencing phase,
3 correct?

4 A Correct.

5 Q And this is the only opportunity we get to ask you
6 these questions. That's why we do it at this time. You
7 understand that?

8 A Yes, sir.

9 Q All right. Did you have an opportunity to review the
10 witness list?

11 A Yes, I did.

12 Q Did you know anyone on that list?

13 A No, sir.

14 Q And you know nothing about this case; is that
15 correct?

16 A I do not.

17 THE COURT: All right. Thank you very much.

18 Mr. Harte, I usually switch back and forth.

19 Mr. Tarr, you may examine the witness.

20 MR. TARR: Thank you, Your Honor.

21 DIRECT EXAMINATION

22 BY MR. TARR:

23 Q I apologize in advance, Ms. Koenig, if I mispronounce
24 your name.

25 A Oh, that's quite all right. It's mispronounced all

1 the time.

2 Q I have a friend whose last name is the same but it's
3 pronounced Koenig, so that's the first thing I thought.

4 I believe -- first off, I'm David Tarr. I
5 represent Steven Barnes.

6 If I'm not mistaken, I believe in jury
7 qualification you may have said that you thought you
8 recognized me?

9 A I thought I did, but I'm not sure. Mt. Vintage
10 against the developers. Were you in that?

11 Q No, I've only done criminal defense.

12 A Okay. Then it wasn't you.

13 Q What county was that in?

14 A Well, it was Edgefield County, but the case was heard
15 by this judge in -- what was the little town?

16 THE COURT: Lexington.

17 THE JUROR: Lexington, yes.

18 THE COURT: And there was a lot of lawyers. I'm
19 going to try to figure out who she thinks you look like,
20 Mr. Tarr.

21 THE JUROR: With his glasses on he looks like --

22 MR. TARR: I'd like to know.

23 BY MR. TARR:

24 Q I believe that you've stated that you would fall into
25 the third category of jurors and that you would need to

1 hear all the evidence in the case when making your
2 decision as to life versus death?

3 A Yes.

4 Q And you're also aware that this is a question that
5 you may not even get to if you're picked to be on this
6 jury because the first thing you'd have to do is determine
7 whether or not Mr. Barnes was guilty or not guilty?

8 A Whether he's proven guilty or not.

9 Q Right.

10 A Beyond a reasonable doubt.

11 Q Right. But if you didn't find him guilty, you'd
12 never even get to the question of life versus death.

13 A Correct.

14 Q Now, I see that you had worked with Chamberline
15 Research Consultants?

16 A Yes.

17 Q Up until 2009. It looks like about nine years. And
18 you're a medical transcriptionist?

19 A Not for them. I worked as a medical transcriptionist
20 for an outfit in Atlanta. I was laid off from that job in
21 2007. But I was a proofreader and transcriptionist and
22 did drug studies for Chamberline Research. It's a market
23 research corporation.

24 Q Okay. And you've lived here in Edgefield for seven
25 years?

1 A Yes.

2 Q I see that you watch Fox News is where you get your
3 news from?

4 A Yes.

5 Q Are there any other shows on Fox that you like to
6 watch?

7 A Besides the news shows?

8 Q Yes.

9 A I like the one with Megan Kelly. They have quite a
10 few nice specials. They did one on cancer research.

11 Q Let me ask you this. In terms of life versus death,
12 what are some of the factors that you would consider to be
13 important in making that determination?

14 MR. MYERS: I have to object to that, Your
15 Honor. He can't go into that.

16 THE COURT: Yes, sir, I will sustain the
17 objection.

18 BY MR. TARR:

19 Q Can I ask you this, then? In your mind, what do
20 you -- what is your understanding of the term "murder"?

21 THE COURT: I won't allow that either. That's a
22 charge on the law by the Court and the jurors would be
23 sworn to follow the law.

24 She may or may not know. She may know the law
25 better than I do, but as far as her opinions of what the

1 law of murder is is not appropriate voir dire.

2 BY MR. TARR:

3 Q Let me ask you this, Ms. Koenig. What types of
4 evidence that the defense could present to you would be
5 important to you in making your decision in a case like
6 this?

7 MR. MYERS: I have to object to that, too, Your
8 Honor. We're getting into hypothetical things of what the
9 juror wants. Jurors have a position and we can't delve
10 into what it may or may not be.

11 THE COURT: I would agree with that.

12 You know, you can certainly ask her if she's
13 going to follow the law, there's statutory mitigating,
14 there's non-statutory mitigating without giving
15 examples --

16 MR. TARR: Yes, sir.

17 THE COURT: -- is she going to consider
18 everything, but you can't stake them out, Mr. Tarr, so I
19 would sustain the objection.

20 MR. TARR: And I'm certainly not attempting to
21 --

22 THE COURT: Yes, sir. And I don't mean that by
23 way of criticism. I didn't mean it like that at all.

24 MR. TARR: I'm definitely not trying to get her
25 to commit to any specific set of facts.

1 THE COURT: Yes, sir.

2 BY MR. TARR:

3 Q Ms. Koenig, if the judge told you that you were
4 required to consider evidence presented by the defense in
5 mitigation, such as any factors relating to Mr. Barnes,
6 his background, education, intelligence, mental health
7 issues, anything like that, if he told you that you needed
8 to consider that as evidence, would you be able to do
9 that?

10 A Oh, yes.

11 Q I believe you're a member of the Edgefield Republican
12 Women's Association?

13 A Yes, I am.

14 Q How long have you been doing that?

15 A Since October. I can take shorthand, so they thought
16 I would be valuable in their meetings.

17 MR. TARR: Your Honor, I don't have any other
18 questions. I would have an argument I'd like to put on
19 the record outside the juror's presence.

20 THE COURT: Certainly.

21 All right. Solicitor.

22 CROSS-EXAMINATION

23 BY MR. MYERS:

24 Q Ms. Koenig, have you ever served on a jury panel
25 before?

1 A No, sir.

2 Q All this is kind of new to you?

3 A Yes.

4 Q The first part of this case, Ms. Koenig, is like any
5 case tried in this courtroom, criminal cases. Witnesses
6 would have to be put on the stand in that same chair
7 you're in and proof would have to be shown to the jury
8 that the defendant is guilty beyond a reasonable doubt.
9 And I think you used that term, "beyond a reasonable
10 doubt."

11 Could you listen to all the evidence just in
12 this courtroom and base your verdict, whether it's guilty
13 or not guilty, just on what you heard in this courtroom?

14 A That's what I'm expected to do, right?

15 Q Yes, ma'am.

16 A Yes, sir.

17 Q And sometimes it's referred to as the case is tried
18 in a vacuum, the vacuum being the courtroom, because
19 outside influences couldn't interfere. You could do that;
20 is that correct?

21 A You should do that.

22 Q Yes, ma'am, you're right.

23 Now, where this is unusual is if the defendant
24 is found guilty in a normal case, usually the jury goes
25 home and the judge does the sentencing. And the judge

1 says, Well, tell me something good or something bad about
2 him before the sentencing's published.

3 In this case if the defendant is found guilty,
4 the jury's going to hand down the sentence: Life in
5 prison or the death penalty. Do you understand that?

6 A Yes, sir.

7 Q Now, the second part of this case is called the
8 sentencing phase. That's to hear additional testimony,
9 maybe something good about the defendant, maybe something
10 bad about him, to give the jury more evidence to determine
11 what's the appropriate sentence.

12 Now, you just told Judge McMahon that you're in
13 that Category C; is that correct?

14 A Yes, sir.

15 Q And by that, if you thought life imprisonment was the
16 appropriate sentence, there's nothing about you that would
17 prevent you from voting for life imprisonment, is there?

18 A No.

19 Q And on the other hand, if you thought the death
20 penalty was appropriate, is there anything about your
21 background, religion, morals, or anything else that would
22 prevent you from voting for the death penalty?

23 A Not if I thought it was appropriate.

24 Q Good.

25 Now, I'll tell you one other special thing about

1 the law in South Carolina.

2 Our lawmakers said that if the jury decides that
3 the death penalty is the necessary punishment, that all 12
4 jurors have to sign that verdict. Not just the foreman
5 but all 12. Now, some people say, Well, I'll tell you
6 what my opinion is, but I'm not putting my name down on
7 anything.

8 The fact that if you're on the jury panel and
9 you thought the death penalty was appropriate, you'd have
10 to sign your name, would that interfere with your ability
11 to return the death penalty?

12 A No, sir.

13 MR. MYERS: Thank you, ma'am. That's all I have
14 to ask.

15 THE COURT: Thank you very much.

16 If you step outside the door into the hallway
17 for a moment, please.

18 (Juror leaves courtroom.)

19 THE COURT: All right. Mr. Tarr.

20 MR. TARR: Your Honor, I would object to not
21 being able to instruct the jurors on the definition of
22 murder in voir dire.

23 THE COURT: Well, now, you're --

24 MR. TARR: To question them about -- Your Honor,
25 in Bixby, Justice Toal in dicta stated that we weren't

1 required -- that the Court wasn't required to instruct
2 them or allow questioning into the definition of murder.
3 But, Your Honor, that case is currently under cert,
4 seeking to be -- cert being sought in the U.S. Supreme
5 Court, and I believe it's a very strong issue.

6 And I just think the misconception of what
7 murder means, there's a lot of jurors that -- they think
8 that only certain things are murder and there's to be
9 absolutely an automatic death penalty if that person was
10 found guilty of that. But in their minds, self defense,
11 accident and things like that are murder. And so not
12 being able to ask them what their understanding is of
13 murder and we're getting jurors who are saying that they
14 can consider both life or death, when in reality they
15 would only consider life for accident or self defense or
16 manslaughter. They wouldn't consider it for what they
17 have in their minds. So that's the reason why I feel like
18 we need to be able to question them about what their
19 understanding is of the term "murder."

20 THE COURT: All right. Solicitor.

21 MR. MYERS: Yes, sir. Pretty near there at the
22 beginning of the criminal law, particularly capital
23 punishment, the courts have pretty much held without
24 question that probing potential jurors' misconceptions on
25 the point of law is not a proper area of voir dire

1 examination. Such questions also are improper as they
2 seek a prejudgment of the case. Explaining specific legal
3 points of law and thereby eliminating this misconception
4 and prejudgment is the very reason that jury instruction
5 by the judge exists.

6 State versus Smart in 1982 held that where they
7 tried to go into legal questions on voir dire and the
8 Supreme Court gave pretty good guidance as far as about
9 restricting voir dire on different attitudes or points of
10 law, psychiatric, medicine, and presumption of innocence
11 if the defendant didn't testify.

12 State versus Matthews in 1988, they ruled the
13 same thing where they were trying to get the jurors to
14 tell them what a certain thing meant to them. In this
15 case, what a life sentence meant to them.

16 The Court cited King versus Linbar, a Fifth
17 Circuit Court case in 1988, talking about the defendant
18 not being constitutionally entitled to question jurors on
19 voir dire concerning possible misconceptions of the law,
20 explaining specific legal points and thereby eliminating
21 the jury's misconceptions are the very reason jury
22 instructions are given.

23 Our court has cited some Georgia law because our
24 statute is based on the Georgia death penalty law.
25 Barryhill versus State, a Georgia case from 1982, says

1 that the judge properly prohibited questions sought to
2 elicit information of a technical, legal nature on topics
3 which properly were the subject of instruction by the
4 judge.

5 Baxter versus State in Georgia in 1985 said the
6 defendant was not entitled to ask jurors, do you have an
7 understanding of what the presumption of innocence means,
8 what the term "reasonable doubt" means, and other legal
9 questions. And the Court followed the same thing, these
10 questions were properly excluded as they sought to
11 prejudge the case.

12 Our Supreme Court's even ruled on this in
13 non-capital cases. State versus Poindexter in 1993 talked
14 about the purpose of voir dire is to select an impartial
15 juror. Voir dire is not to be used as a means of
16 pre-educating or indoctrinating a jury as a means of
17 impaneling a jury with particular predispositions.

18 And this was cited in State versus Stanko, same
19 case. Stanko was a capital case where they wanted to talk
20 to jurors about the meaning of the insanity defense.

21 So our court has been consistent in saying that
22 points of law, matters of law, elements of law are not to
23 be debated in voir dire. They exist when the judge
24 charges the jury on what the law is.

25 THE COURT: All right. Anything in response,

1 Mr. Tarr?

2 MR. TARR: Again, just briefly, Your Honor, I
3 mean, how are we supposed to judge the responses A, B, and
4 C from these jurors if they don't understand the meanings
5 of the words that are used in the questions? I mean, we
6 don't know if I can't even ask what they think murder
7 means.

8 I mean, the instructions you're going to give
9 them to follow, that's way on down the line. And that's
10 great for their deliberations, but right now, it's like
11 the fact that they may not know what it means doesn't
12 matter and we're supposed to take these responses and
13 judge them as being a certain type of juror when they may
14 not even know what they're --

15 (Counsel conferring.)

16 MR. TARR: We're not trying to find out what
17 they would do in certain circumstances. We want to know
18 if they have a misconception or predisposition to vote a
19 certain way. And just not being able to question them
20 about what their understanding of the definition of murder
21 is I believe injects a degree of arbitrariness into these
22 proceedings at the earliest most point that they could,
23 the very selection of the jury.

24 We're going on answers to questions when we
25 don't even know whether they understand the questions and

1 would believe that violates the Sixth, Eighth, and
2 Fourteenth Amendments to the United States Constitution as
3 well as the state constitutional -- corresponding state
4 constitutional provisions, and we would ask Your Honor to
5 please allow us to question them as to their understanding
6 of the term "murder."

7 THE COURT: All right. I'm going to deny that
8 motion.

9 As I understand State versus Bixby, which is a
10 2010 case, the defendant argued the judge erred in
11 prohibiting the defense to probe jurors concerning the
12 definition of murder. Our South Carolina Supreme Court
13 disagreed.

14 "With respect to appellate's arguments
15 concerning voir dire, the dissent reason that the trial
16 judge committed reversible error was because counsel was
17 not given sufficient latitude to instruct the potential
18 jurors as to the legal definition of murder. We're not
19 persuaded by this position because such information is
20 disseminated to jurors by way of juror instructions, not
21 questioning on voir dire. For these reasons, we find the
22 trial judge did not commit reversible error when he
23 refused to allow defense counsel to probe jurors
24 concerning the definition of murder."

25 It doesn't matter even if they have a

1 misconception. They take an oath to follow the law and to
2 apply the law. And that's what category A, B, and C says,
3 and that's the duties and responsibilities and the oath of
4 the jury.

5 It's the same in Stanko where they were not --
6 the trial judge in that case -- I think that was Stanko 1
7 which was Judge Jefferson -- refused to allow the defense
8 to ask jurors about their views on the insanity defense.
9 I think it's very parallel to that. They could have
10 misconceptions about the insanity defense and all the
11 nuances of it, but they have to follow the law, and that's
12 what they say they do. You cannot question jurors
13 concerning their conceptions or misconceptions on what the
14 law is.

15 All right. Anything further?

16 MR. TARR: No, Your Honor.

17 THE COURT: And your position as to this juror?

18 MR. TARR: Qualified, Your Honor.

19 THE COURT: Solicitor?

20 MR. MYERS: Yes, sir, qualified.

21 THE COURT: All right. If you'd bring this
22 young lady in, please.

23 (Juror re-enters the courtroom.)

24 THE COURT: All right. You may stand right
25 there.

1 I have found that you are qualified to be a
2 member of a pool of jurors from which the trial jury would
3 be selected.

4 Now, what does that mean?

5 THE JUROR: Come back Thursday?

6 THE COURT: 9:30 in the morning. Have with you,
7 you can leave it in your automobile, the personal supplies
8 and effects to last you for a period of seven to ten days.
9 As I stated earlier, the jury will be sequestered for that
10 period of time. It may not take that long, but I do want
11 you to be prepared.

12 Please remember, do not discuss the case with
13 anyone during this period of time. Do not listen, watch,
14 read any news reports about the case.

15 Do you have any questions?

16 THE JUROR: May I tell my husband I possibly
17 could be sequestered?

18 THE COURT: Certainly.

19 THE JUROR: He'd like know that.

20 THE COURT: Certainly. I see he's got a great
21 job.

22 THE JUROR: One of them, yes.

23 THE COURT: One of them at Augusta National.

24 THE JUROR: Yes, sir.

25 MR. HARTE: You did say Thursday, right?

1 THE COURT: I did say Thursday, didn't I?

2 THE JUROR: Yes.

3 THE COURT: At 9:30, yes, sir.

4 MR. HARTE: All right.

5 THE COURT: If I misspoke, I apologize.

6 You may tell your husband you're on jury duty
7 perhaps if you're selected. There's no problem with that,
8 but you may not discuss the case.

9 THE JUROR: I understand.

10 THE COURT: Thank you very much. You're now
11 free until 9:30 Thursday morning.

12 (Juror leaves the courtroom.)

13 THE COURT: All right. If you'd bring us Juror
14 75, Mr. Thomas Devilbiss.

15 THE CLERK: Raise your right hand, please.

16 THOMAS DEVILBISS, after being duly sworn,
17 testified as follows:

18 THE CLERK: Have a seat. State your full name
19 and spell your last name, please.

20 THE JUROR: My full name is Thomas J. DeVilbiss.
21 My last name is spelled D-E- capital V like in Victor
22 I-L-B- as in boy I-S-S, DeVilbiss.

23 THE COURT: DeVilbiss?

24 THE JUROR: Yes, sir.

25 EXAMINATION

1 BY THE COURT:

2 Q All right. Mr. DeVilbiss, did you have an
3 opportunity to review that form?

4 A Yes, sir, I did.

5 Q Do you have it with you?

6 A Yes, sir.

7 Q Would you hand it up to me, please?

8 A (Juror complies.)

9 Q All right. I see you have reviewed it, signed it,
10 placed your juror number on the form and have indicated
11 that you would fit into Category C; is that correct?

12 A Yes, sir.

13 Q All right. I'm going to ask you just a few questions
14 and then I'm going to allow the attorneys to ask you a few
15 questions.

16 First off, did you have the opportunity to
17 review the witness list?

18 A Yes, I did.

19 Q Did you know anyone on that list?

20 A No, sir, I did not.

21 Q Now, you understand a trial such as this, there could
22 be two parts to the one trial. You understand that?

23 A Yes, sir. You explained that this morning.

24 Q And, of course, the first part the jury would be
25 solely focused on the determination of whether or not the

1 defendant was guilty or not guilty. You understand that?

2 A Yes, sir.

3 Q And if the defendant were found not guilty, obviously
4 there would be no need for the second phase.

5 A Yes, sir, I understand that.

6 Q And you understand we're asking you these questions
7 about the death penalty because this is the only
8 opportunity we get to ask jurors concerning their opinions
9 and beliefs about the death penalty?

10 A Yes, sir.

11 Q Now, my understanding of your position in reviewing
12 this form and circling letter C, that you will be among
13 those jurors that, although a defendant were found guilty
14 of murder, you would not have your mind made up in advance
15 concerning punishment; is that correct?

16 A That's correct, sir.

17 Q That you would be one of those jurors that would want
18 to hear all the facts and circumstances, any in
19 aggravation and mitigation, and would want to listen to
20 and follow the law as the judge charged you the law was
21 before you made up your decision or your mind regarding
22 punishment; is that correct?

23 A That's correct, sir.

24 Q And if the facts presented so warranted, you could
25 bring back a verdict of a life sentence, correct?

1 A Yes, sir.

2 Q And also if the facts presented so warranted, you
3 could bring back a verdict for the death penalty; is that
4 correct?

5 A Yes, it is, sir.

6 Q It would all depend on the facts and circumstances
7 and the law as the Court instructed you the law was?

8 A That's correct.

9 THE COURT: All right. Thank you very much. If
10 you'd please answer any questions the Solicitor has for
11 you.

12 THE JUROR: Sure.

13 DIRECT EXAMINATION

14 BY MR. MYERS:

15 Q Mr. Devilbiss, you don't know anything about the
16 facts of the case?

17 A I know absolutely nothing about this case, sir.

18 Q So whatever your verdicts were, you could base it on
19 what you heard in this courtroom; is that correct?

20 A Yes, sir.

21 Q I've got just one question to ask you. If the
22 defendant's found guilty, it would go into that second
23 trial, that's called the punishment or the sentencing
24 trial.

25 A Uh-huh.

1 Q It's either life or death. And you just told the
2 judge that you'd have to listen to everything, you could
3 vote for life or you could vote for the death penalty
4 depending on the facts of the case; is that correct?

5 A That's correct, sir.

6 Q Now, the law says that if the jury decides the death
7 penalty is warranted as the appropriate sentence, every
8 juror has to sign that death penalty verdict. Not just
9 the foreman but all 12. Did you know that was so?

10 A That was explained this morning, I believe, sir.

11 Q All right, sir. Now, a lot of people would say, I'll
12 tell you what I think, but I'm not putting my name down on
13 anything.

14 The fact that our law requires a signature on
15 the death penalty verdict, would that in any way interfere
16 with your ability to vote for the death penalty?

17 A No, sir.

18 MR. MYERS: Thank you, sir. That's all I have.

19 THE COURT: Mr. Harte.

20 MR. HARTE: May it please the Court.

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. HARTE:

24 Q Mr. Devilbiss, how are you this afternoon, sir?

25 A Fine. Thank you, sir.

1 Q Good.

2 I see that you are formerly employed by Delphi
3 Automotive Systems?

4 A Yes, sir.

5 Q What kind of business is that?

6 A Sir?

7 Q What kind of business is that?

8 A Well, right now it's a bankrupt business, but it was
9 started by General Motors Corporation. It was spun off as
10 a separate company back in, I believe, 1998.

11 Q Where were you employed with them?

12 A I was in Dayton, Ohio, for my entire working career.

13 Q And you retired before they had their problems?

14 A I retired in 2002, and I believe they went into
15 bankruptcy in 2005, sir.

16 Q And you've been in this area for how long?

17 A I moved here in December of 2005.

18 Q Okay. And you work at the Augusta National Golf Club
19 as a caddy?

20 A I do, sir.

21 Q Would you consider trading jobs with me?

22 A No, sir, I don't think so.

23 Q I don't blame you.

24 Mr. Devilbiss, as has previously been explained
25 several times, there are two parts to the trial. And this

1 is our only opportunity to ask you about your views with
2 regards to the death penalty and life without parole.

3 But by the same token, I don't want you to get
4 the impression that we may definitely go to a second
5 trial. Can you kind of block that out, that there may not
6 be a second trial, and hold the State to what's required
7 of them to prove Mr. Barnes in the guilt phase, whether he
8 actually committed the crime or not?

9 A Yes, sir.

10 Q And I believe the judge explained to you that there
11 are -- in the penalty phase there are circumstances of
12 aggravation, circumstances of mitigation, and he also went
13 on to say even if you found aggravation, you could still
14 vote for life if you found that appropriate. Do you
15 believe that you could follow that instruction?

16 A I do, sir.

17 Q Thank you very much.

18 A You're welcome.

19 THE COURT: Thank you very much, sir.

20 If you would just come around and stand out in
21 the hallway for me just a moment, please.

22 THE JUROR: Yes, sir.

23 (Juror leaves courtroom.)

24 THE COURT: All right. Solicitor?

25 MR. MYERS: He's qualified.

1 THE COURT: Mr. Harte?

2 MR. HARTE: He's qualified.

3 THE COURT: All right. If you'd bring our juror
4 back in, please.

5 (Juror re-enters the courtroom.)

6 THE COURT: All right. You may stand right
7 there.

8 I have found that you are qualified to be a
9 member of a pool of jurors from which the trial jury would
10 be selected.

11 With that in mind, I would ask you to please
12 return to the courtroom at 9:30 Thursday morning.

13 Also, if you would bring with you, and you may
14 certainly leave it in your automobile, personal supplies
15 and effects to stay with us for a period of seven to ten
16 days. I'm not sure it will take seven to ten days. I'm
17 being --

18 THE JUROR: That means enough clothing for seven
19 to ten days?

20 THE COURT: Yes, sir, enough clothing, enough
21 toiletries, medications if you take any, such like that,
22 for seven to ten days. The jury will be sequestered.
23 They won't be incognito or totally separated, but they
24 will be sequestered and handled by a professional jury
25 sequestration team.

1 Do you have any questions?

2 THE JUROR: No, sir.

3 THE COURT: Please do not discuss the case with
4 anyone. Do not watch, read, or listen to any news reports
5 about the case.

6 See you Thursday morning.

7 THE JUROR: Thank you.

8 THE COURT: Thank you very much.

9 (Juror leaves the courtroom.)

10 THE COURT: If you would please bring us the
11 next juror, No. 152, Mr. Key.

12 Come around, please, Mr. Key, and be sworn.

13 THE CLERK: Raise your right hand.

14 OTIS KEY, after being duly sworn, testified as
15 follows:

16 THE CLERK: Have a seat. State your full name
17 and spell your last name.

18 THE JUROR: Okay. My name is Otis M. Key. And
19 I spell my last name K-E-Y.

20 EXAMINATION

21 BY THE COURT:

22 Q Mr. Key, did you have the opportunity to review that
23 form?

24 A Yes, sir, I did.

25 Q Do you have that with you?

- 1 A Yes, sir.
- 2 Q May I see it please?
- 3 A (Witness complies.)
- 4 Q All right. Thank you very much.
- 5 A Yes, sir.
- 6 Q Mr. Key, did you also have the opportunity to review
- 7 the witness list?
- 8 A Yes, sir, I did.
- 9 Q Did you know anyone on that witness list?
- 10 A The only one I knew was Randy Doran.
- 11 Q Randy Doran?
- 12 A Yes, sir.
- 13 Q And who is he employed by?
- 14 A By Edgefield County Sheriff's Department.
- 15 Q All right. And the fact that you know Mr. Doran
- 16 employed by the Edgefield County Sheriff's Department,
- 17 could you still be a fair and impartial juror in the trial
- 18 of this case for both the defendant Mr. Barnes and the
- 19 State?
- 20 A Yes, I could.
- 21 Q All right. Now, I see this form you filled out is
- 22 circled that you would fit Category C; is that correct?
- 23 A Yes, sir.
- 24 Q And I'm going to back up a minute and make a few
- 25 statements and cover a few things with you concerning the

1 trial process.

2 As you recall from this morning, in a trial such
3 as this, there could potentially be two parts of this one
4 trial. You understand that?

5 A Yes, sir.

6 Q In the first part of the trial, the jury would be
7 solely focused on the issue of whether or not the
8 defendant was guilty or not guilty. Do you understand
9 that?

10 A Yes, sir, I understand.

11 Q And obviously if the defendant were found not guilty,
12 there would be no need for that second part of the trial,
13 that penalty phase, that sentencing phase. You understand
14 that?

15 A Yes, sir.

16 Q So only if a defendant is found guilty of murder
17 would the jury ever go to the second phase or the penalty
18 phase of the trial. Do you understand?

19 A Yes, sir.

20 Q And with that in mind, I believe again you've circled
21 that you were a C. That's the type of juror, who although
22 the guilt of the defendant had been determined, would not
23 have his mind made up in advance concerning punishment.
24 Does that describe you?

25 A Yes, sir.

1 Q That this juror would need to hear the facts and
2 circumstances in aggravation and mitigation and would want
3 to listen, listen to and follow the law before he could
4 make the decision regarding punishment; is that correct?

5 A Yes, sir.

6 Q And you would be that type of juror that if the facts
7 presented so warranted, you could bring back a sentence of
8 life without parole, correct?

9 A Yes, sir.

10 Q Also if the facts presented so warranted, you could
11 bring back a verdict for the death penalty; is that
12 correct?

13 A Yes, sir.

14 Q You would listen to everything, to the facts and the
15 law, before you made up your mind?

16 A That's correct, sir.

17 Q And you could vote for the death penalty or a life
18 sentence depending on the facts and the circumstances,
19 correct?

20 A Yes, sir, that's correct.

21 THE COURT: Thank you very much.

22 Mr. Tarr may have a few questions for you, Mr.
23 Key.

24 DIRECT EXAMINATION

25 BY MR. TARR:

1 Q How are you doing today, Mr. Key?

2 A I'm doing fine, sir.

3 Q I'm David Tarr. I'm one of the attorneys for Steve
4 Barnes. I just have a couple of questions for you.

5 You indicated that you were -- of the witness
6 list, that you were familiar with Investigator Doran?

7 A That's correct.

8 Q And what's the nature of your relationship?

9 A I have did some work for him, brick work for him on
10 his house. It's been a long time ago since I know him.
11 And then I went to school with him, too.

12 Q You went to school with him?

13 A Uh-huh.

14 Q Would the fact that he's the lead investigator for
15 the sheriff's department on this case cause you any
16 problem in being fair to both the defense and the State?

17 A I don't have a problem with it.

18 Q I notice from the questionnaire that you've filled
19 out that your spouse is a captain with the South Carolina
20 Department of Corrections?

21 A That is correct.

22 Q And which facility or institution does she work at?

23 A She's at Trenton.

24 Q How long has she been doing that?

25 A Twenty-three years.

1 Q Okay. Do you discuss her job with her much?

2 A No, we don't do that. That's stressful. It's
3 aggravating. I don't think that I should aggravate her
4 about her job. She already have enough stress.

5 Q Okay. And I believe your daughter also is a
6 correctional officer?

7 A She just started. She graduated last year and she
8 started this year. Or has she been there a year? Maybe
9 she's been there a year. She might have started last
10 year.

11 Q And where is -- which institution?

12 A She works at McCormick.

13 Q At McCormick?

14 A Uh-huh.

15 Q So, in your opinion, is there anything about the fact
16 that your wife has worked 23 years with the Department of
17 Corrections and your daughter has just started working
18 with the Department of Corrections, anything about their
19 employment and what their beliefs might be about what
20 should happen in a case like this, would that affect you
21 at all?

22 A No, we don't discuss that at home. I'm family
23 oriented and we do not discuss that kind of stuff at home.

24 Q So you wouldn't get any grief from her if you came
25 home and you'd found Mr. Barnes not guilty or given him a

1 life sentence?

2 A No, sir.

3 Q No?

4 A No. I'm busy most of the time, so, you know, I don't
5 get into that kind of stuff.

6 Q You work at Savannah River Nuclear Solutions?

7 A That's correct.

8 Q It says "operator/fuel handler." What exactly do you
9 do there?

10 A That's exactly, you covered it. We get spent fuel
11 back from different foreign countries and stuff and store
12 it until they decide that they're going to process it.

13 Q And would the brick work that you did for the
14 investigator, would that have been before you started
15 working there or during that time?

16 A No, I work two jobs, two to three jobs.

17 Q About how long ago was that that you did that?

18 A I don't exactly know when. It's been a long time.
19 But it's probably been -- probably been over ten years or
20 longer. It may have been longer.

21 Q Let me ask you this. If you're sitting on this jury
22 and you had a number of people were wanting -- in the
23 guilt phase, in the first phase, and they were wanting to
24 find Mr. Barnes guilty and you wanted him to be found not
25 guilty, would you be able to stand up to the pressure of a

1 bunch of people trying to get you to side with them and
2 hold your ground?

3 A I always express my opinion. I let you know how I
4 feel.

5 I would not -- if I didn't feel the man was
6 guilty, I would say it.

7 Q Okay. And if you did find him guilty and you went on
8 to the sentencing phase and you felt like after reviewing
9 all the facts and circumstances that a life sentence, life
10 without parole would be an appropriate punishment and
11 there were a number of people who felt like the death
12 penalty would be appropriate, would you be able to stand
13 your ground and stick with your life sentence?

14 A Yes, I'm going to state my opinion.

15 MR. TARR: That's all the questions I have, Your
16 Honor.

17 THE COURT: All right. Solicitor.

18 CROSS-EXAMINATION

19 BY MR. MYERS:

20 Q Mr. Key?

21 A Yes, sir.

22 Q Have you ever served on a jury before, Mr. Key?

23 A No, sir.

24 Q Mr. Key, if the jury in this case decided that the
25 death penalty was the appropriate sentence --

1 A Yes, sir.

2 Q -- the law says that every juror would have to sign
3 that death penalty verdict.

4 Now, the fact that the law requires you to sign
5 your name on a death penalty verdict, would that in any
6 way prevent you from voting for the death penalty?

7 A No.

8 MR. MYERS: Thank you, sir. That's all we have
9 for you.

10 THE COURT: Thank you very much, Mr. Key.

11 If you would just step out into the hallway for
12 me just a moment --

13 THE JUROR: Yes, sir.

14 THE COURT: -- I'll get you right back into the
15 courtroom.

16 THE JUROR: All right.

17 (Juror leaves courtroom.)

18 THE COURT: All right. Mr. Tarr.

19 MR. TARR: Your Honor, in general terms in terms
20 of the A, B, and C, I believe this juror's qualified.

21 I do have a concern regarding his daughter who's
22 a correctional officer in McCormick. That's where
23 Mr. Barnes is. And I think there's just a chance -- I
24 mean, if she knows that he is there, she knows why he's
25 there, that he's actually in the Department of Corrections

1 under sentence on another charge, it just makes me feel a
2 little uncomfortable, that close relationship of a father
3 and daughter and she's a jailer up in the prison where he
4 is. That's just a concern that I have that I need to
5 bring up to the Court.

6 THE COURT: All right. Thank you, Mr. Tarr.
7 Solicitor.

8 MR. MYERS: Your Honor, I didn't ask him many
9 questions because he was so emphatic on his answers. And
10 when he said that he didn't talk to his wife about her
11 work, that that was something that he didn't bring into
12 the family, I pretty much took him for what he said. And
13 if there's a concern, the charge from the Court would take
14 care of that because he didn't know what case it was until
15 this morning.

16 THE COURT: I would agree. I think he's
17 qualified.

18 I don't think there's anything in the record
19 that would indicate that his daughter knows Mr. Barnes is
20 in McCormick. I don't know how many prisoners there are
21 in McCormick Correctional Institute. Further, I believe I
22 made arrangements for Mr. Barnes to be transferred to
23 McCormick just a few weeks ago in anticipation for trial
24 so that he would have better access to his attorneys. He
25 had previously been housed at Lieber until I think perhaps

1 two or three weeks ago.

2 He did appear to be an individual that would
3 form his opinions and express his opinions and stand by
4 his opinions. So I think he's qualified.

5 I certainly understand your concern from a
6 practical level, Mr. Tarr, but I think he's qualified.

7 Thank you very much. If you'd bring us Mr. Key,
8 please.

9 (Juror re-enters the courtroom.)

10 THE COURT: Mr. Key, you may stand right there.

11 I find that you are qualified to be a member of
12 a pool of jurors from which the trial jury will be
13 selected.

14 Now, what that means to you is I'm going to ask
15 you to please return at 9:30 Thursday morning.

16 THE JUROR: Yes, sir.

17 THE COURT: Please have with you enough clothing
18 and toiletries and such for you to remain with us if
19 you're selected as a member of the jury for, let's say,
20 seven to ten days. If you would do that.

21 Please do not discuss the case with anyone. Do
22 not watch or listen or read any news reports about the
23 case. And do not do any independent investigation or any
24 investigation on the Internet.

25 Do you have any questions?

1 THE JUROR: No, sir.

2 THE COURT: See you at 9:30 Thursday morning.

3 THE JUROR: All right.

4 THE COURT: Thank you very much, Mr. Key.

5 (Juror leaves the courtroom.)

6 THE COURT: If you'd please bring me Juror No.
7 19, Emily S. Blackburn.

8 THE CLERK: Raise your right hand.

9 EMILY BLACKBURN, after being duly sworn,
10 testified as follows:

11 THE CLERK: Have a seat. State your full name
12 and spell your last name.

13 THE JUROR: My name is Emily S. Blackburn,
14 B-L-A-C-K-B-U-R-N.

15 EXAMINATION

16 BY THE COURT:

17 Q Ms. Blackburn, did you get the opportunity to review
18 that form?

19 A Yes. This one? Yes, sir.

20 Q Yes, ma'am. Do you have it with you?

21 A Yes, sir.

22 Q Would you hand it up to me, please?

23 A (Witness complies.)

24 Q Further, did you get the opportunity to review the
25 witness list?

1 A Yes, sir.

2 Q Did you know anyone on that list? Did you recognize
3 any of those names?

4 A No, sir, I don't think so.

5 Q All right. Now, I see that you have circled the
6 letter C on this form, you have signed it and indicated
7 your juror number. I'm going to ask you about that in
8 just a moment, but I'm going to back up and talk to you a
9 little bit about the trial process in a trial such as
10 this, all right?

11 A Yes.

12 Q And I covered that generally this morning.

13 Do you understand in a trial such as this, there
14 potentially could be two parts to the one trial? You
15 understand that?

16 A Right, yes, sir.

17 Q The first part, the jury would solely be focused on
18 whether the defendant was guilty or not guilty. You
19 understand?

20 A Right.

21 Q If the defendant were found not guilty, there'd be no
22 need for the penalty or the sentencing phase, the second
23 phase. You understand that?

24 A Right.

25 Q Only if the defendant were found guilty of murder

1 would it then be necessary to go to the sentencing or
2 penalty phase. Do you understand?

3 A Yes, sir.

4 Q Now, you indicate by this form that you would be that
5 type of juror that, although the defendant had been
6 determined to be guilty, you would not have made up your
7 mind in advance concerning punishment; is that correct?

8 A That's correct.

9 Q You would be that type of juror that would need to
10 hear, want to hear the facts and circumstances in
11 aggravation and mitigation before you made that decision;
12 is that correct?

13 A That's correct.

14 Q That you would want to listen to and follow the law
15 before you could make your decision regarding punishment?

16 A Yes, sir.

17 Q Correct?

18 A Yes, sir.

19 Q You'd want to know anything, aggravation, the
20 mitigation, all the facts and circumstances and the law
21 before you decided what the appropriate punishment would
22 be?

23 A Right.

24 Q And if the facts presented so warranted, you could
25 return a verdict of life; is that correct?

1 A That's correct.

2 Q Life without parole?

3 A Right.

4 Q And also if the facts presented so warranted, you
5 could bring in a verdict for the death penalty; is that
6 correct?

7 A Yes, sir.

8 Q Any doubt in your mind that you fit that Category C?

9 A No, there's no doubt.

10 THE COURT: Thank you very much.

11 Solicitor.

12 If you'd answer any questions Solicitor Myers
13 may have.

14 MR. MYERS: Thank you, Your Honor.

15 DIRECT EXAMINATION

16 BY MR. MYERS:

17 Q Mrs. Blackburn?

18 A Yes.

19 Q Have you ever served on a jury panel before?

20 A No, sir, I haven't.

21 Q So this is kind of new to you?

22 A Right.

23 Q The reason we get to talk to the jurors some now is
24 because the death penalty's involved.

25 A Uh-huh.

1 Q In a normal case, the judge will qualify the jury
2 panel like he did this morning, we'd select a jury, they
3 would sit over here, and the jurors would listen to all
4 the evidence and find the defendant guilty or not guilty.

5 A Uh-huh.

6 Q Now, the process about guilty or not guilty is going
7 to be the same in this case. Evidence will have to be
8 presented to prove the defendant murdered someone. Could
9 you base whatever verdict you reach, guilty or not guilty,
10 just on what you heard in this courtroom?

11 A Yes, sir.

12 Q And how this is different, normally if the jury
13 convicts somebody, the judge does the sentencing. And he
14 says, Well, tell me something good or bad about them, and
15 then he'd know what the right sentence is.

16 If the defendant's found guilty here, we're
17 going to that second phase, but the jury's going to do the
18 sentencing in this case. And that second phase is for the
19 same reason: It tells them more about the case, some
20 additional evidence. Maybe something good about the
21 defendant; maybe something bad about the defendant.

22 And then when all that's in, the jury would have
23 to come back with life without parole or the death
24 penalty. You understood that?

25 A Right.

1 Q And I think I just heard you tell the judge, you
2 could vote for life if you thought that was the right
3 sentence?

4 A Uh-huh.

5 Q Or you could vote for the death penalty if you
6 thought that was right?

7 A Right.

8 Q One more thing I wanted to ask you.

9 Our law says that if the jury decides the death
10 penalty is warranted, then all 12 jurors have to sign that
11 verdict form. The fact that you had to put your name on
12 it, would that in any way interfere with your ability to
13 return the death penalty?

14 A No.

15 MR. MYERS: Thank you, ma'am.

16 THE COURT: Mr. Harte.

17 MR. HARTE: May it please the Court.

18 THE COURT: Yes, sir.

19 CROSS-EXAMINATION

20 BY MR. HARTE:

21 Q Ms. Blackburn, I notice that you have a six-year-old
22 daughter?

23 A Yes, sir, and I was going to talk about that when
24 given the opportunity.

25 Q Well, why don't I ask you the question that I think

1 may be on your mind.

2 Would the fact that you're going to perhaps be
3 sequestered for a while present a hardship with regards to
4 her care?

5 A Absolutely.

6 MR. HARTE: Judge, did you want to inquire?

7 THE COURT: You may continue with other
8 questions you have and I'll inquire thereafter.

9 MR. HARTE: All right.

10 BY MR. HARTE:

11 Q We talked about the fact that there is a guilty phase
12 and a penalty phase.

13 A I'm sorry. I work nights and I didn't sleep either.
14 I'm sorry.

15 Q My wife's a nurse, too.

16 A I'm sorry. I wasn't expecting it to be an all-day
17 thing.

18 Go ahead.

19 Q Well, the good news is you won't have to come back
20 tomorrow, no matter what.

21 A Yeah, right.

22 MR. HARTE: I don't have any other questions.

23 RE-EXAMINATION

24 BY THE COURT:

25 Q Tell me your situation, please, Ms. Blackburn, as far

1 as your child.

2 A Right now I have a six-year-old.

3 Q All right.

4 A And of course she's in school. And my husband works
5 full time, too.

6 Q I see he works for John Deere?

7 A Right.

8 Q All right. Well, let's talk a little bit about it.

9 Generally as I've qualified jurors, I've asked
10 them to return Thursday morning prepared to stay with us
11 for about seven to ten days.

12 A That's when I got a little concerned.

13 Q Sure. That doesn't mean you're going to be here
14 seven, doesn't mean you're going to be here ten, doesn't
15 necessarily mean you're going to be here less than seven
16 or less than ten. It's just some numbers I picked out.

17 A Right.

18 Q And, of course, that doesn't necessarily mean jurors
19 would not have the opportunity to speak with and/or visit
20 perhaps with their family members also.

21 I do intend to work generally a full schedule
22 Saturday. We may quit a little early Saturday, about 4
23 o'clock Saturday, and about a half a day Sunday because I
24 know this disrupts people's lives, but the real question
25 becomes, would you be able to get adequate care for your

1 daughter besides missing your daughter? I understand
2 that.

3 A Right. I'm not concerned -- I mean, I know I'd miss
4 her, but I'm saying that my husband would have to take
5 time off to get her ready -- I'm usually the one getting
6 her ready for school and getting her to school.

7 Q Sure.

8 A And my mom also lives with us and she doesn't drive
9 so I'm her transportation to doctor's appointments and,
10 you know, the pharmacy, and I'm the one who knows her
11 health stuff, and so my husband, I hate to say it, but I
12 don't think he could take on all the responsibility.

13 Q Well, I guess my question is, you tell me, can you
14 work it out for us or you think you can't --

15 A If I was here during the week, I just don't know. I
16 mean, it concerns me. I don't know if my husband can be
17 off of work in the mornings to get her -- it would require
18 two of us being off of work, so -- and, you know.

19 Q Well, I don't think you're scheduled now --

20 A Right.

21 Q Quite frankly, I think you're a qualified juror.

22 A Well, other than that --

23 Q And that does not mean you're going to be selected,
24 that means you're going to be a member of the pool.

25 A Right.

1 Q But I do not want to cause such a hardship or burden
2 on you to where -- you know, if you can't work it out,
3 that's one thing.

4 A Right.

5 Q If you tell me, Well, Judge, give me a chance to
6 educate my husband between now and Wednesday night or
7 Thursday morning, I can work it out or I can't.

8 A Right.

9 Q You tell me.

10 A Right. I mean, is that something that I can try to
11 work out and let you know or what? How does it work?

12 Q Well, let's see, today's Monday. Yes, ma'am, I'm
13 going to give you the opportunity, if you think there's a
14 possibility you can work it out, I'm going to ask you to
15 do that.

16 A Okay.

17 Q If you would contact the Clerk's office, could you do
18 it by 5 o'clock tomorrow and let us know something by
19 then?

20 A Yeah, I'll call and make contact and see.

21 Q And see if you can work it out for us. And, like I
22 say, I hope you can, but just please let me know.

23 You got upset a minute ago. That's because you
24 worked last night?

25 A Yes, sir.

1 Q So you've been up all night and here all day?

2 A Since yesterday morning.

3 THE COURT: All right. Well, I apologize for
4 that.

5 Did you have any other questions, Mr. Harte?

6 MR. HARTE: No, sir.

7 THE COURT: All right. Well, I'm going to find
8 that this young lady is qualified and ask her to contact
9 the Clerk's office by 5 o'clock tomorrow. We may have to
10 follow up on her childcare and other issues, okay?

11 All right. Thank you. And if you will contact
12 the Clerk by 5 o'clock tomorrow, please, Ms. Blackburn.

13 THE JUROR: Okay.

14 THE COURT: Thank you very much.

15 (Juror leaves the courtroom.)

16 THE COURT: Would you please bring in No. 146,
17 Mr. Jordan?

18 THE CLERK: Raise your right hand, please.

19 STEVEN JORDAN, after being duly sworn, testified
20 as follows:

21 THE CLERK: Have a seat. State your full name
22 and spell your last name.

23 THE WITNESS: Steven Fraley Jordan, J-O-R-D-A-N.

24 EXAMINATION

25 BY THE COURT:

- 1 Q Good afternoon, Mr. Jordan. How are you?
- 2 A Fine.
- 3 Q Good. Did you have the opportunity to review that
- 4 form? Do you have it with you?
- 5 A Yes, sir.
- 6 Q May I see it, please?
- 7 A (Witness complies.)
- 8 Q Did you also have the opportunity to review the
- 9 witness list?
- 10 A Yes, sir.
- 11 Q Did you know anyone on that witness list?
- 12 A Tony Ball.
- 13 Q Tony Baughman?
- 14 A Baughman, yes, sir.
- 15 Q And by whom is he employed?
- 16 A If he's the one I'm thinking about, it was by the
- 17 newspaper and the radio here in Edgefield.
- 18 Q Is that not correct? That's not the one --
- 19 A Then I don't know him.
- 20 Q Then you don't know him? That's a different Tony?
- 21 A Yes.
- 22 Q All right. I see you're from Columbia.
- 23 A Yes, sir.
- 24 Q What part of Columbia were you raised in?
- 25 A Forest Acres.

1 Q I went to Cardinal Newman over there.

2 A You know me. You just don't remember.

3 Q Well, how do I know you, Mr. Jordan?

4 A It was either from the Statehouse or from high school
5 or either through Jim Anders, I can't remember.

6 Q Well, those three places, I don't want to visit any
7 of them right now, the Statehouse, high school, or
8 Mr. Anders.

9 A I was Sol Blatt's page for four years.

10 Q Well, that's some history there, being Mr. Blatt's
11 page.

12 And where did you go to high school?

13 A A.C. Flora.

14 Q A.C. Flora. Well, I went to Cardinal Newman.

15 A Yes.

16 Q I'm a little older than you.

17 A I don't think so.

18 Q Yes, sir, I see that date of birth.

19 A Now, Matt's your son, right?

20 Q Matt's my son, yes, sir.

21 A Yes, sir, he's a good friend of mine.

22 Q That's another place I might know you.

23 Yes, sir. I finished Cardinal Newman in '65.

24 A That's when Fred Nelson and all that crowd kind of
25 came along.

1 Q That's right.

2 Well, let me ask you a few questions on this
3 form. I see you placed yourself in Category C.

4 And before I get to that, I'm going to back up a
5 little bit and revisit a little bit about what we said
6 this morning.

7 You understand in a trial such as this, there
8 could be two parts to one trial. You understand that?

9 A Yes, sir.

10 Q The first part the jury would solely be focused on
11 the issue of whether the defendant was guilty or not
12 guilty. Do you understand? Is that correct?

13 A Yes, sir.

14 Q And if the defendant were found not guilty, obviously
15 there would be no need for the second phase. You
16 understand that?

17 A Yes, sir.

18 Q Only if a defendant is found guilty of murder is
19 there a need to go to the second phase or the sentencing
20 phase of the trial. You understand that?

21 A Yes, sir.

22 Q And on that sentencing phase, the jury would have the
23 responsibility to determine what the appropriate sentence
24 was, life without parole or the death penalty. Do you
25 understand?

1 A Yes, sir.

2 Q And as I understand, and you read this form and
3 signed it and placed your juror number there, that you're
4 that type of juror that, although the guilt of the
5 defendant had been determined, you would not have made up
6 your mind in advance concerning punishment; is that
7 correct?

8 A That's correct.

9 Q That you would want to hear all the facts and
10 circumstances of aggravation and mitigation, any good, any
11 bad, before you made up your mind what the appropriate
12 punishment was, correct?

13 A Yes, sir.

14 Q That you would want to listen to and follow the law
15 before you would make your decision regarding punishment,
16 correct?

17 A Yes, sir.

18 Q That you would have an open mind and if the facts
19 presented so warranted, you could bring back a verdict of
20 life without parole?

21 A Yes, sir.

22 Q And also if the facts presented so warranted, you
23 could bring back a verdict for the death penalty, correct?

24 A Yes, sir.

25 Q It depends on all the facts and circumstances,

1 correct?

2 A Exactly.

3 THE COURT: Thank you very much, Mr. Jordan. I
4 don't have any other questions.

5 Who's first, Mr. Tarr?

6 Mr. Tarr has a few questions for you,
7 Mr. Jordan.

8 MR. TARR: Thank you, Your Honor.

9 DIRECT EXAMINATION

10 BY MR. TARR:

11 Q Mr. Jordan, I'm David Tarr. I'm representing Steven
12 Barnes along with Mr. Harte here.

13 You had indicated, I believe, that you knew Jim
14 Anders?

15 A Yes, sir.

16 Q How did you know Mr. Anders?

17 A About the same way I know Mr. Harte and Donnie, from
18 hunting and just life.

19 Q Hunting?

20 A I mean, it's the facts.

21 Q It's a small state.

22 And you're close personal friends with Leon
23 Lott?

24 A Very.

25 Q How long have you known him?

1 A About 25 years.

2 Q Okay. And I believe also it says here on your
3 questionnaire that your grandfather was the head of the
4 Highway Department?

5 A It's Tee Hutto, yes, sir.

6 Q So he's the top dog?

7 A He was the head of the Highway Patrol from about 1958
8 to '65 when the captain was head of it, yes, sir.

9 Q Yes, sir.

10 A The Highway Patrol now, not the Highway Department.
11 I think Mr. McMabin's the head of that now.

12 Q And you're a member of the Law Enforcement Officer's
13 Association?

14 A Yes, sir.

15 Q And I believe you have a bumper sticker to that
16 effect on your car?

17 A I was a constable for a number of years.

18 Q You were a constable?

19 A Yes.

20 Q How long were you a constable?

21 A When Campbell got in until probably Beasley, 10-15
22 years, and I just didn't have the time for it anymore.

23 Q What did you do as constable?

24 A Just help on small things in like Edgefield, help the
25 sheriff's department on some -- just parades and stuff

1 like that. I helped the City of Columbia a number of
2 times on traffic when they had the city runs and that type
3 thing.

4 Q Now, do you believe that based on your strong ties it
5 appears that you have with law enforcement, in support of
6 law enforcement, that you would be able to give a fair
7 trial to Mr. Barnes?

8 A Yes, sir.

9 Q Are you aware of the fact that they may have a whole
10 bunch of witnesses who are law enforcement officers
11 testifying against him? That wouldn't hinder you from
12 being fair and impartial in this case?

13 A I would deal from the facts as I see them and as
14 they're presented.

15 Q When you were working as a constable, did you work
16 with the Edgefield Sheriff's Department at all?

17 A Yes, sir, a couple of times, yes.

18 Q So you didn't -- but you didn't know -- I guess this
19 was a few years ago?

20 A No, no, it was longer than that. I wasn't aware -- I
21 wasn't even aware of any of this, to be honest with you.

22 Q So none of these people that are working at the
23 sheriff's office now on the witness list, you don't know
24 any of them?

25 A I didn't recognize any of them.

1 Q Did you recognize anybody in the courtroom that
2 wasn't on that list that may have something to do with
3 this case?

4 A I mean, I know Mr. Harper over there. I know Sheriff
5 Dobey. He's not in here. That's about it.

6 Q So you know the sheriff of Edgefield?

7 A Yes.

8 Q How well do you know him?

9 A I would say fairly well.

10 Q Now, if you were picked to sit on this jury, you
11 understand that the jury would first have to find that
12 Mr. Barnes was guilty of murder before you would even get
13 to the next phase?

14 A Uh-huh.

15 Q You understand that, that if you find him not guilty
16 then that's it; there's no sentencing phase, you don't
17 have to decide whether it should be life or death. You
18 understand that?

19 A Yes, sir.

20 Q Now, if you were on the jury and you found that there
21 was a murder that there was absolutely no excuse for, you
22 could give meaningful consideration to a life sentence?

23 A Quite honestly, if there was no excuse for it, cold
24 blooded, I couldn't. I've just got to be honest with you.
25 If there are mitigating circumstances or situations, I

1 mean yes, but I'd be lying if I said differently.

2 MR. TARR: That's all.

3 THE COURT: All right. Solicitor.

4 CROSS-EXAMINATION

5 BY MR. MAYE:

6 Q Mr. Jordan, I'm Ervin Maye. I think I'm the only one
7 here of the lawyers that you don't know, but I work for
8 Mr. Myers.

9 Let me ask you this. Now, you said initially
10 that you would base your decision on what you heard in the
11 courtroom. You don't know anything about this case at
12 all, do you?

13 A No, sir.

14 Q So anything that you -- if you heard the facts from
15 the witness stand, you could apply them and come back with
16 a verdict --

17 A Yes, sir.

18 Q -- after the judge gives you the law? You wouldn't
19 have any problem, you're not bringing anything in from the
20 outside into this case, are you?

21 A No, sir.

22 Q Okay. You know that at the conclusion of a death
23 penalty case, the reason we're talking to you and asking
24 you questions now is because this is a death case. It's a
25 little bit different. The judge normally -- if it came

1 back on a regular case with a guilty verdict, the judge
2 then hears if there's anything good or anything bad about
3 someone and the judge decides the sentence. You're aware
4 of that?

5 A Uh-huh.

6 Q You know just as well as you know now in this case,
7 at the conclusion of a verdict, they found guilt, the jury
8 comes back with the verdict, whether or not it's life or
9 death. You understand that as well, don't you?

10 A Yes, sir.

11 Q You would listen to the evidence and apply what you
12 heard in this case and that's where you would reach your
13 decision as to whether or not you would vote for life or
14 death. You don't have a predisposition on that?

15 A No.

16 Q But you would listen to the facts and if you thought
17 it warranted it, you could give the death penalty, right?

18 A Oh, yes.

19 Q And if you just as fairly thought that it didn't
20 warrant it, you could come back with a life verdict; isn't
21 that right?

22 A Yes, sir.

23 Q Okay. And in South Carolina, at the conclusion of it
24 normally just the foreman signs the verdict form. But if
25 it's a death case in South Carolina, every person's got to

1 put down their name. You wouldn't have any problem with
2 that. You could sign if it was a death verdict, right?

3 A Yes, sir.

4 Q But just as surely, if you thought someone deserved
5 life, you could give them a life sentence, right?

6 A Yes, sir.

7 Q And you could follow your oath and you're certain of
8 that, can't you?

9 A Oh, yeah, very.

10 MR. MAYE: Okay. Thank you.

11 THE COURT: Thank you very much.

12 You may step out into the hallway for me a
13 moment.

14 (Juror leaves courtroom.)

15 THE COURT: All right. Mr. Tarr.

16 MR. TARR: Your Honor, I clearly don't think
17 this juror is qualified. He said flat out if he found
18 somebody committed murder in cold blood with no excuse --

19 THE COURT: Wait a minute. I never heard the
20 words "cold blood."

21 MR. TARR: Yeah, he said cold blooded, Your
22 Honor.

23 THE COURT: I never heard that.

24 MR. TARR: You can have the court reporter read
25 it back. He said, No excuse in cold blood, I have to be

1 honest, I couldn't vote for a life sentence.

2 THE COURT: And then went on to say, depending
3 on the mitigation.

4 MR. TARR: Well, Your Honor, I really would have
5 liked to have asked him a couple more questions.

6 THE COURT: Well, I'll bring him back out here.
7 Bring Mr. Jordan back out.

8 (Juror re-enters the courtroom.)

9 THE COURT: Would you come back around for us,
10 Mr. Jordan? You're still under oath.

11 I didn't know that, Mr. Tarr. I should have
12 come back to you.

13 MR. TARR: I should have stood up.

14 THE COURT: No, that's all right.

15 All right. Mr. Tarr, you may proceed.

16 REDIRECT EXAMINATION

17 BY MR. TARR:

18 Q I apologize for you having to come back in here.

19 A That's all right.

20 Q I'm trying to get up to ask you a couple more
21 questions.

22 There's a little bit of confusion I have in my
23 mind right now based on a couple of responses that you
24 gave to me and then later to the solicitor.

25 I believe you had testified earlier when I asked

1 you about whether if you're sitting on the jury and found
2 beyond a reasonable doubt that Mr. Barnes had killed
3 somebody, there was no excuse, and I believe you used the
4 term "cold blooded," that if you had to be honest, that
5 you'd probably have to give the death penalty?

6 A Yeah, uh-huh.

7 Q Okay. And is that -- you still feel that way?

8 A Yeah. But what he asked me was mitigating
9 circumstances and no parts to whatever --

10 Q If you found beyond a reasonable doubt that there was
11 a murder with no excuse in cold blood, would it matter to
12 you -- would anything else matter to you?

13 THE COURT: No, sir, now that's not an
14 appropriate question.

15 THE JUROR: Yeah.

16 THE COURT: Because that's staking him out on a
17 particular hypothetical question. You have to ask him
18 about both aggravation and mitigation, which would be part
19 of his oath in that regard, Mr. Tarr.

20 MR. TARR: Yes, Your Honor. I believe that's
21 almost the same question I'd asked previously.

22 THE COURT: No, sir.

23 BY MR. TARR:

24 Q Can you give --

25 THE COURT: Excuse me just a minute.

1 Step out for me a minute, please, Mr. Jordan.

2 (Juror leaves courtroom.)

3 THE COURT: If your question is, and perhaps the
4 Court was not as alert as the Court should have been in
5 that regard, you can't give an individual juror a
6 particular hypothetical or a particular set of facts and
7 say, How would you vote in that circumstance?

8 And I'm not being critical of you, Mr. Tarr, at
9 all. I'm saying perhaps the Court was not as alert in
10 that particular regard as it should have been. But you
11 can't stake a juror out to one particular hypothetical, or
12 a hypothetical at all, and then say, What would you do in
13 that circumstance, because then they become like a ping
14 pong ball and the Solicitor gets up there and says, Well,
15 let me ask you this: What if you throw this into the
16 hypothetical?

17 There's statutory mitigating or non-statutory
18 mitigating or there's evidence of mercy. That's kind of
19 the concern I have with that type of question.

20 Tell me what you want to ask Mr. Jordan.

21 MR. TARR: Well, what I'd asked him before was
22 if the jury found beyond a reasonable doubt that there was
23 a murder with no excuse, could you give meaningful
24 consideration to a life sentence. And he said, No, to be
25 honest with you if they did it no excuse in cold blood, I

1 couldn't do that.

2 THE COURT: And that's without explaining to him
3 what the law is in South Carolina of whether or not he
4 would consider statutory mitigating or non-statutory
5 mitigating circumstances.

6 MR. TARR: It's also without explaining to him
7 what the definition of murder is, Your Honor. This is
8 exactly --

9 THE COURT: I never said I would not explain the
10 definition of murder. What I had said was you cannot
11 question these jurors about their conception or
12 misconception about the definition of murder.

13 If you want me to tell the jury murder in South
14 Carolina is the unlawful killing of a human being by
15 another with malice aforethought, express or implied, I
16 will be glad to do that. That wasn't what I sustained the
17 objection on.

18 My sustaining of the objection in that regard
19 was on the fact that it was concerning what the jury
20 thought murder was or what the jurors thought the
21 definition was.

22 MR. TARR: I'd be happy for Your Honor before
23 they are questioned here today, each one of them, to tell
24 them exactly what you just said.

25 THE COURT: Well, I'll leave that up to the

1 attorneys to tell them, if they give the proper legal
2 definition. You all give the definition of aggravation
3 and mitigation sometimes, lessen and exacerbate. I mean,
4 I don't object to -- I don't have a problem with a
5 properly framed question on what the law is in that
6 regard. That's just asking if you're going to follow your
7 oath -- if that's the law, are you going to follow your
8 oath in that regard.

9 What is it you want to ask Mr. Jordan? Let's
10 move on with him. I apologize for bogging this down.

11 MR. TARR: No. I mean, I think I've already
12 attempted to ask it and you've ruled that I shouldn't ask
13 it.

14 THE COURT: I don't think I've ruled. That's
15 why I had him step out. I wanted to make sure I
16 understood if I have ruled what I was ruling on.

17 What question do you want to ask Mr. Jordan?

18 MR. TARR: I wanted to ask him if he could give
19 meaningful consideration to a life sentence if he sits on
20 a jury that finds Mr. Barnes guilty of murder.

21 THE COURT: All right. Well, let's bring him --
22 yes, sir, Solicitor.

23 MR. MYERS: That's fine.

24 THE COURT: If he can give meaningful
25 consideration to a life sentence if he sits on the jury

1 and finds Mr. Barnes guilty of murder, that's what you
2 want to ask him?

3 MR. TARR: I think anything else I'd want to ask
4 him I'm not being allowed to.

5 THE COURT: Well, you've obviously been allowed
6 to because you asked him to start with the one about the
7 no excuse --

8 MR. TARR: Right. And you said you weren't
9 listening --

10 THE COURT: So tell me what else you want to ask
11 him, Mr. Tarr. I'm not trying to hamstring your right to
12 voir dire.

13 MR. TARR: I'm not trying to commit him to any
14 specific scenario or factual scenario or stake him out. I
15 truly believe that if he finds somebody guilty of murder,
16 this is the type of juror that has a misconception about
17 what murder is, and if it's no justification or excuse,
18 which is what murder is, it's going to be death penalty
19 every time, and I think he said just as much from the
20 stand, Your Honor, and that's why I don't believe he's
21 qualified.

22 THE COURT: So you want me to tell him the
23 definition of murder when he first comes back out?

24 MR. TARR: Yes.

25 THE COURT: All right.

1 MR. MYERS: I think the question could be asked
2 under Morgan versus Illinois: Would you vote for the
3 death penalty in every case of murder?

4 What he's trying to do is he's trying to throw
5 the penalty phase in with the guilt phase, and that's
6 typical. When you say he committed this horrible,
7 violent, intentional premeditated murder, would you give
8 the death penalty, but jurors who've never been through
9 voir dire on a death penalty before without explaining the
10 mitigation and the aggravation, that you can't find the
11 death penalty in the guilt phase. It's the guilt phase,
12 and if they're found guilty, then you go into the good and
13 the bad, the aggravation and the mitigation, and then
14 consider the death penalty. And that's confusing. That's
15 confusing.

16 I was trying to find a case, Patterson, where
17 the Court had ruled on that.

18 THE COURT: On the hypothetical issue?

19 MR. MYERS: It was hypothetical, too.

20 THE COURT: I thought it was State versus
21 Patterson myself.

22 MR. MYERS: It was. And it's where they asked
23 the juror can they consider both sides after the State had
24 introduced the victim's wife, pictures of the victims and
25 other aggravating circumstances without even talking about

1 the mitigating. The Court said you can't do that. And
2 that's what they're trying to do here. They're trying to
3 get this fellow to say, Well, we don't need the second
4 thing, you can vote guilty on life or death in the same
5 trial, which is not the law.

6 I think he can ask him, in every case of murder,
7 would you always vote for the death penalty, like Morgan
8 versus Illinois. If he says yes, you disqualify him.

9 THE COURT: And you know --

10 MR. TARR: That why we need the definition.

11 THE COURT: I apologize.

12 MR. TARR: I'm sorry. That's why we need the
13 definition of murder. That's all.

14 THE COURT: And, you know, everybody that ends
15 up in that Category C, even if we're among those, if you
16 say, Well, if the facts so warranted I could give a life
17 sentence, or if the facts so warranted I could give a
18 death penalty, that means they have thoughts in their mind
19 of -- in their mind of facts that warrant a life sentence,
20 the perceptions at least, and the facts that warrant a
21 death penalty. They have that in their mind or they
22 couldn't put themselves in Category C.

23 But I'll try to give him somewhat of a charge on
24 murder and then you ask what you believe to be the
25 appropriate question, Mr. Tarr.

1 MR. TARR: Thank you, Your Honor.

2 THE COURT: All right. Bring Mr. Jordan in.

3 (Juror re-entered the courtroom.)

4 THE COURT: All right. Mr. Jordan, we'll try to
5 press on. Thank you for your patience.

6 Before I go back to allowing the lawyers to ask
7 you a few more questions, I do want to tell you that as
8 far as murder is concerned, murder in South Carolina is
9 the unlawful killing of a human being by another human
10 being with malice aforethought, express or implied. Do
11 you understand that?

12 THE JUROR: Yes, sir.

13 THE COURT: And as I've said and as the
14 attorneys have said, there are potentially two phases to a
15 trial such as this, the first phase being the guilty or
16 not guilty. If the defendant's found not guilty, we don't
17 go to the second phase. If the defendant is found guilty
18 of a trial such as this, that means you go to that second
19 phase with the defendant having been found guilty of
20 murder, having been found guilty of taking a human life
21 with malice aforethought, express or implied. Do you
22 understand that?

23 THE JUROR: Yes, sir.

24 THE COURT: All right. With that somewhat of a
25 background, I'm going ask to Mr. Tarr -- do you have other

1 questions, Mr. Tarr? You may proceed.

2 MR. TARR: Yes, Your Honor.

3 REDIRECT EXAMINATION

4 BY MR. TARR:

5 Q Basically as you've heard murder defined by the judge
6 as it is in South Carolina, if you were a part of a jury
7 that found Mr. Barnes guilty of murder, could you give
8 meaningful consideration to a life sentence?

9 A I swear you all have got me confused now.

10 Q I apologize. That's not our intention.

11 A I know.

12 RE-EXAMINATION

13 BY THE COURT:

14 Q What's your question, Mr. Jordan?

15 A Okay. The question is, a father has a son, okay?
16 Somebody kills his son, he knows he's dead, and then the
17 father goes and kills that person. I think that person
18 deserves life.

19 Q Now, you're just giving examples --

20 A That's the way my thought process is.

21 Q And let me stop you a minute.

22 So you have in your mind examples of murders in
23 which a person may deserve a life sentence?

24 A Yes, sir.

25 Q You also have in your mind -- don't tell me what they

1 are, but you also have in your mind examples of murders in
2 which a person may deserve the death penalty?

3 A That's correct. Yes, sir.

4 Q So it depends, as you're saying in your mind, on the
5 facts and circumstances of each individual case?

6 A Yeah, that's what I said.

7 Q And you're not going to make up your mind just
8 because you've convicted a person of murder?

9 A No, sir.

10 Q It's not an automatic decision; you're not one of
11 those jurors that if you find a person guilty of murder,
12 you'd automatically sentence a person to death?

13 A No.

14 Q And if you get -- in a death penalty trial an
15 individual's found guilty of murder and you go into that
16 penalty phase, you'd go in there with an open mind because
17 there'd be different types of evidence in that penalty
18 phase, evidence of aggravation, evidence of mitigation,
19 evidence that may show something good or more of the
20 circumstances of the nature of the crime or the particular
21 defendant, or evidence of aggravation that may increase
22 the enormity of the crime, you would consider that --

23 A Yes, sir.

24 Q -- before you made your decision?

25 A Yes, sir. And I apologize. I assumed that's what I

1 said.

2 Q And there would be many different factors you would
3 look at -- don't tell me what those factors are -- before
4 you made your decision?

5 A Yes, sir.

6 Q And if I told you the law was that the State has the
7 burden of proving at least one statutory aggravating
8 circumstance before the death penalty could be imposed,
9 you would hold them to that burden?

10 A Yes, sir.

11 Q And if I told you the law was that we have certain
12 statutory mitigating circumstances passed by our
13 legislature, there's non-statutory mitigating
14 circumstances, you would consider all those before you
15 made your decision as to the appropriate punishment?

16 A Yes, sir.

17 Q And you understand there could be cases -- you're
18 never required to impose the death penalty. Never. In
19 other words, even if a person is found guilty of murder
20 and there's an existence of a statutory aggravating
21 circumstance, a jury can sentence a person to a life
22 sentence even under those circumstances. Do you
23 understand that?

24 A Yes, sir.

25 Q For a statutory mitigating circumstance,

1 non-statutory, or for what they say no reason at all. In
2 other words, just as an act of mercy.

3 Are there circumstances in your mind in which
4 you could consider and impose each of those sentences
5 depending on the circumstances?

6 A Yes, sir.

7 THE COURT: Mr. Tarr, if you have further
8 follow-up questions, you may certainly ask them.

9 MR. TARR: No. There's just a matter to take up
10 with the Court.

11 THE COURT: All right. Solicitor.

12 MR. MYERS: No, sir.

13 THE COURT: Step out again for me, please, Mr.
14 Jordan.

15 THE COURT: I forgot who went first with him,
16 Mr. Tarr or the Solicitor?

17 MR. TARR: I believe I did.

18 THE COURT: All right. I'll be glad to hear
19 from you, Mr. Tarr.

20 MR. TARR: Your Honor, the factual scenario that
21 he just posed as something that he could give a life
22 sentence for was -- I mean, that was probably a voluntary
23 manslaughter. It was clearly in the heat of passion. I
24 mean, somebody kills your son, you go out and get your gun
25 and you go kill them. I mean, that could very easily have

1 been voluntary manslaughter and not murder and it wouldn't
2 even be a situation where you could even give the death
3 penalty.

4 Your Honor, we would just object again. One of
5 the motions we raised on Friday was a motion to prevent
6 judicial rehabilitation on a juror and that's clearly that
7 colloquy that we were trying to ask the Court not to
8 engage in. It was just probably ten or 15 leading
9 questions in a row that the answer was, you know, it was
10 supposed to be -- everything led to -- it was clear to the
11 listener what the answer was supposed to be.

12 Your Honor, this is a juror who is like best
13 friends with Leon Lott, the Sheriff of Richland County;
14 friends with the Edgefield County Sheriff; was friends
15 with Jim Anders; is a member of the South Carolina Law
16 Enforcement Association, has a bumper sticker on his car;
17 was a constable for ten or 15 years.

18 He's clearly very law and order. He's got very
19 rigid beliefs on when the death penalty is appropriate,
20 which apparently is -- appears to be in every case where
21 there's a murder with aggravation.

22 THE COURT: I disagree with that. And if you
23 want to bring him back out here and question him more in
24 that regard, I will allow you to do so, Mr. Tarr.

25 MR. TARR: Well, I mean, all --

1 THE COURT: If you think in every murder with
2 aggravation -- if you think that that's that man's
3 position and you want to explore it more, I will allow you
4 to do so.

5 MR. TARR: I just don't know how I can do it
6 without, you know, being accused of staking out --

7 THE COURT: No, sir, you're not going to
8 prejudge my rulings in that regard either.

9 MR. TARR: No. I'm not talking about you, Your
10 Honor. The solicitor's office objected any time I've --
11 I'm not trying to get any of these jurors to commit to any
12 specific factual scenarios. I'm just trying to see if
13 it's possible -- I don't believe it's possible that he
14 would give a life sentence in a case with facts even close
15 to what the facts are in this case.

16 THE COURT: All right. Solicitor.

17 MR. MAYE: Your Honor, briefly, he was asked a
18 question initially that rolled the two trials together,
19 the guilt phase and the penalty phase. He asked him if
20 you found somebody guilty of a murder without excuse or
21 justification, and then we got up and asked him, would you
22 listen to the facts in both the guilt phase and the
23 penalty phase, listen to the good and the bad and could
24 you decide then. He clearly indicated that he could. It
25 was almost impossible for him to answer that first

1 question because it presupposed that it was all decided at
2 the guilt phase.

3 This juror has repeatedly answered that he could
4 listen to the facts and circumstances in the guilt phase
5 and the sentencing phase and follow the law and reach a
6 verdict; not always death, not always life, but he would
7 apply the facts and circumstances as he was asked. He's
8 repeatedly been asked that and answered that
9 appropriately.

10 We think he's a qualified juror. I think that
11 the first question was clearly designed to put him in a
12 box where he couldn't answer any other way, because the
13 mitigating circumstances or the excuse could come forward
14 at the sentencing phase. And this juror has clearly said
15 that he could follow the law and return either a guilty or
16 a not guilty verdict for murder depending on the facts and
17 circumstances and that he could return a life sentence or
18 a death sentence at the sentencing phase, Your Honor.

19 THE COURT: Thank you, Solicitor.

20 I think this juror, Mr. Jordan, in his
21 responses, his initial voir dire concerning a murder case
22 with no excuse where he said he would give the death
23 penalty in that type of case, upon further questioning --
24 he's been questioned several times since that time. He,
25 from the witness stand, said, I think y'all got me

1 confused, or I've gotten confused.

2 Upon explanation to Mr. Jordan of the procedure,
3 I do not find he fits in that category of Morgan versus
4 Illinois where he would automatically vote for the death
5 penalty.

6 I cite a number of cases for the proposition
7 that though jurors may have some predisposition to the
8 death penalty, although I do not think he does, I think he
9 has certain examples in his mind in which he would vote
10 for the death penalty and other examples in which he would
11 vote for a life sentence. He knows nothing about this
12 case.

13 I'm looking at cases such as State versus Green,
14 a juror, Mr. Brown. His responses indicated some
15 confusion on his part, but he demonstrated the ability to
16 consider all the evidence before reaching a decision.

17 Further, State versus Matthews and State versus
18 Smith and State versus Singleton also in which a juror
19 stated he would always favor the death penalty for murder,
20 particularly where the juror said he would consider any
21 mitigating circumstances and follow the judge's charge in
22 view of the fact the defendant -- review of that.

23 So I find that Mr. Jordan is qualified under the
24 appropriate standard in this case. So he would be
25 qualified number six.

1 If you'd bring Mr. Jordan out for me, please.

2 (Juror re-enters the courtroom.)

3 THE COURT: Mr. Jordan, I have found that you
4 are qualified to be a member of a pool of jurors from
5 which the trial jury will be selected for the trial of
6 this case.

7 With that in mind, I'm going to ask you to
8 please return to the courtroom Thursday morning at 9:30.

9 THE JUROR: All right.

10 THE COURT: If you would bring with you, and you
11 can certainly leave them in your car, clothing, personal
12 effects to stay with us for about seven to ten days.
13 Don't know that it will be that long. You know, I'm kind
14 of giving a guesstimate right now, but if you would just
15 have those available with you when you return Thursday.

16 Do not talk with anyone about the case. Do not
17 watch, listen, or read any news reports about the case.
18 Do not do any investigation on the Internet or anything.

19 THE JUROR: All right.

20 THE COURT: Thank you very much, Mr. Jordan.
21 We'll see you Thursday morning.

22 (Juror leaves the courtroom.)

23 THE COURT: Court will be in recess ten minutes.

24 (A break was taken.)

25 THE COURT: Bring us No. 265, Ms. Thompson.

1 THE CLERK: Raise your right hand.

2 MARGARET THOMPSON, after being duly sworn,
3 testified as follows:

4 THE CLERK: Have a seat. State your full name
5 and spell your last name, please.

6 THE JUROR: My name is Margaret M. Thompson,
7 T-H-O-M-P-S-O-N.

8 EXAMINATION

9 BY THE COURT:

10 Q Good afternoon, Ms. Thompson. How are you?

11 A I'm fine. How are you?

12 Q Fine. Did you get the opportunity to review that
13 form?

14 A I did.

15 Q Did you bring it out with you?

16 A I did.

17 Q May see it, please?

18 A (Juror complies.)

19 Q All right. Thank you very much.

20 I note that you have circled indicating you
21 would fit Category C; is that correct?

22 A Correct.

23 Q Before I ask you any questions about this form, I do
24 want to ask you also, did you get the opportunity to
25 review the potential witness list?

- 1 A I did.
- 2 Q Did you know anyone on that list?
- 3 A I did.
- 4 Q And who did you know?
- 5 A Shirley Newby.
- 6 Q Shirley Newby.
- 7 A And Officer Florida.
- 8 Q Now, who is Shirley Newby?
- 9 A The Clerk of Court.
- 10 Q I see. And who was the other?
- 11 A Officer Florida.
- 12 Q Florida?
- 13 A Right.
- 14 Q And who is she?
- 15 A He is the resource officer where one of my children
- 16 are in school.
- 17 Q He's a school resource officer?
- 18 A Yes, sir.
- 19 Q And employed by?
- 20 A Edgefield County.
- 21 Q Edgefield County Sheriff's Department?
- 22 A Right.
- 23 Q And you know him in regards to him being a resource
- 24 officer at one of your children's school?
- 25 A Correct.

1 Q All right. That fact that you know Ms. Newby and
2 Officer Florida, could you still be a fair and impartial
3 juror to both the State and the defense in this case?

4 A I think so.

5 Q And when you say you think so, that may be a matter
6 of semantics. Given the fact that you know them, could
7 you still be a fair and impartial juror for both the
8 defendant, Mr. Barnes, and the State in this case?

9 A I could.

10 Q All right. Now, I'm going to back up just a few
11 minutes before we get to this form, as I said, and talk a
12 little bit about what we talked about this morning, this
13 early afternoon.

14 Do you understand in a trial such as this there
15 are potentially two parts of the one trial?

16 A Correct.

17 Q The first part of the trial the jury would solely be
18 focused on whether or not the defendant is guilty or not
19 guilty of the crime of murder. Do you understand that?

20 A Yes, sir.

21 Q If in a trial such as this a defendant were found not
22 guilty in the guilty phase, obviously there would be no
23 need for the sentencing phase. Do you understand that?

24 A Yes, sir.

25 Q It's only in those cases in which a defendant is

1 found guilty of murder that we go to that second phase,
2 that penalty phase, that sentencing phase. Do you
3 understand?

4 A Yes, sir.

5 Q Now, you placed yourself in Category C. Category C
6 is that type of juror that, although the guilt of the
7 defendant had been determined, would not have her mind
8 made up in advance just because the person had been
9 convicted of murder. That juror would not have her mind
10 made up in advance as to what the appropriate punishment
11 was. Does that describe you?

12 A Yes, sir.

13 Q That would be the type of juror who would want to
14 hear and need to hear all the facts and circumstances in
15 aggravation or in mitigation before she made up her mind
16 as to what the appropriate punishment would be; is that
17 correct?

18 A That's correct.

19 Q Further, that would be the type of juror that would
20 listen to all the evidence and listen to the instructions
21 of the Court and follow the instructions of the Court
22 before she made her decision as to the appropriate
23 punishment in the case; is that correct?

24 A Correct.

25 Q And if the circumstances so warranted, that juror

1 could vote for life without parole -- to impose a sentence
2 of life without parole. Does that describe you?

3 A Yes, sir.

4 Q And if the circumstances so warranted, that juror
5 could vote to impose the death penalty; is that correct?

6 A Yes, sir.

7 Q So it depends on all the facts and all the
8 circumstances in the case as to what the appropriate
9 punishment would be; is that correct?

10 A Correct.

11 Q And if you were selected for trial of a case such as
12 this, you would not make up your mind as to what the
13 appropriate punishment was until you heard all the
14 evidence, all the testimony, in aggravation, in
15 mitigation, and the instruction on the law by the Court
16 before you made that decision, correct?

17 A Correct.

18 Q Could be life sentence, could be the death penalty
19 depending on the circumstances, correct?

20 A Correct.

21 Q And you firmly fit into that category?

22 A Yes, sir.

23 Q You're not one of these jurors that just because a
24 person's guilty of murder you'd always vote for the death
25 penalty?

1 A No, sir.

2 Q And just because -- even if a person had been
3 convicted of murder, you'd always vote for a life
4 sentence?

5 A No, sir.

6 Q Depends on the circumstances?

7 A Right.

8 THE COURT: Thank you very much.

9 All right. The Solicitor may have some
10 questions for you, please, Ms. Thompson.

11 DIRECT EXAMINATION

12 BY MR. MYERS:

13 Q Mrs. Thompson, have you ever served on a criminal
14 jury panel before?

15 A No, sir.

16 Q This is a little something different for you?

17 A Yes, sir.

18 Q Ms. Thompson, that first part of the case, the guilty
19 or not guilty part, you understood what the judge said
20 about that this morning?

21 A Yes, sir.

22 Q And just like any case, we'd have to put up evidence
23 to prove the defendant guilty or not guilty. And that is
24 called the guilt phase. The defendant's either found
25 guilty or not guilty. Do you understand that?

1 A Yes, sir.

2 Q Punishment is not involved in that first part.

3 A Right.

4 Q And if the defendant's found guilty, usually the jury
5 goes home and he comes around and the judge does the
6 sentencing. And he could say, Well, tell me something
7 good or bad about this person so I'll know what the right
8 sentence is. That's why that second part is called the
9 penalty phase, but here the jury's going to do the
10 sentencing, not the judge. Do you understand that?

11 A Yes, sir.

12 Q If the defendant were found guilty, up to that point
13 the jury couldn't even talk about the punishment. All
14 they could talk about is guilty or not guilty. And if
15 he's found guilty, then we'll have that second proceeding,
16 the sentence proceeding, and more evidence would be
17 introduced. It could be good things about the defendant;
18 it could be bad things about the defendant. It's more
19 evidence to give the jury so they'll know what the right
20 sentence is. Do you understand that?

21 A Yes, sir.

22 Q And I think you just got through telling Judge
23 McMahon depending on what the evidence is, you could vote
24 for the death penalty; is that true?

25 A Yes, sir.

1 Q Or you could vote for life imprisonment?

2 A Right.

3 Q Now, one final thing, Mrs. Thompson, is that our law
4 says that if the jury determines that the death penalty is
5 the appropriate sentence, every juror would have to sign
6 their names, all 12.

7 Does the fact that our law requires your
8 signature on a death penalty verdict, does that in any way
9 interfere with your ability to return the death penalty?

10 A I don't think that would be an easy thing to do.

11 Q Yes, ma'am.

12 A But if the decision had been made, I think I would be
13 able to do it.

14 Q But the fact of putting your name down on a verdict,
15 would that prevent you from voting for the death penalty
16 if you thought that was the appropriate sentence?

17 A No, sir.

18 MR. MYERS: Thank you, ma'am.

19 THE COURT: Mr. Harte.

20 CROSS-EXAMINATION

21 BY MR. HARTE:

22 Q How are you?

23 A Fine. Thank you.

24 Q My name is Bob Harte and I represent Mr. Barnes.

25 I notice that you attend and work for the

1 Republican Baptist Church. I'm not familiar with that.

2 A Everybody wonders how it got that name.

3 Q Yeah. Does it have political leanings?

4 A It does not.

5 Q Let me ask you, you indicated that you knew our Clerk
6 of Court here, Ms. Newby. Do you know her outside of just
7 having dealt with her about this or --

8 A I've just known her all my life.

9 Q You all friends?

10 A I wouldn't say -- not close friends, but our families
11 have been acquainted.

12 Q Right. How about Officer Florida? I know he works
13 as a resource officer at the school where you teach, but
14 do you have a personal relationship with him?

15 A I do not, but my husband's also a reserve officer for
16 Edgefield County.

17 Q I saw that. How long has he been a reserve deputy
18 with the sheriff's department?

19 A Probably about -- I'm not sure -- maybe four or five
20 years.

21 Q And what are his duties as a reserve deputy?

22 A He volunteers, tries to volunteer about five hours a
23 week and it just works into his regular work schedule,
24 whenever he can do it.

25 Q Have you heard anything about this case? Do you know

1 anything about this case?

2 A No, sir.

3 Q He hasn't heard anything that he came home and
4 related to you?

5 A No, sir.

6 Q Would the fact that your husband works with the
7 Edgefield County Sheriff's Department and the Edgefield
8 County Sheriff's Department is the chief investigating
9 force in this case, would that have any effect on your
10 ability to be fair and impartial in this case?

11 A No, sir.

12 Q You wouldn't have a problem going home if you were to
13 reach a verdict that was opposed to the sheriff's
14 department's position?

15 A I don't think so, no, sir.

16 Q All right. Now, a couple of times you've said "I
17 don't think so." You said "I don't think so" when asked
18 about the witnesses you knew, and you told the Solicitor
19 you didn't think so with regards to the signing the form
20 for the death penalty, and just said "I don't think so"
21 with regards to your husband. Sometimes people just say I
22 don't think so out of a natural thing; sometimes it's a
23 true hesitation. Are any of those times that you said "I
24 don't think so" a true hesitation?

25 A No, sir.

1 Q Okay. And are you going to Bible study fellowship
2 now?

3 A I am.

4 Q How many years have you been doing it?

5 A One.

6 Q This one in Augusta?

7 A Right..

8 MR. HARTE: I did six.

9 No further questions.

10 THE COURT: All right. Thank you.

11 Ms. Thompson, if you'd step out in the hallway
12 for us momentarily.

13 (Juror leaves courtroom.)

14 THE COURT: All right. Solicitor.

15 MR. MYERS: I submit she's qualified.

16 THE COURT: Mr. Harte.

17 MR. HARTE: She appears to be qualified.

18 THE COURT: All right. If you'll bring

19 Ms. Thompson back in for us, please.

20 (Juror re-enters the courtroom.)

21 THE COURT: Ms. Thompson, you may stand right
22 there.

23 I have found that you are qualified to be a
24 member of a pool of jurors from which the trial jury will
25 be selected.

1 What that means for you is I'm going to ask you
2 to please return to the courtroom at 9:30 Thursday
3 morning. Please have with you, you can leave them in your
4 car, clothing and personal effects to stay with us for
5 approximately seven to ten days. I don't know if it will
6 be that long, but I certainly want you to be prepared.

7 During this time between now and Thursday,
8 please do not discuss the case with anyone. You certainly
9 may tell your family members you've been selected as a
10 member of the pool, you have to report back, but do not
11 discuss anything about the case with anyone.

12 Do not watch, listen to, or read any news
13 reports about the case should there be any. And do not do
14 any independent investigation or any investigation on the
15 Internet.

16 All right? Thank you very much. See you
17 Thursday morning, Ms. Thompson.

18 THE JUROR: 9:30?

19 THE COURT: 9:30, yes, ma'am.

20 THE JUROR: Okay.

21 (Juror leaves the courtroom.)

22 THE COURT: Please bring us Aaron J. Asforis.

23 THE CLERK: Raise your right hand, please.

24 AARON J. ASFORIS, after being duly sworn,
25 testified as follows:

1 THE CLERK: Have a seat. State your full name
2 and spell your last name, please.

3 THE JUROR: My name is Aaron Gerald Asforis.
4 The last name is spelled A-S-F-O-R-I-S.

5 EXAMINATION

6 BY THE COURT:

7 Q And you pronounce that Asforis?

8 A Yes, sir.

9 Q All right. Thank you. Mr. Asforis, did you get an
10 opportunity to review that form?

11 A Yes, sir.

12 Q Did you bring it with you? May I see it, please?
13 Thank you very much.

14 A (Witness complies.)

15 Q All right. And I see you have placed yourself in
16 Category B; is that correct?

17 A Yes, sir.

18 Q All right. Did you also get the opportunity to
19 review the witness list?

20 A Yes, sir.

21 Q Did you recognize any of the names on the witness
22 list?

23 A Yes, sir.

24 Q And could you tell me who you recognized and who you
25 may know?

1 A Grover Dais.

2 Q Say it again?

3 A Grover Dais.

4 Q Grover Day?

5 A It's Dais..

6 Q All right. And who is that?

7 A He's a friend of my -- I mean, the father of my
8 friend.

9 Q All right. And the fact that he's the father of your
10 friend, could you still be a fair and impartial juror for
11 both the State and the defense?

12 A Yes, sir.

13 Q Is that correct? In other words, the fact that
14 you're a friend of that potential witness's father --

15 A Yes, sir.

16 Q -- that wouldn't affect your ability to be a fair
17 juror, would it?

18 A No, sir.

19 Q Sir?

20 A No, sir.

21 Q All right. Now, I'm going to back up and ask you a
22 few questions concerning the death penalty because it is
23 the only opportunity that we get to question you in that
24 regard.

25 You understand in a case such as this, there

1 could potentially be two parts of one trial. Do you
2 understand that?

3 A Yes, sir.

4 Q And the first part, if you were selected as a member
5 of the jury on a trial such as this, the jury would solely
6 be interested and focused on the determination of whether
7 the defendant was guilty of murder or not guilty. Do you
8 understand?

9 A Yes, sir.

10 Q If a defendant were found not guilty, obviously the
11 trial would end. There would be no need for the second
12 part of the trial, the penalty phase. Do you understand
13 that?

14 A Yes, sir.

15 Q It's only if a defendant is found guilty of murder
16 would there be a necessity for part two of the trial, the
17 penalty phase. Do you understand that, Mr. Asforis?

18 A Yes, sir.

19 Q Now, experience tells us that most jurors fit into
20 one of these three categories, and I want to review these
21 categories with you.

22 The first category is the type of juror who,
23 once the crime of murder has been proven by the State and
24 the juror is considering the punishment, feels that he or
25 she is required to give the death penalty in each and

1 every case. Do you fit that category?

2 A No, sir.

3 Q The second type of juror is the juror who, although
4 the guilt of the defendant has been determined, under no
5 circumstances could that juror ever give the death
6 penalty. Do you fit in that category?

7 A Yes, sir.

8 Q And your response is?

9 A Yes, sir.

10 Q So you would be the type of juror that would not need
11 to hear the facts and circumstances in aggravation or
12 mitigation in a particular case because upon a finding of
13 guilt of murder, you would have your mind made up
14 concerning punishment; is that correct?

15 A No, sir.

16 Q Sir?

17 A No, sir.

18 Q All right. Explain it to me then, please.

19 A Sir, I'm really not understanding what that was.

20 Q All right. Well, let's see if we can break it down.

21 A Yes, sir.

22 Q If you have any questions now, ask me and I'll try to
23 answer them for you. All right?

24 A Yes, sir.

25 Q Well, you had these three categories.

1 A Yes, sir.

2 Q And you circled number B or letter B.

3 A Yes, sir.

4 Q And letter B is a juror that's always in favor of the
5 death penalty. Or, excuse me, always in favor of a life
6 sentence. Juror A is always in favor of the death
7 penalty. You told me, "I'm not Juror A." You're not in
8 favor of the death penalty; is that correct?

9 A Yes.

10 Q That you think in all cases of murder, if a person's
11 convicted of murder, that you will vote for a life
12 sentence; is that correct?

13 A No, sir.

14 Q All right. Explain your position to me then.

15 A I don't think all of them would be murder. It all
16 depends on what the case is about.

17 Q All right. And can you explain what you mean by
18 that, "it all depends on what the case is about"?

19 Well, let me ask you this. Let me explain this.

20 There's a third category. The third category is
21 a juror that's selected to serve on a trial such as this
22 and you'd have the first phase, the guilt phase, and the
23 jury finds the defendant guilty of murder. Then it is the
24 jury's determination to determine, the decision to
25 determine what the appropriate punishment should be, the

1 death penalty or life in prison. Do you understand that?

2 A Yes, sir.

3 Q Are there circumstances of murder in your mind where
4 you could vote to impose the death penalty?

5 A No, sir.

6 Q No? Is that your response, no, sir?

7 A Yes, sir: No, sir.

8 Q So there are no circumstances under which you could
9 vote to sentence someone to death?

10 And like I say, listen, there's no right or
11 wrong answers. Your answers are -- well, actually there
12 are right answers.

13 A Yes, sir.

14 Q Your answers are the right answers. Whatever your
15 answers are, whatever your beliefs are, are the correct
16 answers for you.

17 A Yes, sir.

18 Q Are there any circumstances of murder -- in other
19 words, you've sat on a jury, you found the defendant
20 guilty of murder, aggravated murder -- are there
21 circumstances in your mind in which you could vote to
22 sentence someone to the death penalty?

23 A Yes, sir, I understand.

24 Q All right. And what is your response? Are there?

25 A Yes, sir.

1 Q Okay. And then there are also circumstances of
2 murder in which you could vote to impose a life sentence;
3 is that correct?

4 A Yes, sir. Yes, sir.

5 Q Is that correct?

6 A Yes, sir.

7 Q So it depends on the circumstances?

8 A I understand.

9 Q Is that right?

10 A Yes, sir.

11 Q So it's not an automatic decision for you?

12 A Yes, sir.

13 Q In other words, you wouldn't get over here in the
14 jury box and already make your mind up and say, Look, I
15 don't care if I convict this person of murder, he's going
16 to get a life sentence; I'm going to close my mind once
17 I've made the decision on murder, I'm going to impose a
18 life sentence. That wouldn't be you, that wouldn't
19 describe you; is that correct?

20 A No.

21 Q You would listen to everything before you made your
22 decision as to what the appropriate punishment was; is
23 that correct?

24 A Yes, sir.

25 Q And can you explain for me, just in your words, if

1 you can, why you circled B, why you circled Category B?

2 A I thought it was the same way of what you were
3 saying.

4 Q All right. Well, look back at it just a moment.

5 A Yes, sir. It's the first time.

6 Q That's right. I mean, you've never done this before,
7 have you?

8 A No, sir.

9 Q And you've never had to sit down and circle an A, B,
10 or C, and describing yourself on the death penalty, have
11 you?

12 A No, sir.

13 Q All right. Well, look at it for just a moment.
14 We're not in any hurry.

15 (Pause.)

16 All right. Which one describes you, A, B, or C?

17 A It's C.

18 Q Say it again?

19 A C.

20 Q C?

21 A Yes, sir.

22 Q So upon reflection, you're telling us that C
23 describes you?

24 A Yes, sir.

25 Q And that's a juror that wants to hear everything,

1 correct?

2 A Yes, sir.

3 Q Before he makes up his or her mind?

4 A Yes.

5 Q If the circumstance warranted it, you could vote to
6 sentence a person to life without parole; is that correct?

7 A Yes, sir.

8 Q Sir?

9 A Yes, sir.

10 Q And if the circumstances so warranted it, you could
11 vote to sentence a person to the death penalty?

12 A Yes, sir.

13 Q Is that correct?

14 A Yes, sir.

15 THE COURT: All right. Thank you very much.

16 I forget who's first. Mr. Tarr.

17 These gentlemen have some questions for you.

18 Answer them as best you can.

19 DIRECT EXAMINATION

20 BY MR. TARR:

21 Q I'm sorry, could you pronounce your last name for me?

22 A Asforis.

23 Q Asforis?

24 A Yes, sir.

25 Q My name is David Tarr and this is Bob Harte and we're

1 the attorneys for Steven Barnes.

2 You're 22 years old, correct?

3 A Yes, sir.

4 Q You're pretty young. It's probably the first time
5 you've ever come into a courtroom on a jury, to possibly
6 be on a jury?

7 A Yes, sir.

8 Q So you've never been involved in anything like this,
9 have you?

10 A No, sir.

11 Q And those are kind of confusing questions that you
12 had to read?

13 A Yes, sir.

14 Q And I think there was maybe a little confusion at
15 first and now you've --

16 A I understand it now.

17 Q You understand it?

18 A Yes, sir.

19 Q After the judge explained to you exactly what each of
20 those responses mean?

21 A Yes, sir.

22 Q So you definitely now would fall under the C category
23 where you would listen to both sides?

24 A Yes, sir.

25 Q Okay. Now, you understand that this is a two-part

1 trial, could be a two-part trial. You would never even
2 get to the consideration of whether it's a life sentence
3 or the death penalty unless you first find that Mr. Barnes
4 is guilty.

5 A Yes.

6 Q You could find he's not guilty. You understand that?

7 A Yes, sir.

8 Q I believe the Solicitor is probably going to ask you
9 this, but there's a provision in the law that states that
10 when you're sitting on a jury and you're voting for life
11 or death, if the jury finds that the death penalty is
12 appropriate, then each member of the jury has to sign
13 their name to form. You would be able to do that if you
14 were on a jury and you felt like you should vote for
15 death, couldn't you?

16 A Yes, sir.

17 MR. TARR: That's all I have, Your Honor.

18 THE COURT: Solicitor.

19 CROSS-EXAMINATION

20 BY MR. MYERS:

21 Q Mr. Asforis?

22 A Yes, sir.

23 Q They've asked you, you've never served on a jury
24 panel before; is that right?

25 A No, sir.

1 Q This is a murder case and jurors would have to sit
2 over here and find the defendant guilty or not guilty.

3 A Yes.

4 Q You understand that?

5 A Yes, sir.

6 Q And if the defendant's found guilty, then we have to
7 go into the second part of the case, that's the sentencing
8 part. Did you understand the judge when he said that?

9 A Yes.

10 Q The jury's going to hand down the sentence in this
11 case. Normally the judge does, but the jury's going to
12 hand down the sentence. And they only have two options:
13 Number one is life without parole, and number two is the
14 death penalty. Do you understand that?

15 A Yes, sir.

16 Q Now, they asked you a little while ago about forms of
17 the verdict. If the jury finds the defendant guilty, just
18 the foreperson would sign that. It would be speaking for
19 all 12, but just the foreperson would write "guilty" and
20 sign his name on it. But if the jury decided that the
21 death penalty was the right sentence, they'd have to put
22 on there, "We sentence the defendant to death," but all 12
23 of you would have to sign their names.

24 A Yes.

25 Q So my question is, is there anything about you that

1 you couldn't sign your name to a verdict sentencing
2 someone to death?

3 A No, sir. I mean, I could -- I could sign a paper,
4 yes.. That's what all 12 of us thought of it. So this is
5 the one with all 12 of us, right?

6 Q All 12 would have to agree and it would be a form
7 saying "We sentence the defendant to death," but all 12,
8 everybody would have to sign their name. Could you sign
9 your name on a verdict sentencing someone to death?

10 A I wouldn't want to, but if that's the right way, yes,
11 sir.

12 THE COURT: Thank you. Thank you very much.
13 Would you hand me your form back, please? I
14 think I handed it back to you.

15 Would you step out here in the hallway for me a
16 moment?

17 THE JUROR: Yes, sir.

18 (Juror leaves courtroom.)

19 THE COURT: All right. Mr. Tarr.

20 MR. TARR: I think he's clearly qualified.

21 MR. MYERS: He's qualified.

22 THE COURT: I think he's qualified.

23 All right. If you'd bring Mr. Asforis back in
24 for me, please.

25 (Juror re-enters the courtroom.)

1 THE COURT: Mr. Asforis, you may stand right
2 there a moment.

3 I have found that you are qualified to be a
4 member of a pool of jurors from which the trial jury will
5 be selected.

6 Now, what this means for you is I need you to
7 report back here Thursday morning at 9:30. Please have in
8 your automobile supplies, clothes, toiletries -- clothing,
9 supplies and toiletries to last you for a period of seven
10 to ten days. We hope to select the trial jury at that
11 time.

12 During the time you're away from the courtroom,
13 please do not discuss this case with anyone.

14 THE JUROR: Yes, sir.

15 THE COURT: Do not watch, listen to, or read any
16 news reports about the case. Do not do any independent
17 investigation or any investigation on the Internet.

18 Do you have any questions?

19 THE JUROR: No, sir.

20 THE COURT: All right. See you --

21 THE JUROR: Thursday.

22 THE COURT: What time?

23 THE JUROR: 9:30.

24 THE COURT: Thank you very much. See you then.

25 THE JUROR: All right.

1 (Juror leaves the courtroom.)

2 THE COURT: Bring us our next juror, No. 250,
3 Christopher L. Stansell.

4 THE CLERK: Please raise your right hand.

5 CHRISTOPHER L. STANSELL, after being duly sworn,
6 testified as follows:

7 THE CLERK: Have a seat. State your full name
8 and spell your last name, please.

9 THE JUROR: Christopher Logan Stansell,
10 S-T-A-N-S-E-L-L.

11 EXAMINATION

12 BY THE COURT:

13 Q Mr. Stansell, did you get an opportunity to review
14 that form?

15 A Yes, sir.

16 Q Do you have it with you?

17 A Yes, sir.

18 Q May I see it, please?

19 A (Witness complies.)

20 Q All right. Thank you very much.

21 Did you also get the opportunity to review the
22 witness list?

23 A Yes, sir.

24 Q Did you recognize any of the names on there? Do you
25 know any of those individuals?

1 A No, sir.

2 Q All right. And I notice by your form that you have
3 circled the letter A?

4 A Yes, sir.

5 Q The letter A indicates the type of juror who, once
6 the crime of murder has been proved by the State and the
7 juror is considering punishment, feels that he is required
8 to give the death penalty in each and every case. Does
9 that describe you?

10 A Yes, sir.

11 Q The juror simply feels that once a murder has been
12 committed, the death penalty is the most appropriate
13 punishment no matter what the circumstances of the case;
14 is that correct?

15 A Yes, sir.

16 Q Does that describe you?

17 A Yes, sir.

18 Q Is that a firmly held belief?

19 A Yes, sir.

20 Q In all cases of murder, you would vote automatically
21 to impose the death penalty?

22 A As long as he's tried and found guilty, yes, sir.

23 Q In all cases of which an individual were found guilty
24 of murder, you would automatically vote to impose the
25 death penalty?

1 A Yes, sir.

2 THE COURT: All right. Solicitor.

3 MR. MYERS: No questions.

4 THE COURT: Mr. Harte.

5 MR. HARTE: No questions, Your Honor.

6 THE COURT: Thank you very much, Mr. Stansell.

7 I'm going to release you from your jury service. You do
8 not have to report back again.

9 Thank you very much for your time.

10 THE JUROR: Thank you.

11 THE COURT: You are now excused.

12 (Juror leaves the courtroom.)

13 THE COURT: All right. Bring me, please,
14 William A. Jennings, Juror No. 140.

15 THE BAILIFF: The juror's still reviewing the
16 form, the next juror.

17 (Pause.)

18 THE CLERK: Please raise your right hand and
19 place your left on the Bible.

20 WILLIAM JENNINGS, after being duly sworn,
21 testified as follows:

22 THE CLERK: Have a seat. State your full name
23 and spell your last name, please.

24 THE JUROR: Yes, ma'am. William Anthony
25 Jennings, J-E-N-N-I-N-G-S.

EXAMINATION

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BY THE COURT:

Q Good afternoon, Mr. Jennings.

A Good afternoon.

Q Appreciate your patience. Thank you for being with us this afternoon.

A Yes, sir.

Q Did you get the opportunity to review that form?

A Yes, sir.

Q Do you have it with you?

A This one?

Q Yes, sir. May I see it, please?

A Yes, sir. (Witness complies.)

Q All right. And I see you've placed yourself in Category C; is that correct?

A Yes, sir.

Q Did you also get the opportunity to review the witness list?

A Yes, sir.

Q Did you know any of the individuals on the witness list?

A No, sir.

Q I'm going to ask you a few questions about this form and about the death penalty, but before I do that, I want to back up and explain a little bit, follow up a little

1 bit on my explanations from this morning.

2 Do you understand in a trial such as this, there
3 could be potentially two parts of the one trial?

4 A Yes, sir.

5 Q The first part is the guilt or not guilt phase, the
6 guilt phase as it is known. If you were selected as a
7 member of the jury, you and the other members of the jury
8 would be solely focused on the issue of whether the
9 defendant were guilty or not guilty of the crime of
10 murder. Do you understand that?

11 A Yes, sir.

12 Q If the defendant were found not guilty of the crime
13 of murder, obviously there would not be a second part.
14 You understand that?

15 A Yes, sir.

16 Q It's only in cases in which a defendant is found
17 guilty of the crime of murder in which it is necessary to
18 go to the second phase or the sentencing phase. Do you
19 understand that?

20 A Yes, sir.

21 Q In this type of case, in the sentencing phase, the
22 jury, not the judge, the jury determines what the
23 appropriate punishment should be, life without parole or
24 the death penalty. Do you understand that?

25 A Yes, sir.

1 Q Now, placing yourself in Category C, I understand
2 that to be the type of juror that although a person had
3 been found guilty of murder, a defendant, that that juror
4 would not have his mind made up in advance concerning the
5 punishment. Does that describe you?

6 A Yes, sir.

7 Q In other words, you wouldn't automatically have your
8 mind made up always the death penalty or always life
9 without parole; is that correct?

10 A That's correct.

11 Q That you would be that type of juror that would need
12 to hear all the facts and circumstances in aggravation and
13 mitigation and would want to listen and follow the law
14 before you could make your decision regarding punishment;
15 is that correct?

16 A Yes, sir.

17 Q And you would do that, correct?

18 A Yes, sir.

19 Q Listen to all that evidence in aggravation and
20 mitigation before you made your decision as to the
21 appropriate punishment, correct?

22 A Yes, sir.

23 Q And if the facts presented warranted the juror --
24 warranted the juror to bring back a verdict, a sentence of
25 life without parole, correct?

1 A Yes.

2 Q Even though a person had been convicted of murder,
3 correct?

4 A Yes, sir.

5 Q And if the facts so warranted, you could bring back a
6 verdict of the death penalty; is that correct?

7 A Yes, sir.

8 Q Depending on all the facts and circumstances?

9 A Yes, sir.

10 Q You don't have your mind made up just because you've
11 sat through a guilt phase and found the defendant guilty
12 of murder, correct?

13 A Correct.

14 Q You're going to listen to everything in that penalty
15 phase, if there is a penalty phase, before you make your
16 decision as to the appropriate punishment?

17 A Yes, sir.

18 Q Life without parole or death penalty?

19 A Yes, sir.

20 Q Depending on the facts and circumstances?

21 A Yes, sir.

22 THE COURT: Thank you very much.

23 I forget where we're at, gentlemen. Mr. Tarr.

24 These gentlemen have a few questions for you,

25 Mr. Jennings. It shouldn't be too much longer.

1 DIRECT EXAMINATION

2 BY MR. TARR:

3 Q I'm David Tarr. This is Robert Harte. We represent
4 Mr. Steven Barnes who is here. Just have a couple of
5 questions for you.6 I understand you've got a couple of -- you've
7 got an aunt that is a prison guard?

8 A Yes, sir.

9 Q Do you know what prison that is?

10 A I'm not sure. She lives in McCormick County. I
11 would figure it would be that prison up there in
12 McCormick.

13 Q McCormick Correctional Institute?

14 A I believe so.

15 Q Do you talk to her a lot?

16 A Not a whole lot. Most of the times just family
17 get-togethers around Christmas or Thanksgiving.18 Q You don't get involved in her job and what she's
19 doing in her job or anything like that?

20 A No, sir.

21 Q And I believe you've got a friend who's a chief of
22 police in Georgia?

23 A Yes, sir.

24 Q Where is Sardis? Is that how you pronounce it?

25 A Yes, sir. It's about 20 miles past Waynesboro on --

1 THE COURT: On 25?

2 THE JUROR: It's on Highway 25 which I think
3 turns into 24. It's, I guess, 20 miles past -- if you're
4 coming from Augusta, about 20 miles past Waynesboro down
5 towards Savannah.

6 THE COURT: Down towards Milling?

7 MR. TARR: I think so, sir.

8 THE COURT: Yes, sir.

9 BY MR. TARR:

10 Q I don't believe they've got any involvement in the
11 department in this case, but considering your relationship
12 with this chief of police, could you be fair and impartial
13 to Mr. Barnes and give him a fair trial if you sat on the
14 jury?

15 A I believe so, sir.

16 Q And you don't have any reason to believe that you
17 couldn't give him a fair trial?

18 A No, sir.

19 Q Well, having a friend who's the chief of police,
20 would that cause you to lean more towards believing a law
21 enforcement officer's testimony?

22 A I don't think so. Like I said, I would like to make
23 sure I've got all the facts and everything before I make
24 up my mind either way.

25 Q The facts on both sides?

1 A Yes, sir.

2 Q So you would -- if you didn't feel like the State
3 proved their case, you could find Mr. Barnes not guilty?

4 A Yes, sir.

5 Q And then we wouldn't even get to the question of life
6 versus the death penalty?

7 A Yes, sir.

8 Q And if you're on the jury that found Mr. Barnes
9 guilty, you could listen to the judge and follow the law?

10 A Yes, sir.

11 Q And you could listen to everything that the State put
12 up saying how bad the murder was and you could listen to
13 everything that we put up letting you know all the facts
14 and circumstances about Mr. Barnes and his background?

15 A Yes, sir.

16 Q Okay. I see on your questionnaire that there's a
17 question on here if you or any immediate family member or
18 close personal friend has ever been the victim of a crime
19 and you checked yes, armed robbery. Was that you or a
20 friend or family member?

21 A That was me.

22 Q And how long ago was that?

23 A That was back in the late '90s.

24 Q Okay. And it looks like you said someone was
25 arrested but you don't know what the outcome was as far as

1 jail time or probation or anything?

2 A No, sir. I work night shift and they were wanting me
3 to -- they had asked me twice to come in for hearings in
4 the morning and I couldn't do it.

5 Q But being the victim of a violent crime in the past,
6 you feel like you could be fair and impartial to both
7 sides in this case?

8 A Yes, sir.

9 MR. TARR: That's all I have.

10 THE COURT: Thank you, Mr. Tarr.

11 Solicitor.

12 CROSS-EXAMINATION

13 BY MR. MAYE:

14 Q Mr. Jennings, you understand in this case that
15 there'd basically be two parts to the proceeding: First,
16 we'd have a trial to determine whether or not he's guilty
17 or innocent of murder. You understand that, right?

18 A Yes, sir.

19 Q And you know that in a normal trial, once that
20 happens, if they find him guilty, the judge decides the
21 sentence. He hears maybe something good about somebody or
22 maybe something bad about them and the judge decides the
23 sentence, correct? You understand that?

24 A Yes, sir.

25 Q You know in this case, if you all found a guilty

1 verdict in this case and it went to the sentencing phase,
2 it would be up to the jury to decide whether life in
3 prison would be appropriate or the death penalty would be
4 appropriate. Do you understand that?

5 A Yes, sir.

6 Q Do you understand that?

7 A Yes, sir.

8 Q And if the facts warranted it, you could give the
9 death penalty, couldn't you?

10 A Yes, sir.

11 Q And if you didn't think it was warranted, you could
12 give somebody life without parole, correct?

13 A Yes, sir.

14 Q Now, Mr. Jennings, there's one other thing in South
15 Carolina law. If you came back with a verdict of death,
16 every juror has to sign his name individually on that
17 death verdict. Would that give you any pause? Because
18 some people will say something but might have a little
19 trouble writing it down. Could you write or sign your
20 name to a death penalty verdict if you thought the facts
21 and circumstances warranted it?

22 A If they warranted it, yes, sir.

23 MR. MAYE: Nothing else. Thank you.

24 THE COURT: Thank you very much, Mr. Jennings.

25 Would you step out into the hallway for me just

1 a moment?

2 THE JUROR: Yes, sir.

3 THE COURT: Thank you.

4 (Juror leaves courtroom.)

5 THE COURT: All right. Mr. Tarr.

6 MR. TARR: I believe he's qualified.

7 THE COURT: Solicitor.

8 MR. MAYE: I think he's qualified, Your Honor.

9 THE COURT: All right. Bring him back in,
10 please.

11 (Juror re-enters the courtroom.)

12 THE COURT: Mr. Jennings, I have found that you
13 are qualified to be a member of a pool of jurors from
14 which the jury panel will be selected.

15 I'm going to ask you to please return to the
16 courtroom at 9:30 Thursday morning.

17 THE JUROR: 9:30 Thursday morning?

18 THE COURT: Yes, sir. If you'll have with you,
19 please, and you can leave it in your automobile of course,
20 clothing and toiletries and supplies to last you for a
21 period of seven to ten days. We will hopefully select our
22 jury at 9:30 Thursday morning.

23 Do not discuss this case with anyone. If anyone
24 tries to talk with you about the case, please let me know
25 immediately.

1 Do not watch, listen to, or read any news
2 reports about the case. Do not do any independent
3 investigation or any investigation on the Internet.

4 Do you have any questions?

5 THE JUROR: No, sir.

6 THE COURT: See you Thursday morning at 9:30.

7 THE JUROR: Thursday morning at 9:30, yes, sir.

8 THE COURT: Thank you very much.

9 (Juror leaves the courtroom.)

10 THE COURT: If you would please bring us Juror
11 No. 97, Gayle G. Garry.

12 THE CLERK: Please raise your right hand and
13 place your left hand on the Bible.

14 GAYLE GARRY, after being duly sworn, testified
15 as follows:

16 THE CLERK: If you'll take a seat. State your
17 full name and spell your last name.

18 THE WITNESS: My name is Gayle G. Garry,
19 G-A-R-R-Y.

20 EXAMINATION

21 BY THE COURT:

22 Q Good afternoon, Ms. Garry, and thank you for your
23 patience.

24 A Thank you.

25 Q Did you have an opportunity to review that form?

1 A Yes, I did.

2 Q Do you have it with you?

3 A I do.

4 Q May I see it, please?

5 A Yes, sir. (Juror complies.)

6 Q All right.. And I see you've placed yourself in

7 Category C; is that correct?

8 A Yes, it is.

9 Q And I'm going to talk with you about that
10 momentarily.

11 Did you also get the opportunity to review the
12 witness list?

13 A Yes, I did.

14 Q Did you recognize or do you know anyone on that list?

15 A No.

16 Q All right. Now as to the form, before I ask you
17 questions concerning that, I'm going to back up and cover
18 a little bit about what we talked about earlier today.

19 You understand that in a trial such as this
20 there could potentially be two parts of one trial. Do you
21 understand that?

22 A Yes, sir.

23 Q In the first part of the trial, the jury would be
24 solely focused on the issue of the guilt of the defendant.
25 Do you understand that?

1 A Yes.

2 Q And if at the conclusion of the guilt phase the
3 defendant were found not guilty, obviously there would be
4 no need to go to the second phase of the trial, the
5 punishment phase. You obviously understand that?

6 A Yes, I do.

7 Q So it's only in a situation in which a defendant has
8 been found guilty of murder that there would ever be a
9 necessity for the second phase or the sentencing phase.
10 You understand that?

11 A I do.

12 Q And we discuss with you or ask you these questions
13 about the death penalty at this time because this is the
14 only opportunity that we have to do so. Do you
15 understand?

16 A Yes, I do.

17 Q All right. Now, assume you were selected for a trial
18 such as this and the jury had returned a verdict of guilty
19 of murder and there was that second phase, that penalty
20 phase. As I understand your position in Category C, that
21 although the guilt of the defendant had been determined,
22 you would not have your mind made up in advance to
23 concerning the punishment; is that correct?

24 A That is correct.

25 Q That you would be that type of juror that would need

1 to hear all the facts and all the circumstances in
2 aggravation and mitigation before you could make a
3 decision as to what the appropriate punishment was; is
4 that correct?

5 A That's correct.

6 Q That you would be that type of juror that would
7 listen and follow the law before you could make any
8 decision regarding the punishment as to life without
9 parole or the death penalty, correct?

10 A That's correct.

11 Q Now, if the facts presented in a particular case --
12 and I'm not asking you about this case or anything of that
13 nature, but if the facts so warranted in a particular case
14 in your mind, if the facts warranted a sentence of life
15 without parole, you could return a sentence of life
16 without parole, correct?

17 A Yes, I could.

18 Q And by the same token, if the facts presented so
19 warranted it, you could return a verdict for the death
20 penalty; is that correct?

21 A Yes, I could.

22 Q And life or death, you would not make up your mind as
23 to those punishments until you heard all the evidence in
24 aggravation and mitigation, all the testimony, and the
25 instruction on the law by the Court; is that correct?

1 A Yes, that's correct.

2 Q And is that your -- you think you firmly fit into
3 that Category C?

4 A Yes, I do.

5 THE COURT: All right. Thank you very much, Ms.
6 Garry.

7 The Solicitor may have a few questions for you
8 and then Mr. Harte, I believe.

9 DIRECT EXAMINATION

10 BY MR. MYERS:

11 Q Ms. Garry?

12 A Yes.

13 Q Because the death penalty's involved, we get to talk
14 with some of the jurors like this very briefly.

15 A Yes, uh-huh.

16 Q Have you ever served on a criminal jury panel before?

17 A I don't know. I did serve on a jury. I think it was
18 a civil suit, not a criminal suit.

19 Q Okay. But if you've served on one you know that
20 jurors sit over here and listen to witnesses testify?

21 A That's correct.

22 Q Then they reach a verdict?

23 A Yes, they do.

24 Q The same thing would happen in this case. The first
25 part is guilty or not guilty.

1 A Uh-huh.

2 Q The punishment has nothing to do with the first part.
3 We'd have to put witnesses up to prove the defendant
4 guilty.

5 A Uh-huh.

6 Q And if the defendant was found guilty, we'd go into
7 that second part of the trial. Do you understand that?

8 A Correct.

9 Q Normally when a jury in a criminal case finds someone
10 guilty, their job's over with and the judge hands down the
11 sentence.

12 A Uh-huh.

13 Q And he says, Well, tell me something about the person
14 so I know what kind of sentence to give him.

15 If you find a defendant guilty of a capital
16 murder, then the jury hands down the sentence, life
17 without parole or the death penalty.

18 A Uh-huh.

19 Q And that second part is to give the jury additional
20 information. It could be something good for the
21 defendant, something bad for them, just to give the jury
22 some more information about the person and the crime so
23 they'll know what the right sentence is.

24 A Uh-huh.

25 Q Now, you just told the judge that you're in that C

1 category. If the facts of the crime said life, you could
2 vote for life imprisonment; is that right?

3 A Uh-huh, that's correct.

4 Q But if the facts warranted it and the crime warranted
5 that the death penalty was the necessary sentence, you
6 could also vote for the death penalty?

7 A Yes, I could.

8 Q Now, our law has one more twist in it, and the judge
9 may have told about that today. In the guilty part of it,
10 the jury finds him guilty, all 12 would have to agree but
11 only the foreman or the foreperson would sign the verdict.

12 A Correct.

13 Q But he'd be speaking for all 12.

14 A Yes.

15 Q Our law says that if the jury determines that the
16 death penalty is correct and the necessary sentence, all
17 12 jurors would have to sign that. Now, the fact that our
18 law would require your signature on a death penalty
19 verdict, would that interfere with your ability to return
20 the death penalty?

21 A No.

22 Q And there's nothing about you that we don't know yet,
23 in your upbringing, your morals, or your religious beliefs
24 or something like that that would prevent you from voting
25 for the death penalty; is that correct?

1 A I don't think it would, no.

2 MR. MYERS: That's all we can ask of you. Thank
3 you.

4 THE COURT: Thank you very much.

5 Mr. Harte.

6 CROSS-EXAMINATION

7 BY MR. HARTE:

8 Q By the same token, there's nothing in your background
9 or upbringing or education that would prevent you from
10 returning a verdict of life if you felt that was the
11 appropriate verdict?

12 A Absolutely.

13 Q All right. And we've talked about the death penalty
14 side of that even before we get to whether or not
15 Mr. Barnes is guilty.

16 A Uh-huh.

17 Q The fact that we've discussed that would not prevent
18 you from being fair and impartial in the guilt phase and
19 if the State did not carry their burden of proof, you
20 could find a verdict of not guilty as to Mr. Barnes?

21 A Yes.

22 Q Looks like you've been in Edgefield a short period of
23 time, three years?

24 A Yes.

25 Q And you were at Hilton Head, Chicago, New York?

1 A Yes.

2 Q Is that business that carried you from place to
3 place?

4 A Yes, it did, uh-huh.

5 Q Thank you.

6 A Uh-huh.

7 THE COURT: So that --

8 THE JUROR: Do I get to ask questions?

9 THE COURT: Yes, ma'am, you may. Ask me.

10 THE JUROR: Ask you?

11 THE COURT: Yes, ma'am.

12 THE JUROR: I have a ticket to LA to see my
13 grandchild over Thanksgiving weekend -- week.

14 THE COURT: All right.

15 THE JUROR: And I have a confirmation of my
16 flight number and I leave on Tuesday the 23rd and I come
17 back on Monday the 29th. And I'm more than happy to
18 serve, but I also would like to go see my new
19 granddaughter.

20 THE COURT: I think that will happen. I mean, I
21 do not think we would be here Tuesday, the 23rd.

22 Step out momentarily to the jury room and let me
23 discuss that with the attorneys briefly, if you would.

24 THE JUROR: Thank you.

25 (Juror leaves courtroom.)

1 THE COURT: All right. Solicitor.

2 MR. MYERS: We submit she's qualified, sir.

3 MR. HARTE: She's qualified.

4 THE COURT: All right. I think I'll leave her
5 in the pool. I don't think we'll go to the 23rd. That's
6 a Tuesday two weeks.

7 MR. MYERS: I'm not going to be here then.

8 THE COURT: Of course I'm drawing three
9 alternates also, but I think I'll leave her in the pool.
10 And if I got where she lived correct, she went
11 New York, Chicago, Hilton Head, Edgefield; is that
12 correct?

13 MR. MYERS: Yes.

14 THE COURT: All right. Hot dog. Bring her
15 back, please.

16 (Juror re-enters the courtroom.)

17 THE COURT: All right. Ms. Garry, I have found
18 that you're qualified to be a member of a pool of jurors
19 from which the trial jury will be selected.

20 THE JUROR: Okay.

21 THE COURT: I'm going to ask you to please
22 return Thursday at 9:30.

23 THE JUROR: All right.

24 THE COURT: Have with you clothing and supplies,
25 toiletries that would last you seven to ten days.

1 The 23rd is two weeks from tomorrow, and I
2 believe that's correct if my days are correct. I do
3 not -- I think the trial will be concluded by that time.
4 I intend to draw 12 jurors on the primary jury and three
5 alternates. So don't be concerned about your ticket. All
6 right?

7 THE JUROR: Okay.

8 THE COURT: All right. Thank you very much.
9 See you Thursday morning at 9:30. Thank you very much.

10 (Juror leaves the courtroom.)

11 THE COURT: All right. Bring us -- I guess I
12 could say bring us whatever's left. That's Juror No. 111,
13 Phillip B. Griffin.

14 That's qualified number ten; is that correct?

15 MR. MYERS: Yes, sir.

16 THE COURT: I really say nine and a half,
17 depending on what occurs with Ms. Blackburn.

18 THE CLERK: Raise your right hand.

19 PHILLIP GRIFFIN, after being duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat. State your full name
22 and spell your last name, please.

23 THE JUROR: Phillip Bernard Griffin,
24 G-R-I-F-F-I-N.

25 EXAMINATION

1 BY THE COURT:

2 Q Good evening, Mr. Griffin.

3 A Good evening.

4 Q Thank you very much for being with us this late
5 afternoon and thank you very much for your patience.

6 A Okay.

7 Q Did you get the opportunity to review that form?

8 A Yes.

9 Q Do you have it with you?

10 A Yes.

11 Q May see it, please?

12 A Yes, sir. (Witness complies.)

13 Q All right. And I see you have placed yourself in
14 Category Letter C.

15 A Right.

16 Q Is that correct? It's getting late.

17 A Right.

18 Q Did you also get the opportunity to review the
19 potential witness list?

20 A Yes, I did, Your Honor.

21 Q Did you know any of those individuals on that list?

22 A No, sir.

23 Q All right. Now, before I talk with you about a
24 Category C juror, I want to back up and explain a little
25 bit about what we talked about this morning.

1 In a trial such as this, a death penalty trial,
2 there could potentially be two parts of one trial. Do you
3 understand that?

4 A Yes, sir.

5 Q The first part would be guilt phase. If you were
6 selected as a member of a jury on a trial such as this,
7 the jury would first be focused on that first part with
8 whether or not the defendant were guilty or not guilty.
9 Do you understand that?

10 A Yes, sir.

11 Q Obviously if a defendant's found not guilty, there's
12 no need for that second part, there's no sentencing. Do
13 you understand that?

14 A Yes, sir..

15 Q It's only in the situation in which a defendant is
16 found guilty of murder that it is necessary to go to the
17 second phase or the penalty phase. Do you understand?

18 A Yes, sir.

19 Q Now, in most trials the judge does the sentencing.
20 There's a trial, the individual's found guilty, he's
21 brought around. I'm told aggravation and mitigation, good
22 or bad, and then I make a decision. But in this case, a
23 jury determines the appropriate punishment, life without
24 parole or the death penalty. Do you understand that?

25 A Yes, sir.

1 Q And as I understand it, you place yourself in that C
2 category. And that C category is a juror that, although a
3 defendant had been found guilty of murder, would not have
4 his mind made up in advance concerning punishment; is that
5 correct?

6 A That's correct, sir.

7 Q You would not be one of those jurors that say guilty
8 of murder, always the death penalty?

9 A No, sir.

10 Q Nor one of those jurors that say guilty of murder,
11 always a life sentence?

12 A No, sir.

13 Q You would be one of those jurors that would need to
14 hear all the facts and circumstances in aggravation, the
15 bad, and mitigation, the good, and would want to listen to
16 and would follow the law before you made your decision as
17 to what the appropriate punishment should be, correct?

18 A Yes, sir.

19 Q If the facts so warranted in a case of guilt of
20 murder, you could bring back a verdict of life without
21 parole, correct?

22 A Yes, sir.

23 Q Also, if the facts presented so warranted it, you
24 could bring back a verdict for the death penalty; is that
25 correct?

1 A Yes, sir.

2 Q Life or death depending on all the facts and
3 circumstances in the case; is that correct?

4 A That's correct, sir.

5 THE COURT: Thank you very much, Mr. Griffin. I
6 believe Mr. Tarr has a few questions for you, Mr. Griffin.

7 THE JUROR: Thank you.

8 DIRECT EXAMINATION

9 BY MR. TARR:

10 Q Mr. Griffin?

11 A How you doing?

12 Q I'm David Tarr. This is Robert Harte. We represent
13 Steven Barnes.

14 It sounds to me like you're the type of juror
15 that would want to hear everything there is to hear on
16 both sides of the case before you make up your mind?

17 A Correct, sir.

18 Q And you're also the type of juror, it sounds like,
19 who would listen to the law as the judge tells you it is
20 and apply that to the facts as you find them with your
21 fellow jurors?

22 A That's correct, sir.

23 Q There's just one thing I want to ask you about on
24 your questionnaire that you completed.

25 You listed that -- the question is: Have you or

1 any immediate family member or close personal friend ever
2 been the victim of a crime? And you checked yes, and you
3 said robbery/home.

4 A Yes, sir, that was --

5 Q Was that you or a family member or a friend?

6 A A family member.

7 Q Was it a burglary or was it a robbery? Because
8 there's a difference under the law. Do you know?

9 A I didn't know all the facts of it because it happened
10 out of state in another state. It happened in New York
11 and I was here at the time. It was my sister.

12 Q But as far as you know, did somebody just break in
13 somebody's house or did somebody come into their house and
14 rob people?

15 A They broke into their house when nobody was there.

16 Q Okay. And I think you checked off that no one was
17 arrested?

18 A I didn't follow up on that.

19 Q So you didn't know?

20 A No.

21 Q So the fact that a friend of yours was a victim of
22 robbery or burglary of their home, you'd still be able to
23 be fair and impartial as a juror in deciding Mr. Barnes'
24 guilt or innocence?

25 A Yes, sir.

1 MR. TARR: That's all I have, Your Honor.

2 THE COURT: Thank you, Mr. Tarr.

3 Solicitor.

4 CROSS-EXAMINATION

5 BY MR. MYERS:

6 Q Mr. Griffin, have you ever served on a jury before?

7 A No, sir.

8 Q Okay. The judge has explained the two-part process
9 to you, the first part is guilty or not guilty.

10 A That's right.

11 Q If the jury finds him guilty, then we go into the
12 second part and that's the punishment or the sentencing
13 phase. Do you understand that?

14 A Yes, sir.

15 Q You said you're in that C category. You could invoke
16 life without parole if that was warranted; is that right?

17 A Yes, sir.

18 Q Or you could vote for the death penalty if that would
19 be the appropriate sentence?

20 A Yes, sir.

21 Q I just have one more thing to ask you.

22 Our law says that if the jury determines the
23 death penalty is the appropriate sentence, then all 12
24 jurors would have to sign that, each juror would have to
25 sign that.

1 A Yes, sir.

2 Q The fact that our law requires a signature on a death
3 penalty verdict, would that interfere with your ability to
4 return the death penalty if you thought it was warranted?

5 A No, sir.

6 MR. MYERS: Thank you, sir.

7 THE JUROR: You're welcome.

8 THE COURT: Thank you very much, Mr. Griffin.

9 I'm going to ask you if you would please
10 momentarily just step out into the hallway for me. Thank
11 you.

12 (Juror leaves courtroom.)

13 THE COURT: Mr. Tarr.

14 MR. TARR: I believe he's qualified.

15 THE COURT: Solicitor.

16 MR. MYERS: He's qualified, yes, sir.

17 (Juror re-enters the courtroom.)

18 THE COURT: Mr. Griffin, I have found that you
19 are qualified to be a member of a pool of jurors from
20 which the trial jury will be selected.

21 I would ask you if you would please return to
22 the courtroom at 9:30 Thursday morning. If you would have
23 with you -- of course you could leave it in your
24 automobile, if you would please have you with, though,
25 supplies and clothing and toiletries that would last you

1 for a period of seven to ten days. If you'd please have
2 that with you.

3 Also, during this time you're away, do not
4 discuss this case with anyone. If anyone attempts to talk
5 with you about the case, please let me know immediately.

6 Do not watch, listen to, or read any news
7 reports about the case. Do not do any independent
8 investigation or any investigation on the Internet.

9 Do you have any questions?

10 THE JUROR: No, sir.

11 THE COURT: Thank you. Thank you very much
12 again for your time. We'll see you at Thursday morning at
13 9:30.

14 THE JUROR: All right.

15 THE COURT: Thank you.

16 (Juror leaves the courtroom.)

17 THE COURT: Anything further from the defense?

18 MR. HARTE: No, Your Honor.

19 How many jurors did you plan to qualify?

20 THE COURT: My goal is 42. That gives the
21 maximum for the strikes.

22 MR. HARTE: Plus three?

23 THE COURT: Plus three alternates. That is my
24 goal.

25 If we don't quite hit that goal, for example, if

1 we hit the high 30s and it's very late Wednesday night, we
2 may see how the strike goes and we may have to qualify a
3 few more Thursday morning.

4 MR. HARTE: The maximum you need is 39?

5 THE COURT: All right. That's right, the
6 maximum we need is 39.

7 MR. HARTE: That's if all strikes are used.

8 THE COURT: For example, we've got Ms. Blackburn
9 still in the pool.

10 MR. HARTE: Right.

11 THE COURT: I'm going to have the Clerk check
12 with her tomorrow. We're probably 50/50 at best with her
13 right now, at best.

14 MR. HARTE: Yes, sir.

15 THE COURT: And so I think we have 11 qualified.
16 That could put us at 10. But that appears to have been a
17 good number for this afternoon, I think.

18 Anything else?

19 MR. HARTE: No, sir.

20 THE COURT: I do have some documents back here
21 for you all that you handed up to me this morning that I
22 need to give you.

23 Solicitor, anything?

24 MR. MYERS: No, sir.

25 THE COURT: Thank you very much. 9:30 in the

1 morning. 9:30 in the morning.

2 Thank you very much. Hope you all have a
3 pleasant evening.

4 (The proceedings were concluded for the day and
5 reconvened on November 9, 2010.)

6 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

7 VOLUME 1 OF 9

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1 CERTIFICATE OF REPORTER

2
3
4 STATE OF SOUTH CAROLINA)5 COUNTY OF EDGEFIELD)
6
7

8 I, CAROL M. THUEME, RPR, Official Court Reporter for
9 the 11th Judicial Circuit of the State of South Carolina,
10 do hereby certify that the foregoing is a true, accurate
11 and complete Transcript of Record of the proceedings had
12 and evidence introduced in the trial of the captioned
13 case, relative to appeal, in the Court of General Sessions
14 for Edgefield County, South Carolina, on the 8th day of
15 November, 2010.

16 I do further certify that I am neither of kin,
17 counsel nor interest to any party hereto.
18

19
20 March 5, 2011

21 
22

23 CAROL M. THUEME, RPR
24 Circuit Court Reporter
25

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF EDGEFIELD —) 2005-GS-19-273
 2005-GS-19-457

STATE OF SOUTH CAROLINA)
)
 vs.) TRANSCRIPT OF RECORD
) VOLUME 2
 STEVEN LOUIS BARNES,)
 DEFENDANT)

November 9, 2010
Edgefield, South Carolina

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, JUDGE.

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EXHIBITS

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(There were no exhibits marked.)

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1 THE COURT: Mr. Tarr, Mr. Harte, anything before
2 we bring our next juror?

3 MR. HARTE: No, Your Honor.

4 THE COURT: All right. Solicitor.

5 MR. MYERS: No, sir.

6 THE COURT: All right. If you would please
7 bring us Juror No. 228, Joseph B. Rowland.

8 THE CLERK: Raise your right hand.

9 JOSEPH ROWLAND, after being duly sworn,
10 testified as follows:

11 THE CLERK: Have a seat. State your full name
12 and spell your last name, please.

13 THE JUROR: My name is Joseph Branham Rowland.
14 It's R-O-W-L-A-N-D.

15 EXAMINATION

16 BY THE COURT:

17 Q Good morning, Mr. Rowland. How are you?

18 A Fine.

19 Q Did you get the opportunity to review the form this
20 morning?

21 A Yes, sir.

22 Q Do you have that with you. Would you hand it up to
23 me, please?

24 A (Witness complies.)

25 Q Thank you very much.

1 All right. It appears that you have circled the
2 letter C; is that correct?

3 A Yes, sir.

4 Q And also signed the form and placed your juror number
5 there.

6 Momentarily I'm going to ask you about that
7 form, but before I do that, did you also get the
8 opportunity to review the potential witness list?

9 A Yes, sir, I did.

10 Q Did you know any of those individuals on that list,
11 Mr. Rowland?

12 A Yes, sir, I know several.

13 Q Could you share with us, please, the individuals that
14 you knew on that list?

15 A Patti Ruff and Emily Reinhart.

16 Q All right. Ms. Ruff and Ms. Reinhart?

17 A Yes, sir.

18 Q All right.

19 A Of course Ms. Newby. Tony Baughman.

20 Q All right.

21 A There's one other one with the sheriff's department
22 that I can't remember.

23 THE COURT: Do you have a copy of the list,
24 Madam Clerk?

25 THE CLERK: Yes, sir.

1 THE COURT: Would you hand it to Mr. Rowland?

2 (Clerk complies.)

3 BY THE COURT:

4 Q Does that refresh your memory?

5 A Randy Doran.

6 Q What was the other one?

7 A Randy Doran.

8 Q All right. The fact that you -- is it a personal
9 relationship you have with any of these individuals or --

10 A No, sir, some are working relationships and others
11 just casual.

12 Q All right. And what type of -- can you describe that
13 working relationship and who that's with?

14 A Yes, sir. Ms. Ruff and Ms. Reinhart, I worked at
15 SLED and they're SLED agents.

16 Q All right. You worked there in the past?

17 A Yes, sir.

18 Q And what period of time did you work at SLED?

19 A I retired in 2001 and I was at SLED for ten years
20 prior to that.

21 Q All right. So about '91 to 2001?

22 A Yes, sir.

23 Q And what position did you hold with SLED during that
24 period of time?

25 A I was a narcotics investigator and also an alcohol

1 enforcement investigator.

2 Q All right. Then prior to being with SLED, what was
3 your occupation?

4 A I was with the Highway Patrol.

5 Q With the Highway Patrol?

6 A Yes, sir.

7 Q And how long were you with the Highway Patrol?

8 A Fifteen years.

9 Q All right. Well, let's break that down just a little
10 bit.

11 The fact that you know Ms. -- I believe it's
12 Lieutenant Reinhart, I'm not sure, and Ms. Ruff, the fact
13 that you know them and have worked with them in the past,
14 could you still be a fair and impartial juror to both
15 Mr. Barnes and the State in this case?

16 A Yes, sir.

17 Q And the fact that you were previously employed with
18 the State Law Enforcement Division in narcotics and
19 alcohol enforcement and previously were a South Carolina
20 Highway Patrol officer, could you still be a fair and
21 impartial juror to both Mr. Barnes and the State?

22 A Yes, sir.

23 Q And I believe you indicated you knew some of the
24 other individuals on that list. Who were they?

25 A Tony Baughman I just know casually as a local person.

1 Ms. Newby and Randy Doran.

2 Q All right. And the fact that you know Mr. Doran,
3 Mr. Baughman, and Ms. Newby, could you still be a fair and
4 impartial juror to both the defense and the State in this
5 case?

6 A Yes, sir.

7 Q And I understand -- I believe I've heard this
8 previously -- that Mr. Doran is the chief investigating
9 officer on the case; is that correct?

10 If that is correct, the fact that Deputy Doran
11 is the chief investigating officer on the case, could you
12 still be a fair and impartial juror to both the State and
13 the defense in this case?

14 A Yes, sir.

15 Q Would that cause you any problem, any concern?

16 A No, sir.

17 Q All right. Mr. Rowland, I want to back up just a few
18 minutes to a little bit about what we discussed yesterday
19 morning.

20 As you recall, I told the entire jury panel that
21 this could potentially be a trial with two parts. You
22 understand that?

23 A Yes, sir.

24 Q The first part of the trial the jury would be solely
25 focused on the issue of whether or not the defendant were

1 guilty or not guilty. You understand that?

2 A Yes, sir.

3 Q Obviously if the defendant is found not guilty of
4 murder, there is no need for a penalty trial. Not guilty
5 of murder, that would end the case. Do you understand
6 that?

7 A Yes, sir.

8 Q It's only in those situations in which a defendant is
9 found guilty of aggravated murder in which you would even
10 have the necessity to have a penalty phase. You
11 understand?

12 A Yes, sir.

13 Q Now, you placed yourself in the category of jurors
14 that would fit Category C. That is the type of juror that
15 although the guilt of the defendant had been determined,
16 the defendant had been found guilty of murder, that that
17 juror would not have his mind made up in advance
18 concerning punishment.

19 A Yes, sir.

20 Q Does that describe you, Mr. Rowland?

21 A Yes, sir, it does.

22 Q That's the type of juror that would need to hear all
23 the facts and circumstances; any facts in aggravation,
24 which means bad; or any facts in mitigation, which means
25 good -- in other words, any bad or any good -- before they

1 would make their decision as to what the appropriate
2 punishment was. Does that describe you, Mr. Rowland?

3 A Yes, sir.

4 Q Would you want to hear, would you listen to and would
5 you consider all those facts, both aggravation and
6 mitigation, before you made up your mind?

7 A Yes, sir, I would.

8 Q That juror also would want to listen to and follow
9 the law as the judge instructed on the law before he could
10 make his decision as to what the appropriate punishment
11 was. Would that describe you?

12 A Yes, sir.

13 Q And you understand in a case such as this if a
14 defendant were found guilty of murder, it's the jury that
15 determines the appropriate sentence, life or death. You
16 understand that?

17 A Yes, sir.

18 Q Not the judge, it's the jury.

19 A Yes, sir.

20 Q If the facts presented so warranted in a case of
21 murder, would you have that open mind and could you bring
22 back a verdict of life without parole as far as the
23 appropriate punishment?

24 A Yes, sir.

25 Q Also, if the facts warranted, could you bring back a

1 verdict of the death penalty?

2 A Yes, sir.

3 Q Life or death, you could make either one of those
4 decisions based on all the facts and all the circumstances
5 and the law as I instructed you on the law, correct?

6 A Yes, sir, correct.

7 Q And you would not make your decision as to what the
8 appropriate punishment would be until you've heard all
9 those facts and circumstances?

10 A Yes, sir.

11 Q Heard the charge on the law?

12 A Yes, sir.

13 Q And would apply and follow the law as I instruct it?

14 A Yes, sir.

15 THE COURT: Thank you very much, Mr. Rowland.

16 These attorneys may have some questions for you.

17 Gentlemen, I apologize. Who -- all right.

18 Solicitor.

19 DIRECT EXAMINATION

20 BY MR. MYERS:

21 Q Mr. Rowland, because the death penalty is involved is
22 why we get to talk with the jurors some.

23 Mr. Rowland, the judge will tell the jury in the
24 first part of the case that their sole job is to listen to
25 the evidence, follow the law, and reach a verdict of

1 guilty or not guilty. Could you follow those
2 instructions?

3 A Yes, sir.

4 Q Also, the penalty or punishment is in no way involved
5 in the first part. Could you follow that?

6 A Yes, sir.

7 Q If the defendant were found guilty, then and only
8 then would we go into that second part, the penalty part
9 or the sentencing part.

10 A Yes, sir.

11 Q The jury should go into that second part with an open
12 mind as to what the punishment is just they like went into
13 the first part with an open mind as to guilt or innocence.
14 Could you do that?

15 A Yes, sir.

16 Q And that second part, Mr. Rowland, would be for the
17 jury to hear additional testimony. It could be good
18 things about the defendant, it could be bad things about
19 the defendant, maybe some more about the crime. And after
20 they've heard all of that, the judge would charge the jury
21 what the law is. You could follow that law as he charged
22 it to you?

23 A Yes.

24 Q He would instruct the jury that they're not to make
25 up their minds as to what the punishment should be until

1 they've heard everything. Could you follow that?

2 A Yes, sir.

3 Q He would give the jury a list of some aggravating
4 circumstances that may be involved in the case and he
5 would tell them about it. He would also give the jury a
6 list of some mitigating circumstances and he would
7 instruct the jury on that. Could you consider all that in
8 reaching your verdict, aggravation and mitigation?

9 A Yes, sir, I would.

10 Q And is it fair to say, Mr. Rowland, that you would
11 make up your mind only after you've heard everything in
12 that second part also?

13 A That's correct, yes, sir.

14 Q Now, Mr. Rowland, in South Carolina, when a jury
15 reaches a verdict of guilt, only the foreman must sign
16 that verdict, even though all 12 must agree to it. But in
17 the penalty phase, if the jury determines that the death
18 penalty is the appropriate sentence, all 12 jurors would
19 have to sign that verdict.

20 The fact that our law would require a signature
21 on a death penalty verdict, would that interfere with your
22 ability to return the death penalty if you thought that
23 was appropriate?

24 A No, sir.

25 MR. MYERS: Thank you. That's all we have.

1 THE COURT: Thank you, Solicitor. Mr. Harte.

2 CROSS-EXAMINATION

3 BY MR. HARTE:

4 Q Good morning, Mr. Rowland.

5 A Good morning.

6 Q I'm Bob Harte. David Tarr and I represent
7 Mr. Barnes.

8 A Yes, sir.

9 Q Do you have any position that gives you the power of
10 arrest at this time?

11 A No, sir.

12 Q I note from your sheet, information sheet, that you
13 have a son who is with the North Augusta Department of
14 Public Safety.

15 A Yes, sir.

16 Q And he's presently employed there?

17 A Yes, sir.

18 Q You have a brother and I believe his name is Jody?

19 A Yes, sir.

20 Q Jody used to be with State Alcohol?

21 A Yes, sir, Aiken County.

22 Q And then he went to Aiken County as a chief deputy
23 and now he's got the wonderful job of being the security
24 manager of the Augusta National Country Club.

25 A I'm not sure how good the job is.

1 Q I would have thought it would be a good job.

2 And this also indicates that your wife is an
3 administrator with the Federal Bureau of Prisons?

4 A Not presently. She has been.

5 Q Not presently. When was that?

6 A Mr. Harte, it's been several years ago.

7 Q Okay.

8 A Right after we first came here, whenever that was.

9 Q Now, you left SLED in 2001?

10 A Yes.

11 Q What part of 2001, do you recall?

12 A July 1st.

13 Q Do you know anything about this case?

14 A No, sir.

15 Q Haven't heard it discussed or anything like that?

16 A No, sir.

17 Q In light of your extensive background in law
18 enforcement and your connections, can you be certain that
19 you would not give more weight to a police officer's
20 testimony than another, especially an officer that you
21 know?

22 A Yes, sir, I believe I can.

23 MR. HARTE: Thank you.

24 THE COURT: Thank you very much, Mr. Rowland.

25 Would you step out into the hallway for me with

1 the bailiff momentarily?

2 THE JUROR: Yes, sir.

3 (Juror leaves courtroom.)

4 THE COURT: Thank you.

5 All right. Solicitor.

6 MR. MYERS: I believe he's qualified, sir.

7 THE COURT: Mr. Harte.

8 MR. HARTE: Your Honor, I'd move to have
9 Mr. Rowland excused for cause on the grounds of his
10 extensive connection with law enforcement would disqualify
11 him. Not disqualify him but would create cause that he
12 should be excused from this jury.

13 THE COURT: All right. I would deny that
14 motion. He is under oath. He's clearly stated that he
15 could be a fair and impartial juror. Further, he wouldn't
16 give any greater weight to the testimony of a law
17 enforcement officer or a police officer, I forget exactly
18 how it was phrased, because of his background in law
19 enforcement.

20 I'd further note that he's been out of law
21 enforcement about nine years, knows nothing about this
22 case.

23 Also I would note on his questionnaire there is
24 no indication that, as you asked, he has no powers of
25 arrest. He is not a member of any law enforcement

1 organizations according to his questionnaire, so I would
2 deny that motion. I believe he is qualified.

3 If you'd bring Mr. Rowland in for me, please.

4 (Juror re-enters the courtroom.)

5 THE COURT: Mr. Rowland, you may stand right
6 there for me momentary, sir.

7 I find that you are qualified to be a member of
8 a panel of jurors from which the trial jury will be
9 selected.

10 THE JUROR: Yes, sir.

11 THE COURT: What that means for you, Mr.
12 Rowland, is I would ask you if you'd please return to the
13 courtroom at 9:30 Thursday morning. If you would have
14 with you in your automobile clothing, toiletries, supplies
15 to supply you for, say, a seven to ten-day stay. I'm not
16 sure if it would be seven to ten days, but preparation is
17 the key to victory in that regard, if you would have that.

18 During this time between now and Thursday and
19 throughout the course of your jury duty, do not discuss
20 this case with anyone. If anyone tries to talk with you
21 about the case, please let me know immediately.

22 Do not watch, listen to, or read any news
23 reports about the case. Do not do any independent
24 investigation or any investigation on the Internet.

25 Any questions?

1 THE JUROR: No, sir.

2 THE COURT: Thank you very much. We'll see you
3 Thursday morning at 9:30.

4 THE JUROR: Yes, sir.

5 (Juror leaves the courtroom.)

6 THE COURT: If you'd please bring to the
7 courtroom, Mr. Bailiff, Juror No. 33, Alexis C. Brunson.

8 THE CLERK: Raise your right hand.

9 ALEXIS BRUNSON, after being duly sworn,
10 testified as follows:

11 THE CLERK: Have a seat. State your full name
12 and spell your last name, please.

13 THE JUROR: Alexis Sierra Brunson,
14 B-R-U-N-S-O-N.

15 EXAMINATION

16 BY THE COURT:

17 Q All right. You are Ms. Brunson?

18 A Yes, sir.

19 Q Ms. Brunson, good morning.

20 A Good morning.

21 Q How are you?

22 A Good.

23 Q Good. I'm going to ask you first, did you get an
24 opportunity to review the form?

25 A In the back?

1 Q Yes, ma'am.

2 A Yes, sir.

3 Q Do you have that with you?

4 A Yes, sir.

5 Q May I see it, please?

6 A (Juror complies.)

7 Q Thank you very much, Ms. Brunson.

8 A You're welcome.

9 Q And I see you have indicated and you have circled the
10 letter C; is that correct?

11 A Yes, sir.

12 Q And I'm going to talk with you about that in just a
13 few minutes, but first I also want to ask, did you get the
14 opportunity to review the potential witness list?

15 A Yes, sir.

16 Q Did you know any of those individuals on that list?

17 A No.

18 Q None whatsoever?

19 A No, sir.

20 Q Thank you very much.

21 Now, I want to go back to a few things I said to
22 the entire jury panel yesterday morning before I asked you
23 about this form that you've handed up.

24 You understand in a case such as this, a death
25 penalty case, there could potentially be two parts of this

1 one trial. Do you understand that?

2 A Yes, sir.

3 Q The first part is known as or called the guilt phase.
4 The jury -- if you're selected on a jury of a trial such
5 as this, the jury's first -- the guilt phase would be
6 focused on determining whether the defendant were guilty
7 or not guilty. You understand that?

8 A Yes, sir.

9 Q If a defendant were found not guilty of the crime of
10 murder, there would be no need for the penalty phase. Do
11 you understand that?

12 A Yes, sir.

13 Q So it's only in the situation in which a defendant is
14 found guilty for murder in which the penalty phase, the
15 sentencing phase is necessary. Do you understand?

16 A Yes, sir.

17 Q And we have to ask you these questions about the
18 death penalty now because we don't have an opportunity to
19 do that later. You understand? So don't imply or infer
20 anything about the guilt of the defendant just because
21 we're asking you about the death penalty now. Do you
22 understand?

23 A Yes, sir.

24 Q Now, you placed yourself in that category of jurors,
25 that C category. As I understand that C category, that's

1 the type of juror that although a defendant had been found
2 guilty of murder, she would not have her mind made up as
3 to what the appropriate punishment would be at that time;
4 is that correct?

5 A Yes, sir.

6 Q That you would be that type of juror who would need
7 to hear all the facts and circumstances both in
8 aggravation, which kind of means bad; and mitigation,
9 which means good; the good and the bad of the defendant
10 and of the crime before you made up your mind as to what
11 the appropriate punishment should be. Does that describe
12 you, Ms. Brunson?

13 A Yes, sir.

14 Q You would be that type of juror that would want to
15 listen and would follow the law as I told you the law was;
16 is that correct?

17 A (Juror nodding.)

18 Q Is that correct?

19 A Yes, sir.

20 Q All right. I have to get it on the record.

21 A Oh, I'm sorry.

22 Q This lady is taking down everything I say and
23 everything you say.

24 And you would want to hear all that and listen
25 to all that before you could make your decision regarding

1 what the appropriate punishment should be; is that
2 correct?

3 A Yes, sir.

4 Q Now, you know there are only one of two punishments
5 that the jury can return if there is a penalty phase,
6 either a life sentence or the death penalty. Do you
7 understand that?

8 A Yes, sir.

9 Q If the facts so warranted, could you bring back a
10 verdict of life without parole?

11 A Yes, sir, I could.

12 Q And if the facts so warranted, could you bring back a
13 verdict for the death penalty?

14 A Yes, sir.

15 Q So it would be life or death depending on all the
16 facts and circumstances and the law as I tell you the law
17 is; is that correct?

18 A Yes, sir.

19 THE COURT: Thank you very much, Ms. Brunson.
20 Mr. Tarr?

21 MR. TARR: Yes, Your Honor.

22 THE COURT: Mr. Tarr has a few questions for
23 you, Ms. Brunson.

24 DIRECT EXAMINATION

25 BY MR. TARR:

1 Q My name is David Tarr. This is Bob Harte. We're
2 representing Steven Barnes. I just have a couple of quick
3 questions for you.

4 You indicated that you're the type of juror that
5 needs to hear both sides of the case before you would know
6 what your decision would be?

7 A Yes, sir.

8 Q Whether it would be guilty or not guilty?

9 A Yes.

10 Q Or life without parole or the death penalty?

11 A Yes.

12 Q So you would want to hear everything that the State
13 had to tell you about the bad things, correct?

14 A Yes.

15 Q And everything that we might want to tell you about
16 things that might make it not so bad?

17 A Yes.

18 Q And you feel like you could do that and be fair and
19 impartial to both the State and the defense?

20 A Sure can.

21 Q I see you've lived in Edgefield for -- you're 21
22 years old?

23 A Yes, sir.

24 Q And you've been here 19 years?

25 A Give or take. I moved away to North Carolina for,

1 like, a couple of years, but around that time.

2 Q I see some of your hobbies are watching football and
3 sleeping?

4 A Yes, sir.

5 Q My problem is whenever I'm watching football I'm
6 usually on the couch and end up falling asleep.

7 A Yes, sir.

8 MR. TARR: That's all I have, Your Honor.

9 THE COURT: Thank you very much, Mr. Tarr.
10 Solicitor.

11 MR. MYERS: Thank you, Your Honor.

12 CROSS-EXAMINATION

13 BY MR. MYERS:

14 Q Ms. Brunson, have you ever served on a jury panel
15 before?

16 A No, sir.

17 Q Ms. Brunson, you realize that the judge said that
18 this case could involve two parts?

19 A Yes, sir.

20 Q The guilt or innocence part and life in imprisonment
21 or the death penalty. Do you understand?

22 A Yes, sir.

23 Q Ms. Brunson, in that first part, if the jury decides
24 from the evidence that the defendant is guilty, all 12
25 would have to agree that he's guilty, but only the

1 foreperson would sign that verdict. Do you understand
2 that?

3 A Yes.

4 Q And if he were found guilty we'd go into that second
5 part, the sentencing part. And in this part, if the jury
6 decides that the death penalty is the correct sentence,
7 all 12 would have to agree just like in the first part,
8 but in the second part if all 12 agree that the death
9 penalty is the right sentence, every juror would have to
10 sign that verdict.

11 The fact that our law requires you to sign your
12 name to the death penalty sentence, would that interfere
13 with your ability to return the death penalty if you
14 thought that was correct?

15 A No, sir, it wouldn't interfere.

16 MR. MYERS: Thank you, ma'am.

17 THE JUROR: You're welcome.

18 THE COURT: Thank you very much, Ms. Brunson.

19 Would you mind stepping around to the hallway
20 for me just momentarily with the bailiff?

21 (Juror leaves courtroom.)

22 THE COURT: Mr. Tarr.

23 MR. TARR: I believe she's qualified.

24 THE COURT: Solicitor.

25 MR. MYERS: Yes, sir.

1 THE COURT: Please bring Ms. Brunson back out
2 for me, please.

3 (Juror re-enters the courtroom.)

4 THE COURT: Ms. Brunson, I have found that you
5 are qualified to be a member of a pool of jurors from
6 which the jury panel will be selected.

7 What that means for you is I'm going to ask you
8 to please return to the courtroom at 9:30 Thursday
9 morning.

10 THE JUROR: Yes, sir.

11 THE COURT: If you'll have with you, and you can
12 certainly leave it in your automobile, if you'd have with
13 you clothing and toiletries for a stay with us of about
14 seven to ten days. It may not take that long, but I'm
15 just saying seven to ten days so you'll have adequate
16 supplies, if necessary.

17 During this time and throughout the course of
18 your jury service, do not discuss this case with anyone.
19 If anyone tries to talk with you about the case, please
20 let me know immediately.

21 Do not watch, listen to, or read any news
22 reports about the case. Do not do any independent
23 investigation or any investigation on the Internet
24 concerning the case.

25 Do you have any questions?

1 THE JUROR: No, sir.

2 THE COURT: All right. We'll see you promptly
3 at 9:30 Thursday morning.

4 THE JUROR: Yes, sir.

5 THE COURT: Thank you very much.

6 (Juror leaves the courtroom.)

7 THE COURT: Madam Clerk, my list indicated that
8 Ms. Brunson was a white female. She appears to be an
9 African-American female. I assume that was just a
10 misprint. I would like that corrected, however, on the
11 strike list.

12 Any objections to that, Mr. Tarr, Solicitor?

13 MR. TARR: No, Your Honor.

14 MR. MYERS: No, sir.

15 THE COURT: All right. If you would please
16 bring us Tasha L. Robertson, No. 224.

17 THE CLERK: Raise your right hand, please, and
18 place your left hand on the Bible.

19 TASHA ROBERTSON, after being duly sworn,
20 testified as follows:

21 THE CLERK: Have a seat. State your full name
22 and spell your last name, please.

23 THE JUROR: My name is Tasha Robertson.

24 EXAMINATION

25 BY THE COURT:

1 Q Good morning, Ms. Robertson.

2 A Good morning, sir.

3 Q Did you have the opportunity to review the form?

4 A Yes, sir.

5 Q Do you have that with you? May I see it, please?

6 A Yes, sir. (Juror complies.)

7 Q Thank you.

8 Now I note on the form that you have indicated
9 that you would be Juror Letter A; is that correct?

10 A Yes, sir.

11 Q Now Juror Letter A is the type of juror that once the
12 crime of murder has been proved by the State, that that
13 juror, in considering punishment, feels that she is
14 required to give the death penalty in each and every case.
15 Does that describe you?

16 A Yes, sir. I didn't really understand what --

17 Q Ma'am, say it again. I can't quite hear you.

18 A I didn't understand what you're really asking me.

19 Q All right. So that may not describe you, you just
20 didn't quite understand the form?

21 A Well, does it really mean that like no matter what
22 the death penalty still can be --

23 MR. HARTE: Your Honor, I'm sorry, I can't hear
24 her.

25 THE COURT: All right.

1 BY THE COURT:

2 Q If you'd just speak up a little bit for us, please.

3 MR. HARTE: I will step up.

4 THE COURT: You may move forward, certainly, Mr.
5 Harte.

6 BY THE COURT:

7 Q Speak up so the attorney and the Solicitor can hear
8 you and the Court can hear you, please, Ms. Robertson.

9 A Does A means that no matter what the circumstances,
10 the death penalty still can be required?

11 Q All right. Well, let me talk with you about this
12 form a little bit. And if you'd look at me when we talk I
13 think I could hear you a little bit better, and Mr. Harte,
14 you can move around if you need to, and Solicitor.

15 Experience tells us in these type cases that
16 most jurors fit in one of three categories. We've kind of
17 learned that over the years from experience, all right?

18 The first category, the A category, is a juror
19 who believes that once a person has been convicted of
20 murder, I'm going to sentence that person to death in all
21 cases. That's Category A.

22 Category B is that type of juror that believes
23 that although a person has been convicted of murder,
24 regardless of the circumstances I'm going to always
25 sentence that person to a life sentence. That's Category

1 B.

2 So A is always death, B is always life.

3 And there is a C category. And that C category
4 is the juror that although an individual has been
5 convicted of murder in the first phase, the guilt phase,
6 that that juror has not made up his or her mind as to what
7 the sentence should be, what the punishment should be.

8 The C juror is the type of juror that wants to
9 hear additional evidence, additional facts; facts in
10 aggravation, which means bad; or facts in mitigation,
11 which means good; anything bad that additionally the State
12 brings forward or anything good in mitigation that the
13 defense may bring forward before that juror makes up her
14 mind about what punishment should this defendant get for
15 this crime. Do you understand that?

16 A Yes, sir.

17 Q And that juror's not going to make up his or her mind
18 until she's heard all that, you see?

19 A Yes.

20 Q And then they've got one or two choices on the
21 sentencing: Either a life sentence or the death penalty.
22 So you have these three categories: A, B, and C.

23 A Okay.

24 Q The first category again is the person's convicted of
25 murder, always sentence that individual to death.

1 The second category is a person's convicted of
2 murder, always sentence that individual to a life
3 sentence.

4 The C category is that juror that even though
5 the person's been convicted of murder, they haven't made
6 up their mind until they've heard all the additional facts
7 and circumstances and the law as the judge tells them the
8 law is and they can vote to sentence a person to life or
9 death depending on those facts and circumstances. Do you
10 understand?

11 A Yes, sir.

12 Q You further understand in a trial such as this, it
13 could be a two-part trial. The first part is to determine
14 whether or not the defendant's guilty or not guilty of
15 murder. Obviously if a person is found not guilty of
16 murder, there's no need for punishment. Do you understand
17 that?

18 A Yes.

19 Q The trial would end at that point.

20 Only if a person's found guilty of murder do we
21 go to that second phase where the jury determines what is
22 the appropriate sentence, all right?

23 A Yes, sir.

24 Q Now I don't know how good my explanation is or how
25 bad my explanation is, it could be good or bad. Do you

1 have any questions about it, though?

2 A Well, I would like to hear a little about the case.

3 Q All right. And when you say you'd like to hear more
4 about the case, and I'm not asking you have you made up
5 your mind or anything like that, sitting here right now,
6 you have not made up your mind as to whether or not the
7 defendant is guilty or not guilty, have you?

8 A No, sir.

9 Q And you want to hear all the evidence, all the
10 testimony, and the instruction on the law before you
11 decide whether the defendant is guilty or not guilty; is
12 that correct?

13 A Yes, sir.

14 Q And if I tell you the law is the State has the burden
15 of proving its case beyond a reasonable doubt, that the
16 defendant is presumed to be innocent, that he has no
17 burden of proof, that he is not required to prove himself
18 innocent, you would follow my instructions, wouldn't you?

19 A Yes, sir.

20 Q So on that guilt phase, there's no reason why you
21 would not be a fair and impartial juror for both the State
22 and the defense; is that correct?

23 A Yes, sir.

24 Q All right. And then in that penalty phase, tell me
25 again, have you made up your mind as to what the

1 appropriate punishment should be?

2 A Well, if a person committed murder and a kidnapping
3 and all that, sir, I really think they need the --

4 Q They need what?

5 A The death penalty. I would think they need it.

6 THE COURT: All right. Thank you very much for
7 your responses, Ms. Robertson.

8 Who's first? Solicitor, any questions?

9 MR. MYERS: They're first.

10 THE COURT: All right. They say you're first.

11 MR. HARTE: No, no, David did the last one.

12 MR. MYERS: We're odd and this is the 15th
13 juror.

14 MR. HARTE: That's right, you and I are odd.

15 MR. MYERS: We're even.

16 MR. HARTE: He went first yesterday. That makes
17 him odd.

18 THE COURT: Madam Court Reporter, would you go
19 back and see who first interviewed -- I apologize, I
20 haven't kept up with it -- who first interviewed Ms. --

21 MR. HARTE: Your Honor, I had Mr. Rowland
22 because I questioned him extensively about his connection
23 with law enforcement. That was No. 13 and that was after
24 Donnie had questioned Mr. Rowland. Then Ms. Brunson was
25 the last juror and Mr. Tarr went first and the Solicitor

1 went second.

2 MR. MYERS: That's all right. I'll go first.

3 THE COURT: All right. Thank you for that
4 mediation there, gentlemen.

5 DIRECT EXAMINATION

6 BY MR. MYERS:

7 Q Ms. Robertson, have you ever served on a jury panel
8 before?

9 A No, sir, it's my first time.

10 Q We get to talk with you because this case could
11 involve the death penalty. Do you understand that?

12 A Yes, sir.

13 Q Now, if someone is convicted of murder, then we'll
14 have to go into the second part of the case. Do you
15 understand that?

16 A Yes, sir.

17 Q That second part of the case is for the jury to
18 listen to additional testimony, things they hadn't heard
19 in the first part. Do you understand that?

20 A Yes, sir.

21 Q And the second part of the case is to tell the jury
22 some more about the defendant, that the judge calls it
23 aggravating evidence, that's something bad; mitigating
24 evidence, maybe something good. Would you have to listen
25 to all of that evidence before you decided what the right

1 punishment would be?

2 A Yes, sir.

3 Q Now, would you have made up your mind before we got
4 into that second phase on what the punishment should be
5 without having heard this evidence?

6 A No, sir.

7 Q Now, the judge would tell the jury, We're going into
8 that second part of the trial, to listen to all the
9 testimony and not to make up their minds. Would you
10 follow that?

11 A Yes, sir.

12 Q Ma'am?

13 A Yes, sir.

14 Q And after they had heard everything in the second
15 phase, the judge would tell them what the law is, and then
16 after that he would tell them, Now decide what the
17 punishment is. Could you follow that?

18 A Yes, sir.

19 Q Now, I was a little confused because I couldn't hear
20 you back there and I don't know which category you fit in
21 of those three categories. Do you think that everybody
22 convicted of murder should automatically be sentenced to
23 life imprisonment?

24 A Could you repeat that, sir? Could you repeat that?

25 Q I'm sorry.

1 A Could you repeat that, please?

2 Q Yes, ma'am. If someone is convicted of murder,
3 without going into that second part, do you think
4 everybody convicted of murder should always get life
5 imprisonment?

6 A No, sir.

7 Q Do you think that everybody convicted of murder
8 should always get the death penalty?

9 A Yes, sir.

10 Q Ma'am?

11 A Yes, sir.

12 MR. MYERS: Thank you, ma'am.

13 MR. HARTE: No questions.

14 THE COURT: All right. Thank you.

15 If you would please step to the hallway for me
16 momentarily.

17 Let me ask you this: Any arguments on this
18 particular juror?

19 MR. MYERS: No, sir.

20 MR. HARTE: No, sir.

21 THE COURT: All right. Ms. Robertson, I'm going
22 to excuse you from your jury service for the remainder of
23 the week.

24 THE JUROR: Yes, sir.

25 THE COURT: You do not have to come back at all.

1 I want to thank you very much for being with us
2 this week, for being with us this morning.

3 Do not discuss your jury service with anyone,
4 all right?

5 THE JUROR: Yes, sir.

6 THE COURT: Thank you very much. You're now
7 excused.

8 THE JUROR: Thank you, sir.

9 (Juror leaves the courtroom.)

10 MR. MYERS: Your Honor, just for the record --
11 I'm sorry.

12 THE COURT: Yes, sir, Solicitor.

13 MR. MYERS: Just for the record, I didn't mind
14 going first because if she had said the same thing she
15 said to you I wouldn't object to her being disqualified,
16 but the first juror, I was the first one to go. That
17 gives me odd numbers. The next one is the second one.
18 I'm the first one that questioned Mr. Rowland, then Bob
19 questioned him. And then on Ms. Brunson, Mr. Tarr
20 questioned her and then I questioned her.

21 Now, I didn't mind going first on this one --

22 MR. HARTE: That's puts you back on first on 15.

23 THE COURT: Well, wait. Let the Solicitor
24 finish.

25 MR. MYERS: That's what I'm saying. I didn't

1 mind being first on 15, but who's going first next is my
2 question?

3 THE COURT: Well, here's what I thought. And
4 I'm going to appoint an arbitrator because obviously I
5 can't keep up with this math.

6 I thought the State went on the odd numbers --

7 MR. MYERS: All right.

8 THE COURT: Because you started out number one,
9 number one, the first juror, Ms. West -- now, that's what
10 I thought -- and that the defense always went first on the
11 even numbers.

12 So I guess what I'm saying is, Solicitor, you're
13 odd.

14 MR. MYERS: I'm odd. So they go next. Is that
15 right?

16 THE COURT: Sir?

17 MR. MYERS: They go next?

18 THE COURT: If I do my math right, they would go
19 first with Ms. Miller.

20 MR. HARTE: Maybe I don't understand --

21 MR. MYERS: That's right.

22 MR. HARTE: Can I say something?

23 THE COURT: Certainly.

24 MR. HARTE: I thought that the Solicitor was
25 saying that I should have gone first on No. 15.

1 MR. MYERS: I'm sorry. I just wanted to know if
2 you were going first next time.

3 THE COURT: I'm appointing Ms. Novashine as our
4 arbitrator and she has to keep up with who's on first.
5 And I think the odd Solicitor is on the odd numbers is
6 what I think.

7 MR. MYERS: I agree completely.

8 THE COURT: Now, what was y'all's position on
9 Ms. Robinson? If you'd place that on the record for me,
10 please, Mr. Harte.

11 MR. HARTE: I believe she's disqualified.

12 MR. MYERS: We agree.

13 THE COURT: All right. I believe she is
14 disqualified. She did circle Category A and said at least
15 once to the Court that she thought with murder and
16 kidnapping, the death penalty would be the sentence, the
17 appropriate sentence. And she also indicated an
18 affirmative response to a question of punishment, the
19 death penalty, as far as the Solicitor's question.

20 All right. If you'd bring us, please, No. 183,
21 Ms. Miller.

22 THE CLERK: Raise your right hand and place your
23 left hand on the Bible.

24 KANETTE MILLER, after being duly sworn,
25 testified as follows:

1 THE CLERK: Have a seat. State your full name
2 and spell your last name, please.

3 THE JUROR: Kanette V. Miller, M-I-L-L-E-R.

4 EXAMINATION

5 BY THE COURT:

6 Q Good morning, Ms. Miller.

7 A Good morning.

8 Q Would you look at me and speak with me a few minutes
9 and also keep your voice up so the attorneys can hear our
10 conversation?

11 A All right.

12 Q Thank you for being with us this morning.

13 Did you have the opportunity to review the form?

14 A Yes.

15 Q Do you have that with you? May I see it, please?

16 A Yes. (Juror complies.)

17 Q Thank you very much.

18 A Yes, sir.

19 Q All right. It appears you have placed yourself in
20 the C category; is that correct?

21 A Yes, sir.

22 Q And I'm going to talk with you about that in just a
23 few minutes.

24 Before I get to that, I'm to going ask you, did
25 you also have the opportunity to review the potential

1 witness list?

2 A Yes, sir.

3 Q Did you know anyone on that list?

4 A Not that I know of.

5 Q All right. Thank you very much.

6 Before I ask you about the category of juror
7 that you placed yourself in, I want to revisit a little
8 bit about what we talked about yesterday morning with the
9 entire panel here.

10 You understand in a case such as this, there
11 could be two parts of one trial. Do you understand that?

12 A Yes, sir.

13 Q In the first part, a jury would only be focused on
14 the issue of whether or not the defendant were guilty or
15 not guilty. Do you understand that?

16 A Yes, sir.

17 Q Obviously if a defendant were found not guilty of the
18 crime of murder, there'd be no need for a penalty phase.
19 Do you understand that?

20 A Yes, sir.

21 Q So then there would only be one phase of this trial.
22 You understand that?

23 A Yes, sir.

24 Q It's only in the situation in which a jury found an
25 individual guilty of murder that it would be necessary to

1 go to the sentencing phase. Do you understand?

2 A Yes, sir.

3 Q In most cases the judge does the sentencing. In this
4 case the jury does the sentencing. Do you understand?

5 A Yes, sir.

6 Q And if you get to a penalty phase, there's one of two
7 choices: Either life without parole or the death penalty.
8 Do you understand that?

9 A Yes, sir.

10 Q Now you placed yourself in that category, that C
11 category of jurors, and as I understand that category,
12 that is those jurors that even though they had made a
13 decision that an individual was guilty of murder, they
14 would not automatically have their mind made up as to what
15 the appropriate punishment would be. Does that describe
16 you?

17 A Yes, sir.

18 Q That juror is the type of juror that would want to
19 hear all the facts and circumstances, any facts and
20 circumstances in aggravation, which is something that
21 worsens the enormity of the crime; or mitigation,
22 something that lessens the culpability of the defendant or
23 the enormity of the crime, the good and bad, before they
24 made the decision as to what the appropriate punishment
25 would be. Does that describe you?

1 A Yes, sir.

2 Q So just because an individual's been found guilty of
3 murder, you would not have already automatically made up
4 your decision as to what the appropriate punishment would
5 be?

6 A No, sir.

7 Q And you would not have made that decision until
8 you've heard all the evidence and testimony in that
9 penalty phase and the instruction on the law by the Court
10 and then and only then make your decision as to what the
11 appropriate punishment would be?

12 A Yes, sir.

13 Q Is that correct?

14 A Yes.

15 Q Any reason you feel like you would not be a fair and
16 impartial juror to both the defendant, Mr. Barnes, and the
17 State in the guilt phase of the trial?

18 A I was just --

19 Q Say it again?

20 A I was just -- there's an issue I wanted to talk to
21 you about that I didn't talk to you about yesterday.

22 Q All right.

23 A And what it is is my pregnancy, I've got gestational
24 diabetes.

25 Q Your pregnancy?

1 A Yes.

2 Q All right. I didn't know you were pregnant. I
3 apologize.

4 A Yes, sir. That's all right.

5 But I have to go to the doctor like once a week.

6 Q All right.

7 A And they told me to go ahead and tell you in here.

8 Q All right.

9 A Because I didn't tell you yesterday because it wasn't
10 one of the exemptions, so I just didn't say anything
11 yesterday, but I mean --

12 Q All right. When would you have to go to the doctor?

13 A Well, I've got a doctor's appointment tomorrow and
14 then he'll tell me when I go the next week.

15 Q All right. And is it a weekly thing?

16 A Yes, sir.

17 Q So that your next doctor's appointment -- let's say
18 tomorrow -- I lose track of time real quick, but
19 tomorrow's Wednesday?

20 A Wednesday, yes, sir.

21 Q Well, let's say if tomorrow's Wednesday and your next
22 doctor's appointment would be Thursday or Friday of the
23 next week, would that be an appropriate time frame?

24 A That's fine. If we can work around your --

25 Q All right. How long do your doctor's appointments

1 take?

2 A It depends on whether he's there when I get there. I
3 mean when he sees me I'm --

4 Q What else would he be doing?

5 A Delivering babies.

6 Q All right. I understood that.

7 Where is your doctor at?

8 A Over in Augusta.

9 Q In Augusta?

10 A Yes, sir.

11 Q Down around MCG or the university?

12 A The university, yes, sir.

13 Q All right. Is that where you're going, to the
14 university?

15 A Yes, sir.

16 Q Well, do you feel all right?

17 A Yes, sir, I feel all right.

18 Q Do you feel like you could physically serve as a
19 member of this jury?

20 A Yes, sir.

21 Q Well, I think that could be worked out if your
22 schedule would be such that your appointment would be,
23 say, Thursday or Friday of next week. I think we could
24 work that out if we could get it as early as we could in
25 the day or something like that. I'll talk with the

1 attorneys about that also outside your presence.

2 A All right.

3 Q But given that fact, you know of no reason you would
4 not be a fair and impartial juror for both Mr. Barnes and
5 the State in that guilt phase?

6 A No, sir.

7 Q And also in a penalty phase if we ever even get to a
8 penalty phase; is that correct?

9 A Yes, sir.

10 THE COURT: All right. Thank you very much.

11 I've already lost track. Mr. Tarr.

12 Mr. Tarr has a few questions for you, Ms.

13 Miller.

14 DIRECT EXAMINATION

15 BY MR. TARR:

16 Q Ms. Miller, I'm David Tarr. This is Robert Harte.
17 We're representing Steven Barnes. We just have a couple
18 of questions for you.

19 A Okay.

20 Q First of all, you said you had gestational diabetes.

21 A Yes, sir.

22 Q That's a pretty common symptom of pregnancy; I guess
23 a lot of women have to go through that?

24 A Right.

25 Q And I think the judge asked you, does it make you

1 feel bad or does it change anything about the way you have
2 to conduct your day or anything like that?

3 A Well, I mean, I have to test my blood a couple of
4 hours after I eat and, I mean, if it runs a little high
5 sometimes I feel bad, but other than for that.

6 Q And you could -- would you eat something or drink
7 something if you feel it's low?

8 A Yes, sir.

9 Q But you would be okay to sit on a jury as long as we
10 take a break every couple hours?

11 A Yes, sir.

12 Q Let me ask you just a little bit about -- first off,
13 you understand, and I think you have a clear understanding
14 based on your responses to the judge, that you have to --
15 if you're on the jury you've got find Mr. Barnes guilty
16 before you can get to a question of whether it's life
17 without parole or death.

18 A Right.

19 Q You could find as a jury member, could feel like he's
20 not guilty of these crimes, these charges?

21 A Yes, sir.

22 Q You could find him not guilty.

23 But we're going to assume just for the purposes
24 of these questions that you're on a jury that's found
25 someone guilty of murder.

1 A Okay.

2 Q And to just kind of determine what your position is
3 on life versus death, just in general, as far as the death
4 penalty, do you have any religious or moral beliefs that
5 impact your opinion about the death penalty?

6 A I feel like sometimes it might be necessary, but I
7 don't -- it would have to be like on a case-by-case basis
8 for me to really say okay, well, this is what needs to be
9 done here and this is what needs to be done there. I
10 don't take that lightly.

11 Q And do you -- what is your thoughts on the axiom from
12 the Bible, an eye for an eye?

13 MR. MYERS: Objection.

14 THE COURT: Sustained.

15 BY MR. TARR:

16 Q Let me ask you this: Are you a member of a church?

17 A No, sir.

18 Q Did you grow up as any type of --

19 A Yes, sir, Methodist.

20 Q Do you consider -- do you believe that the death
21 penalty helps to protect society?

22 MR. MYERS: Objection.

23 THE COURT: Sustained.

24 MR. TARR: Your Honor, may I have hear the basis
25 for the objection?

1 THE COURT: I really don't want to take the
2 argument in front of the juror. I'll have her, Ms. Miller
3 --

4 MR. TARR: Yes, Your Honor.

5 THE COURT: I'll have her step out --

6 MR. TARR: I'll withdraw the question, Your
7 Honor.

8 THE COURT: We can take it up outside of her
9 presence if you want to argue it at that time.

10 MR. TARR: Yes, Your Honor.

11 THE COURT: All right.

12 BY MR. TARR:

13 Q I just want to ask you a couple more questions.

14 You heard the judge talk about aggravating and
15 mitigating factors that can effect the jury's decision
16 whether to impose life or death.

17 A Yes, sir.

18 Q Aggravating being factors that make the crime worse
19 and mitigating being factors that make the crime not as
20 bad.

21 Do you understand that you have the right if you
22 sit on the jury to weigh the mitigation evidence presented
23 by the defense independently and assign it any importance
24 you choose, even if other jurors disagree with you?

25 A Yes, sir.

1 Q And you have the right to decide for yourself whether
2 or not the State's proven one or more of the aggravating
3 factors in this case.

4 A Yes, sir.

5 Q And even if they prove an aggravating factor to your
6 liking, you can still vote for a life sentence.

7 A Yes, sir.

8 Q Do you understand that?

9 A Yes, sir.

10 Q And you actually have the right to vote for a life
11 sentence for any reason you see fit or no reason at all.

12 A Yes, sir.

13 Q And you're willing to look at this case and judge
14 this case based on the facts as you see them.

15 A Yes, sir.

16 Q And I take it you don't take it lightly, either
17 whether your decision is life or death, it's a very
18 serious decision for you?

19 A Yes, sir.

20 Q And you would treat it as such?

21 A Yes, sir.

22 MR. TARR: That's all I have, Your Honor.

23 THE COURT: Thank you very much, Mr. Tarr.

24 Solicitor.

25 CROSS-EXAMINATION

1 BY MR. MAYE:

2 Q Ms. Miller, you've already indicated you've never
3 served on a jury before; is that correct?

4 A No, sir.

5 Q And you know that in a capital case or a death
6 penalty case there's two parts: You know first there's
7 the trial on the murder to decide whether or not they're
8 guilty or innocent, right?

9 A Yes, sir.

10 Q And you've already told the judge in this case that
11 you're going to listen to the evidence in that case and
12 weigh it and come back with what you think is an
13 appropriate verdict there, right?

14 A Yes, sir.

15 Q You also realize that in that case, and in a normal
16 case, once the jury reaches a verdict, they all can go
17 home and the judge hands down the sentence on a normal
18 case?

19 A Yes, sir.

20 Q But in this case, it would be that if you found the
21 defendant guilty of murder, you'd come back and there
22 would be a trial on the penalty phase and the jury comes
23 back with the verdict. You realize that, don't you?

24 A Yes, sir.

25 Q Okay. And in South Carolina it's a little bit

1 different because in a murder case, in the first part of
2 it, only the foreman would have to sign that verdict form.
3 But in a death penalty case, if the jury comes back with
4 the death penalty, each and every juror has to sign that
5 form.

6 A Yes, sir.

7 Q Sometimes people are a little different, "I'll say
8 it, but I don't want to write it." Would you have any
9 problems signing your name, if you thought the death
10 penalty was appropriate, signing your name to a death
11 verdict? Would that give you any pause?

12 A It might. I mean, it might give me pause to actually
13 do it anyway, but like I said, this is not something that
14 I take lightly. I just --

15 Q But you would follow the judge's instruction?

16 A Yes, sir.

17 Q And you would weigh the evidence?

18 A Yes, sir.

19 Q And you might give someone based on that after you've
20 weighed that evidence a life sentence or you might give
21 them a death sentence, right?

22 A Yes, sir.

23 Q But if you were going to give them the death
24 sentence, you could sign your name to it, couldn't you?

25 A Yes, sir.

1 Q Okay. So you would follow the judge's instruction?

2 A Yes, sir.

3 Q Weigh the evidence and not be one way or another,
4 you'd make up your mind based on the evidence, wouldn't
5 you?

6 A Yes, sir.

7 MR. MAYE: Okay. Thank you.

8 THE COURT: Anything further, Mr. Tarr?

9 MR. TARR: No, Your Honor.

10 THE COURT: Thank you, Ms. Miller.

11 If you would step to the hallway for me
12 momentarily. We'll have you right back in the courtroom.

13 THE JUROR: Okay.

14 THE COURT: Before you leave, Ms. Miller, could
15 I ask you, when is your due date?

16 THE JUROR: January 1st.

17 THE COURT: January 1st?

18 THE JUROR: Yes, sir. I have about eight weeks
19 left.

20 THE COURT: All right. Thank you.

21 (Juror leaves the courtroom.)

22 THE COURT: All right. Mr. Tarr.

23 MR. TARR: I believe she's qualified, Your
24 Honor.

25 THE COURT: All right. Did you want to be heard

1 on any other issues?

2 MR. TARR: I was just going to ask what the
3 basis of the two objections were on the motion that I --
4 or the question.

5 THE COURT: All right. Solicitor.

6 MR. MYERS: Yes, sir. Number one, an eye for an
7 eye in the Bible, religion is not a part of voir dire.
8 And also she doesn't have to explain or interpret the
9 Bible in her opinion.

10 The other one that he said, purpose of the death
11 penalty, the juror doesn't have to explain why they --
12 what their position is, or they don't have to give an
13 explanation of what the law is, or what morality is or
14 anything for purposes of the death penalty. Hypothetical
15 stuff is just asking them to go into their background and
16 stake them out on State versus Patterson, State versus
17 Smart, a long line of cases that eliminate those kind of
18 questions.

19 THE COURT: All right. Mr. Tarr, do you care to
20 be heard?

21 MR. TARR: I just believe I have a right to
22 delve into whether or not she has religious views that
23 can't be set aside or any other impermissible sentencing
24 consideration that may be underlying her testimony that's
25 under questioning.

1 THE COURT: I believe you do have -- yes,
2 Solicitor.

3 MR. MYERS: He asked her about her religious
4 views and she said no. She said sometimes the death
5 penalty may be necessary but it would have to be a
6 case-by-case basis. And then he asked her about what
7 religion she was, she said Methodist. Then he started
8 asking about an eye for an eye and the purpose -- what
9 purpose the death penalty serves. That's way out of line.

10 THE COURT: I agree you have the right to ask a
11 juror if they have any firmly held -- not necessarily
12 firmly held, that may be my lingo, religious or moral or
13 personal beliefs for or against the death penalty. I
14 agree with that.

15 I don't think -- that's you or the solicitor
16 have that right.

17 I do not agree that either you or the Solicitor
18 would have the right to ask them, Well, for example, do
19 you believe in the teaching of Jesus that forgiveness is
20 divine? You know, the difference or distinctions in
21 people's philosophies from the Old Testament and the New
22 Testament, I don't think that's appropriate.

23 I always hold the position that this is not an
24 Ecclesiastical court; that perhaps that would be
25 appropriate in the Ecclesiastical courts that still exist

1 throughout the world, but not in a state constitutional
2 court.

3 As far as their beliefs in the -- and I forget
4 how you formed the question -- is the death penalty,
5 something to the effect, necessary to provide security for
6 society, or words to that effect.

7 MR. TARR: Yes, sir.

8 THE COURT: Nor do I think that's appropriate.
9 A, it's kind of a compound question in that regard.

10 You know, in the past I've observed lawyers ask
11 questions and say, Well, let me ask you this. If you were
12 a member of the legislature at the time they passed the
13 death penalty statute, would you have voted for it, you
14 know, and I just don't think those questions are
15 appropriate.

16 Now, I do think it's appropriate for you to
17 question them if they have any firmly held beliefs for or
18 against the death penalty.

19 I would, and perhaps the solicitor just said it
20 different than my interpretation, I interpreted that she
21 does not now go to church but that she was raised
22 Methodist anyway, and I thought her responses were very
23 clear and that she'd be a good juror when she talked about
24 a case-by-case basis. Further, she said it would be a
25 serious decision.

1 I believe you think she's qualified also you
2 said?

3 MR. TARR: Yes, Your Honor.

4 We would for the record object to not being able
5 to ask those types of questions of the jurors under the
6 Fifth, Sixth, Eighth and Fourteenth Amendments.

7 THE COURT: And again, you may ask concerning
8 their religious beliefs or their moral beliefs. I'm not
9 prohibiting that.

10 MR. TARR: Yes, Your Honor. I understand your
11 ruling.

12 THE COURT: All right. Now one concern I
13 obviously do have is that she has a medical issue. I
14 think we can work around that, I think, but, you know,
15 then again I can't predict the future. So that would be
16 out there if she becomes a member of this jury if some
17 issue does arise in that regard.

18 Any concerns there? Anything you all would like
19 to place on the record in that regard?

20 MR. HARTE: Your Honor, since she has a doctor's
21 appointment tomorrow, which she obviously will be able to
22 make, perhaps you could ask her to ask her doctor if she
23 would be -- if it would be a problem with her condition
24 and her being sequestered and on a jury for seven to ten
25 days.

1 THE COURT: That's a good point, Mr. Harte.

2 Thank you.

3 Solicitor, do you have any concerns in that
4 regard?

5 MR. MYERS: Whatever they recommend.

6 THE COURT: All right. Thank you very much.

7 If you'd bring Ms. Miller out for us, please.

8 (Juror re-enters the courtroom.)

9 THE COURT: Thank you again for your patience,
10 Ms. Miller. Are you all right to stand there just a
11 moment?

12 THE JUROR: Yes, sir.

13 THE COURT: I have found that you're qualified
14 to be a member of a pool of jurors from which the trial
15 jury will be selected.

16 What that means for you is I'm going to ask you
17 to please return to the courthouse at 9:30 Thursday
18 morning. Have with you enough clothing, toiletries and
19 supplies to last you for a period of about seven to ten
20 days. I don't know that it will take seven days, don't
21 know that it will take ten days, but preparation's the key
22 to victory, I'm going to ask you to please be prepared for
23 that stay with us.

24 As I recall, you related to the Court you have a
25 doctor's appointment tomorrow. You look fit and you say

1 you're feeling fine and that you've managed your medical
2 condition associated with your pregnancy well I take it.
3 If in your discussions with your doctor you have any
4 concerns, you can bring them up to me Thursday morning
5 also, but I take it you feel like you could perform your
6 duties as a juror if selected; is that correct?

7 THE JUROR: Yes, sir.

8 THE COURT: And I would ask you, if you make
9 your next appointment, if you'd do it towards the end of
10 next week as early in the day as possible in that regard,
11 we'll certainly work with you in that regard. Your health
12 is very important to the Court and to all these attorneys.

13 During this break and throughout your jury
14 service, do not discuss this case with anyone. If anyone
15 tries to talk with you about the case, please let me know
16 immediately.

17 Do not watch, read, or listen to any news
18 reports about the case should there be any. Do not do any
19 independent investigation nor any investigation on the
20 Internet.

21 Do you have any questions?

22 THE JUROR: No, sir.

23 THE COURT: See you 9:30 Thursday morning.

24 THE JUROR: All right.

25 THE COURT: Thank you very much. Hope you have

1 a great afternoon and tomorrow.

2 (Juror leaves the courtroom.)

3 THE COURT: All right. If you'd please bring us
4 our next juror, No. 190, Sherene H. Moore.

5 I have that as qualified number 14. Is that
6 what you all have?

7 MR. MYERS: Yes, sir.

8 MR. HARTE: Yes, sir.

9 THE COURT: Thank you.

10 THE CLERK: Please raise your right hand and
11 place your left hand on the Bible.

12 SHERENE MOORE, after being duly sworn, testified
13 as follows:

14 THE CLERK: Have a seat. State your full name
15 and spell your last name, please.

16 THE JUROR: My name is Sherene Moore. And my
17 last name is M-O-O-R-E.

18 EXAMINATION

19 BY THE COURT:

20 Q Good morning, Ms. Moore. How are you?

21 A Nervous.

22 Q All right. Well, don't be nervous. Everybody's
23 going to treat you with dignity and respect, I assure you
24 of that. All right?

25 Did you have the opportunity to review the form

1 prior to coming into the courtroom?

2 A Yes, sir.

3 Q Do you have it with you? Would you hand it up to me,
4 please.

5 A (Juror complies.)

6 Q Thank you very much.

7 Now, I note from the form that you have -- it
8 appears you initially circled, and correct me if I'm
9 wrong, it appears that you initially circled letter B and
10 then Xed that partially and then circled letter C; is that
11 correct?

12 A Yes, sir.

13 Q All right. And I'll ask you about that momentarily.
14 We'll discuss that in just a few minutes.

15 Did you also get the opportunity to review the
16 witness list?

17 A Yes, sir.

18 Q Did you know any of those individuals whose names
19 appeared on that potential witness list?

20 A Yes, sir.

21 Q Could you share with us who you know and how you know
22 them?

23 A Leigh Bouknight.

24 Q All right.

25 A She's my cousin.

1 Q Leigh Bouknight is your cousin, all right. Any
2 others?

3 A That's it.

4 Q That's it.

5 The fact that Leigh Bouknight, and she is
6 employed with the Edgefield -- is that a she?

7 A Yes, sir.

8 Q All right. That she is employed with the Edgefield
9 County Sheriff's Office, could you still be a fair and
10 impartial juror for both the State and for Mr. Barnes
11 given the fact that your cousin's employed with the
12 Edgefield County Sheriff's Office?

13 A Yes, sir.

14 Q All right. Now, I want to talk just a few minutes
15 about the procedure in this type of trial.

16 Do you understand, Ms. Moore, that this type of
17 trial, that there could be two parts of one trial, do you
18 understand that?

19 A No, sir.

20 Q All right. Well, let me try to explain it to you.

21 You've never been on jury duty before, have you?

22 A No, sir.

23 Q And certainly not in a case such as this; is that
24 correct?

25 A No, sir.

1 Q All right. Well, let me explain it to you.

2 The first part of the trial the jury would sit
3 to determine and be focused on whether or not the
4 defendant were guilty or not guilty. Do you understand
5 that?

6 A Yes, sir.

7 Q Now, if an individual is found not guilty of murder,
8 obviously there'd be no need for the second part of the
9 trial, the sentencing phase. Do you understand?

10 A Yes, sir.

11 Q So there's a guilt phase, a defendant's found not
12 guilty, then there's no sentencing phase. Do you
13 understand?

14 A Yes, sir.

15 Q It's only in the situation in which a defendant is
16 found guilty of murder in which it is necessary to have
17 that second phrase of the trial, that penalty phase. Do
18 you understand?

19 A Yes, sir.

20 Q So you understand there is that guilt phase, and if
21 you don't find a person guilty then you never go to that
22 second phase. You understand that?

23 A Yes, sir.

24 Q All right. Now, let's assume for a moment you were
25 selected on a jury in a trial such as this and an

1 individual has been found guilty of murder. Under most
2 circumstances, in most cases, the judge then does the
3 sentencing. But in this case, the jury does the
4 sentencing. Do you understand?

5 A Yes, sir.

6 Q And there's one of two sentences: Either life
7 without parole or the death penalty. Do you understand
8 that?

9 A Yes, sir.

10 Q And I want to talk a few minutes about these
11 categories of jurors.

12 As I understand these categories, experience
13 tells us that most individuals, most people fit in one of
14 three categories.

15 A Yes, sir.

16 Q The first category is these folks that -- and there's
17 no right or wrong, it's just whatever a person's beliefs
18 are in this regard -- but that first category is that
19 group of jurors that believe if a person's found guilty of
20 murder, that that person should always, always receive the
21 death penalty. Does that describe you?

22 A No, sir.

23 Q Then that second category of jurors is that category
24 of jurors that believe that even though an individual has
25 been found guilty of the crime of murder, they should

1 always receive a life without parole sentence. Does that
2 describe you?

3 A No, sir.

4 Q Then there's that third category of jurors. That
5 third category of juror is that juror that even though an
6 individual had been found guilty of murder, that juror
7 would not have made up her mind as to what the appropriate
8 punishment would be. Does that describe you?

9 A Yes, sir.

10 Q That that juror would want to listen to all the
11 additional evidence, any evidence in aggravation or
12 mitigation -- and what those terms mean, aggravation means
13 anything that kind of worsens or increases the enormity of
14 the crime, and mitigation means any evidence that may tend
15 to mitigate, that tend to lessen the severity of the crime
16 as to this particular defendant and this particular crime,
17 kind of the good and the bad. Do you understand what I'm
18 saying?

19 A Yes, sir.

20 Q In other words, you want to know more about the crime
21 and more about the person before you make your sentencing
22 decision. Does that describe you?

23 A Yes, sir.

24 Q And that juror would also be the type of juror that
25 would follow the law as the Court said the law is. Does

1 that describe you?

2 A Yes, sir.

3 Q So under the appropriate circumstances, you could
4 vote to sentence someone to life without parole; is that
5 correct?

6 A Could you repeat that again?

7 Q All right. And it wasn't a trick question. I don't
8 want you to think I'm trying to trick you. And there's no
9 right or wrong -- well, there's only right answers, your
10 answer. You understand?

11 Under the appropriate circumstances, although a
12 person had been found guilty of murder, if you think the
13 facts and the circumstances so warranted it, you could
14 sentence a person to life without parole; is that correct?

15 A Yes.

16 Q All right. And also under the appropriate
17 circumstances, a person's been found guilty of murder, if
18 you think the facts warranted it, you could sentence a
19 person to the death penalty; is that correct?

20 A It depends on how they act, how bad the situation is,
21 yes.

22 Q All right. So it depends on the facts and
23 circumstances of each individual case, correct?

24 A Correct.

25 Q As to what you think the appropriate punishment

1 should be; is that correct?

2 A Correct.

3 Q Sometimes for a crime of murder it might be life
4 without parole?

5 A Correct.

6 Q And sometimes for murder it might be the death
7 penalty; is that correct?

8 A Correct.

9 Q All right. Now, when you did your form, I noted that
10 you did circle B, Category B to start with, and then
11 Category C. But you place yourself in Category C; is that
12 correct?

13 A Yes, sir.

14 Q All right. You would not be in that Category B; is
15 that correct?

16 A No, sir.

17 Q All right. Now, Ms. Moore, as I recall, when we had
18 our general jury selection you came up and shared some
19 issues with me, some personal issues you have.

20 A Yes, sir.

21 Q Are those still of concern to you?

22 A Yes, sir.

23 Q If they're concerns to you, they're concerns to me.
24 Would you explain those to me and what concerns you have?

25 A Well, one thing, my mother, she just passed. And she

1 passed in September five days before my birthday. And I
2 was there through the whole thing when she took her two
3 last breaths, and that's taken an effect on me.

4 I got a lot on my plate. I got like medical
5 conditions. I even go to court myself next month.

6 I just got a whole lot now, it's just on my mind
7 and it keeps coming back to me and bothering me. I was
8 thinking about I need to go to a psychiatrist, someone to
9 talk to, because I keep -- I can just see my momma, you
10 know, in front of me.

11 Q Yes, ma'am.

12 A And I can just see where she passed on the front
13 porch.

14 Q Yes, ma'am.

15 A And it's been bothering me a whole lot.

16 Q Well, it's very difficult, of course, to lose a
17 parent or any loved one, but let me ask you this. You
18 know this is a very serious matter. You understand that?

19 A Yes, sir.

20 Q And it demands each and every juror's complete focus
21 and attention. You understand that?

22 A Yes, sir.

23 Q Day in and day out when they're in court. That's why
24 they're separated from their families, that's why they're
25 sequestered, so that they understand the seriousness of

1 these proceedings and what is expected in a trial such as
2 this. Do you understand that?

3 A Yes, sir.

4 Q You know yourself better than anyone.

5 A Yes, sir.

6 Q Do you feel like you could render efficient jury
7 service based on these factors that you are sharing with
8 the Court now, that you could focus appropriately and be a
9 fair and impartial juror for both Mr. Barnes and the
10 State?

11 A To be honest with you, maybe the next time but not
12 this time because I know I'm not able because, like I say,
13 I got a lot on my mind and I've got a 15-year-old son
14 who's about to drive me crazy. He's really tearing my
15 nerves up right now and I'm trying to get him settled
16 because he was real close with my mother and stuff and he
17 just got wild or whatever and now I be worried about what
18 he doing and everything.

19 Q And you said you have some medical issues. Tell me a
20 little bit more about your medical issues.

21 A I have sarcoid on my lungs.

22 Q You have what now?

23 A Sarcoidosis on my lungs.

24 Q All right.

25 A I have asthma with it. I'm a diabetic on top of it.

1 I have back problems in the lower part of my back on my
2 L4. That's it.

3 Q How often do you go to a doctor?

4 A Every other week or every other month.

5 Q And do you go to a doctor for your lungs, for your
6 asthma?

7 A Yes.

8 Q Who do you go to?

9 A I go Dr. Bass. He's at MCG. I go to pain management
10 for my back.

11 Q And who do you go to for pain management?

12 A Dr. Martin.

13 Q Do they give you injections and such?

14 A Yes, sir, I have had injections.

15 Q All right. Do you take medication for -- are you in
16 chronic back pain?

17 A Yes, sir. They got me on all kind of pain
18 medication. I'm on Tylenol, Tylenol 3 for pain, but I
19 don't take it because it makes me sleepy.

20 Q Is it Tylox, codeine?

21 A Codeine, I'm on codeine. Some of the other names I
22 can't recall.

23 THE COURT: All right. Thank you very much.

24 All right. This would be the solicitor.

25 Would anyone want to be heard prior to

1 questioning in this matter?

2 (There was no response.)

3 THE COURT: All right. Solicitor.

4 DIRECT EXAMINATION

5 BY MR. MYERS:

6 Q Ms. Moore?

7 A Yes, sir.

8 Q When you came up here yesterday and talked with the
9 judge --

10 A Yes, sir.

11 Q -- you said something about having no cartilage in L4
12 in your back?

13 A Yes, sir.

14 Q Is that painful?

15 A Yes, sir.

16 Q If you were on this jury you'd have to be over here
17 seated a good bit. Would that be a problem?

18 A If I sit down a long period of time it bothers me,
19 but then if I stand up for a long period of time it
20 bothers me.

21 Q So either way it bothers you?

22 A Yes, sir.

23 Q And tell me about -- you said yesterday, too, about
24 your mother passing. And you said about seeing her, you
25 said something about seeing her on the porch.

1 A My mother called me 4:30 between Saturday and Sunday
2 morning. She said, "Sherene, come to the house." She
3 said, "I can't breathe." So when I got there my momma was
4 on the front porch. Usually when she can't breath she
5 goes on the front porch and gets fresh air and she'll be
6 all right, but that day she couldn't get her breath or
7 whatever. And I was the only one there.

8 And, see, me and my mother, we are very close.
9 We had like a real tight bond.

10 Q Yes, ma'am.

11 A And talking was like me and you talking now.

12 And when I was there I took my machine because
13 I've got an asthma machine myself and I gave it to her,
14 and I was trying my best to do everything I can, and she
15 looked at me, you know, and she told me she loved me and I
16 hollered out. I was screaming, I didn't know what to do.

17 And I just can see her on that front porch
18 because she grasped back in the chair and she said,
19 Sherene, tell my sister and them that she loved them. She
20 called each one of them by their names and it's the way
21 she looked at me on that front porch, and it hurts me.

22 It bothers me the most because I'm the only one
23 there and that's all I can see is my momma on that front
24 porch. And I hollered and I tried to get help, but I
25 couldn't get nobody to come or nothing. And I just still

1 see her on that porch when she took her last breath, and
2 it took a toll on me.

3 Q I hate to you ask these things, Ms. Moore, but you
4 said it's causing your 15-year-old son some problems.

5 A Yes, I'm having a lot of problems with him because
6 him and my momma was real close. She kept him in church.

7 Q Yes, ma'am.

8 A He's acting out now. He don't want to go to church.
9 He trying to do what he want to do. He get out of school
10 he don't want to come home, I have to go look for him or
11 either I'll call around because it's just like I'm a
12 single parent and I'm doing both the male and the female.

13 Q Yes, ma'am. And you said yesterday and again here
14 today that you've just got a lot of your plate right now.

15 A Yes, I've got a lot on my plate right now.

16 Q Ms. Moore, and because of all this, that would
17 probably interfere with you being a juror at this time; is
18 that right?

19 A Yes, sir.

20 Q You said you're even thinking about seeking some
21 counseling with a psychiatrist or something?

22 A Yes, sir, because I can't sleep at night. I jump up
23 through the night --

24 Q Yes, ma'am.

25 A -- especially around 4 o'clock now I just jump up.

1 If I'm by myself or whatever I get to thinking about her,
2 I get to seeing her out on that front porch, and it
3 bothers me real bad.

4 Q Yes, ma'am. I can understand that.

5 And it's fair to say it's pretty hard to get all
6 that out your mind, isn't it, thinking about that?
7 There's no way to get it out. Even though you'd like to,
8 it's still there.

9 A (Juror nodding.)

10 MR. MYERS: That's all I have.

11 THE COURT: Thank you, Solicitor.

12 Mr. Harte.

13 MR. HARTE: No questions, Your Honor.

14 THE COURT: Thank you.

15 Ms. Moore, will you please step out to the
16 hallway for me momentarily?

17 THE JUROR: Yes, sir.

18 (Juror leaves courtroom.)

19 THE COURT: Thank you.

20 All right. Solicitor.

21 MR. MYERS: Your Honor, we would request she be
22 excused because she said this would interfere with her
23 ability to serve as a juror. I think under Wainwright
24 versus Witt that she's disqualified.

25 THE COURT: Mr. Harte?

1 MR. HARTE: I agree.

2 THE COURT: All right. Thank you very much.

3 And I do agree. I just think she would not be
4 focused and the goal is a fair and impartial jury and the
5 goal is a fair trial for the defendant. I think she
6 clearly does not meet the appropriate standards.

7 If you'd have Ms. Moore step out for me, please.

8 (Juror re-enters the courtroom.)

9 THE COURT: All right. Ms. Moore, you can stand
10 there for me just a few minutes.

11 I'm going to release you from your jury service.
12 I want to thank you for being with us yesterday and today
13 and for being very candid with the Court and with the
14 attorneys in this case, but I'm going to excuse you from
15 further service on this jury panel.

16 Good luck to you, Ms. Moore.

17 THE JUROR: Thank you.

18 THE COURT: Thank you very much.

19 Do not discuss your jury service with anyone,
20 all right?

21 THE JUROR: Yes, sir.

22 THE COURT: Thank you very much.

23 (Juror leaves the courtroom.)

24 THE COURT: Let's do one more before we take a
25 break, ladies and gentlemen -- or gentlemen. That would

1 be No. 13, Charles A. Bafford, B-A-F-F-O-R-D.

2 THE CLERK: Raise your right hand and place your
3 left hand on the Bible.

4 CHARLES BAFFORD, after being duly sworn,
5 testified as follows:

6 THE CLERK: Have a seat. State your full name
7 and spell your last, please.

8 THE JUROR: Yes. My name is Charles Anthony
9 Bafford, B-A-F-F-O-R-D.

10 EXAMINATION

11 BY THE COURT:

12 Q Good morning, Mr. Bafford. How are you?

13 A I'm doing pretty good.

14 Q Thank you for being with us this morning.

15 Did you get the opportunity to review the form
16 before you came into the courtroom this morning?

17 A I did.

18 Q Do you have that with you?

19 A Yes, sir.

20 Q May see it, please?

21 A (Juror complies.)

22 Q Thank you very much. And see you've indicated you
23 are a Category C juror; is that correct?

24 A Correct.

25 Q And we'll talk about that momentarily.

1 Also, did you get the opportunity to review the
2 potential witness list?

3 A I did.

4 Q Did you know any of those individuals on that list?

5 A No, not personally. I have -- I know some of the
6 Edgefield County Sheriff's officers, but I don't know them
7 on a personal basis.

8 Q All right. And explain that to me, please, when you
9 say you know them.

10 A Just seeing them in the store or something like that
11 and just happened to like a meet-and-greet-type deal.

12 Q Just speak to them in a retail store or something
13 like that?

14 A Correct, yes, sir.

15 Q Do you know their names?

16 A I recognize Randy Doran and Florida, but like I say,
17 I don't know them.

18 Q All right. And the fact that you recognize and may
19 speak to Randy Doran -- and let me see the other one's
20 name.

21 A I remember the last name is Florida.

22 Q Florida?

23 A It might not be the same one, but yes, sir.

24 Q Could you still be a fair and impartial juror to both
25 Mr. Barnes and the defendant (sic) in this case?

1 A Yes, I believe so.

2 Q Even if I told you that Mr. Doran was the chief
3 investigating officer in the case, could you still be a
4 fair and impartial juror to both Mr. Barnes and the State
5 in this case?

6 A Yes, sir.

7 Q All right. Thank you very much.

8 I want to go back a few minutes and talk about
9 what I talked about with the entire panel yesterday
10 morning.

11 You understand in a trial such as this there
12 could be two parts of one trial?

13 A Yes, sir.

14 Q The first part would be what's known as the guilt
15 phase. The jury would be focused on the determination and
16 the decision of whether or not the defendant was guilty or
17 not guilty. Do you understand that?

18 A Yes, sir.

19 Q You understand obviously if the defendant's found not
20 guilty of murder there's no need for sentencing, there's
21 no need for punishment if he's found not guilty. Do you
22 understand?

23 A Yes, sir.

24 Q So it's only in the situation in which a defendant is
25 found guilty of murder that we would go to that penalty

1 phase to determine what the appropriate punishment was.

2 Do you understand?

3 A Yes, sir.

4 Q In most cases the judge does the sentencing. In a
5 case such as this, the jury makes the decision on the
6 appropriate sentence, whether it's life without parole or
7 the death penalty. Do you understand?

8 A Yes, sir.

9 Q Now you placed yourself in that C category of jurors.
10 I understand that C category as being the type of juror
11 that just because he's sat on a jury panel and found an
12 individual guilty of murder, he would not have made up his
13 mind as to what the appropriate punishment would be. Does
14 that describe you?

15 A Yes, sir.

16 Q Before that juror made up his mind as to the
17 appropriate punishment, he would want to hear all the
18 evidence and testimony; any additional evidence in
19 aggravation, in other words, bad; or mitigation, good,
20 before he made his decision as to what the appropriate
21 punishment was, life or death. Does that describe you?

22 A Yes, sir.

23 Q Would you not make up your mind until you've heard
24 all that evidence, all that testimony, and the
25 instructions on the law by the Court in that penalty

1 phase?

2 A Yes, I would not.

3 Q And would it be a case-by-case basis for you as to
4 what the appropriate punishment was --

5 A Of course.

6 Q -- life or death?

7 A Yes, sir..

8 Q In other words, in your mind, there are cases of
9 murder in which the appropriate punishment may be a life
10 sentence; is that correct?

11 A Correct.

12 Q And also in your mind there are cases of murder in
13 which the appropriate punishment may be the death penalty;
14 is that correct?

15 A Yes, sir.

16 Q It depends on the circumstance; is that correct?

17 A Yes, sir.

18 Q Do you firmly fit into that C category juror?

19 A I do.

20 Q You would not have pre-judged the case as to the
21 guilt of the defendant?

22 A No, sir.

23 Q And even if we got to that penalty phase -- like I
24 say, the defendant may be found not guilty. You
25 understand that?

1 A Yes, sir.

2 Q If not, if we got to that penalty phase, you would
3 not have pre-determined what the appropriate punishment
4 would be; is that correct?

5 A Correct.

6 Q You wouldn't make that decision until you've heard
7 everything?

8 A Correct.

9 THE COURT: Thank you very much.

10 I believe this would be Mr. Tarr.

11 Mr. Tarr may have some questions for you, Mr.
12 Bafford.

13 THE JUROR: Okay.

14 DIRECT EXAMINATION

15 BY MR. TARR:

16 Q Is it Bafford or --

17 A It's Bafford.

18 Q Mr. Bafford, how are you doing this morning?

19 A Doing pretty good.

20 Q I'm David Tarr and this is Bob Harte. We represent
21 Steve Barnes in this case. I'm going to ask you a few
22 questions here.

23 I see you're in the National Guard.

24 A Correct.

25 Q You're active?

1 A Yes, sir.

2 Q Will sitting as a juror in this case interfere at all
3 with your duties in that regard?

4 A No.

5 Q When do you go? I don't even know what they do in
6 the guard or when you have training or things like that.
7 What is your schedule like?

8 A You know, it's once two weeks a year, but I'm in the
9 position that I can get it changed if need be.

10 Q Okay. So if your once a month came up during the
11 seven to ten days of this trial, you'd be able to get that
12 changed?

13 A I'd be able to move it, yes.

14 Q I also see in here that your grandfather was a
15 military police officer and a regular police officer?

16 A Correct.

17 Q How many years did he do that?

18 A I'm not sure to be honest. That's a long time before
19 I come along.

20 Q Okay. You're just aware that he had --

21 A Correct, yes.

22 Q Okay. And I believe you testified that you know
23 several Edgefield County officers just from kind of seeing
24 them around, talking to them?

25 A Right.

1 Q Is that the Bridgestone store where you work that you
2 see them?

3 A No, I work at the Bridgestone plant.

4 Q So you're just talking about seeing them around town?

5 A Right. You know, you live in a small town and you
6 just meet people.

7 Q Okay.

8 A Yeah, I've never met them personally. Well, I met
9 them personally but not on a personal basis. I just have
10 friends or whatever that they describe this is so-and-so.
11 Like I didn't know Mr. Doran was an investigator and all.

12 Q Okay. Now, I also see that you actually applied for
13 a deputy's position in the past?

14 A I did.

15 Q When was that and where was that.

16 A It was in Edgefield County. It was probably about
17 five or six years ago, I guess.

18 Q And in applying for that position, did you come in
19 contact with officers at that time as well?

20 A No.

21 Q So you went and just filled out an application?

22 A I filled out an application and I got hired on out
23 there at Bridgestone so I didn't pursue it anymore.

24 Q Okay. So none of your relationships with any of
25 these officers is from applying for a job, it's just from

1 seeing them around, casual relationships?

2 A No, sir, correct.

3 Q Now, if you were sitting on -- if you were chosen to
4 sit on this jury and you didn't feel like the State had
5 proven their case and you found Mr. Barnes not guilty,
6 would you have any problem going back out into the
7 community and seeing Investigator Doran or anybody else
8 and being worried about what they might think about you
9 kind of going against their case?

10 A No.

11 Q That wouldn't bother you?

12 A No, it would not.

13 Q I also see on your questionnaire that there's a
14 bumper sticker and I was just wondering, what's a wild
15 life, NWTF?

16 A National Wild Turkey Federation.

17 Q Okay. I'm just not familiar with that. Is that what
18 I passed coming into town?

19 A It is.

20 Q Okay. And you understand in this case that, as the
21 judge explained, there are two parts to the trial and
22 you'd first have to determine whether or not Mr. Barnes
23 was guilty or not?

24 A Uh-huh.

25 Q And if you find him guilty, then and only then would

1 you move to the decision of whether it's life without
2 parole or the death penalty?

3 A Correct.

4 Q And assuming that you got to that point in this case,
5 do you understand that you have an absolute right to vote
6 for a life sentence for a reason that you may have or no
7 reason at all?

8 A Uh-huh, yes, sir.

9 Q And even if other jurors disagreed with you, you have
10 a right to stand your ground and hold out for a life
11 sentence?

12 A Uh-huh.

13 MR. TARR: Your Honor, that's all I have.

14 THE COURT: Thank you.

15 Solicitor.

16 CROSS-EXAMINATION

17 BY MR. MYERS:

18 Q Mr. Bafford, have you ever served on a jury panel
19 before?

20 A No, sir.

21 Q Because the death penalty's involved, we get to talk
22 with you a little bit.

23 If you were on the jury and the first part,
24 guilty or not guilty, if the jury, all 12, decided that
25 the defendant was guilty based on the evidence, all 12

1 would have to agree, but only the foreperson would sign
2 that sentence or that guilty verdict. Do you understand
3 that?

4 A Correct.

5 Q And then if you found him guilty you'd go into the
6 sentencing or the penalty phase, and you understand life
7 without parole or the death penalty, that's the only two
8 options. Do you understand that?

9 A Yes, sir.

10 Q If the jury decided that the death penalty would be
11 the appropriate sentence, all 12 jurors would have to sign
12 that sentence. Not just the foreperson but all 12. Do
13 you understand that?

14 A Yes, sir.

15 Q The fact that you would be required to sign your name
16 to a death penalty sentence, would that interfere with
17 your ability to return the death penalty, having to put
18 your name?

19 A No. No, sir.

20 MR. MYERS: That's all we can ask you.

21 Thank you, Judge.

22 THE COURT: Thank you very much, Mr. Bafford.

23 Will you step momentarily out to the hallway for
24 me, please?

25 (Juror leaves courtroom.)

1 THE COURT: All right. Mr. Tarr.

2 MR. TARR: I believe he's qualified, Your Honor.

3 THE COURT: Solicitor?

4 MR. MYERS: Yes, sir, we agree.

5 THE COURT: All right.

6 (Juror re-enters the courtroom.)

7 THE COURT: I'm going to have you stand right
8 there momentarily.

9 Mr. Bafford, I've found that you're qualified to
10 be a member of a pool of jurors from which the trial jury
11 will be selected.

12 What that means to you is I need you to return
13 back to the courtroom at 9:30 Thursday morning. Please
14 have with you, and you can leave it in your automobile,
15 clothing and toiletries for a stay with us of about seven
16 to ten days. It may not take that long, but please be
17 prepared for such a stay.

18 During this time and throughout your jury
19 service do not discuss this case with anyone. If anyone
20 tries to talk with you about the case, please try to get
21 their name and let me know immediately.

22 Do not watch, read, or listen to any news
23 reports about the case, should there be any. Do not do
24 any independent investigation or any investigation on the
25 Internet.

1 Do you have any questions or concerns?

2 THE JUROR: No, sir.

3 THE COURT: All right. We'll see you 9:30
4 Thursday morning. Thank you very much.

5 THE JUROR: Thank you.

6 (Juror leaves the courtroom.)

7 THE COURT: All right. Court will be in recess
8 for about five minutes.

9 (A break was taken.)

10 THE COURT: All right. If you would please
11 bring us Juror No. 173, Diann W. McCary.

12 THE CLERK: Raise your right hand, please, and
13 place your left hand on the Bible.

14 DIANN MCCARY, after being duly sworn, testified
15 as follows:

16 THE CLERK: Have a seat. State your full name
17 and spell your last name, please.

18 THE JUROR: It's Diann W. McCary, M-C-C-A-R-Y.

19 EXAMINATION

20 BY THE COURT:

21 Q Good morning, Ms. McCary. How are you?

22 A Fine.

23 Q Thank you for being with us this morning.

24 Did you get the opportunity to review the form?

25 A Yes.

1 Q Do you have it with you? May see it, please?

2 A Yes, sir. (Juror complies.)

3 Q Thank you very much.

4 And I see on here you've placed yourself in the
5 B category; is that correct?

6 A Yes, sir.

7 Q All right. And we'll talk about that momentarily.

8 Did you also get the opportunity to review the
9 potential witness list?

10 A Yes, sir.

11 Q Did you know any of those individuals on that list?

12 A The Clerk of Court.

13 Q You know Ms. Newby?

14 A Yes, sir.

15 Q And is that by friendship?

16 A Yes, sir, and working here with her.

17 Q All right. You work here with Ms. Newby?

18 A Yes, sir, about 13 years ago.

19 Q About 13 years ago?

20 A Uh-huh.

21 Q And the fact that you previously worked with Ms.

22 Newby and are a friend of Ms. Newby, could you still be a
23 fair and impartial juror to both Mr. Barnes and to the
24 State in this case?

25 A Yes.

1 Q You may have to speak up for us just a little bit so
2 I can hear you.

3 A Okay.

4 Q I know I'm loud, but the lawyers also need to hear me
5 and you.

6 Now, you understand in a case such as this, as I
7 went over with the jury panel yesterday morning, there
8 could potentially be two parts of one trial. Do you
9 understand that?

10 A Yes, sir.

11 Q The first part of the trial the jury would solely be
12 focused on whether or not the defendant were guilty or not
13 guilty. Do you understand that?

14 A Yes, sir.

15 Q If a defendant were found not guilty of murder, there
16 would obviously be no need for the penalty phase. Do you
17 understand?

18 A Yes, sir.

19 Q Only in the situation in which a defendant were found
20 guilty of murder would there be a necessity to go into
21 that penalty phase for the jury to determine what the
22 appropriate sentence should be, life without parole or the
23 death penalty. Do you understand?

24 A Yes, sir.

25 Q Experience tells us that most individuals fit into

1 one of three categories under this A, B, or C. That's why
2 we tend to use this or a similar type form.

3 The A jurors are those that in every case in
4 which an individual has been found guilty of murder, they
5 would have their mind made up and think that the death
6 penalty was always the appropriate punishment to impose.
7 That does not describe you?

8 A No.

9 Q Then the B jurors are those jurors that even though
10 an individual had been found guilty of the crime of
11 murder, they would be of the opinion that in all cases the
12 appropriate punishment should be life without parole.

13 Does that describe you?

14 A Yes, sir.

15 Q So your opinion is in all cases of murder, that you
16 would sentence a person, all cases in which an individual
17 had been found guilty of murder, you would sentence a
18 person to life without parole; is that correct?

19 A Yes, sir.

20 Q You could not sentence a person to the death penalty?

21 A No, sir.

22 Q Under any circumstances?

23 A No.

24 Q There's no circumstances that you can conceive in
25 which you would sentence an individual to the death

1 penalty?

2 A No, sir.

3 Q Is that correct?

4 A Yes, sir.

5 Q And is that a firmly held personal belief of yours?

6 A Yes, sir. I don't believe it's my right to sentence
7 someone to death.

8 Q All right. And that's your opinion. And has that
9 been a long-held opinion of yours?

10 A Yes, sir.

11 THE COURT: All right. Thank you very much.

12 These gentlemen may have some questions for you.

13 Solicitor.

14 DIRECT EXAMINATION

15 BY MR. MYERS:

16 Q Ms. McCary, based on what you said to the judge, is
17 it fair to say that you could never sign your name to a
18 verdict sentencing someone to the death penalty?

19 A Yes, sir.

20 MR. MYERS: No questions.

21 THE COURT: Mr. Harte.

22 MR. HARTE: No questions.

23 THE COURT: All right. Thank you very much.

24 If you would step out to the hallway for me
25 momentarily.

1 THE JUROR: Right here?

2 THE COURT: Yes, ma'am, right around here with
3 your bailiff.

4 MR. HARTE: I don't think that's necessary,
5 Judge.

6 THE COURT: All right. Ms. Mccary, I'm going to
7 excuse you from jury service on this panel.

8 I thank you for being with us. I thank you for
9 your time.

10 I would ask you, please, do not discuss your
11 jury service with anyone.

12 Thank you very much. You're now excused.

13 THE JUROR: Thank you.

14 (Juror leaves the courtroom.)

15 THE COURT: What was your position in regard to
16 Ms. Mccary, Mr. Harte?

17 MR. HARTE: Your Honor, she was clearly
18 disqualified.

19 THE COURT: All right. Thank you very much.
20 And I would agree. And that's your position, Solicitor?

21 MR. MYERS: Yes, sir.

22 THE COURT: I would agree. And she's clearly
23 not qualified and excused by the Court.

24 All right. If you'd please bring us Joseph
25 Robbins, Jr.

1 THE CLERK: Raise your right hand and place your
2 left hand on the Bible.

3 JOSEPH ROBBINS, JR., after being duly sworn,
4 testified as follows:

5 THE CLERK: Have a seat. State your full name
6 and spell your last name, please.

7 THE JUROR: Joseph Robbins, Jr.

8 EXAMINATION

9 BY THE COURT:

10 Q Good morning, Mr. Robbins.

11 A Good morning.

12 Q Thank you very much for being with us this morning
13 and thank you for your patience.

14 A Uh-huh.

15 Q Did you get the opportunity to review that form?

16 A Yes, I did.

17 Q Do you have it with you?

18 A Yes, sir.

19 Q May I see it, please?

20 A (Juror complies.)

21 Q Thank you very much.

22 And I see by this form you have placed yourself
23 in Category C; is that correct?

24 A That's right.

25 Q And I will discuss that with you further momentarily.

1 Did you also have the opportunity to review the
2 potential witness list?

3 A Yes, I did.

4 Q Did you know any of those individuals?

5 A Not by name I don't.

6 Q All right. You might know them if you see them?

7 A That's right.

8 Q But you don't recognize anyone's name?

9 A No, I don't.

10 Q And you don't know anything about this case?

11 A No, I don't.

12 Q All right. Now I want to go back and discuss a few
13 things with you that I discussed with the entire panel
14 yesterday morning.

15 You understand, Mr. Robbins, in a case such as
16 this, there could potentially be two parts to one trial..
17 You understand that?

18 A Yes.

19 Q And the first part of the trial the jury would solely
20 be focused on the issue of whether the defendant were
21 guilty or not guilty. Do you understand that?

22 A Yes, I do.

23 Q Obviously in that first part of the trial if an
24 individual were found not guilty of murder, there would be
25 no need for the second part, the sentencing phase. Do you

1 understand?

2 A Yes.

3 Q It's only in those situations in which an individual
4 has been found guilty of murder that we ever get to that
5 sentencing phase of the trial. Do you understand?

6 A Yes.

7 Q And I don't want you to take anything by the fact
8 that we're discussing with you the death penalty at this
9 stage, because the defendant as he sits here is presumed
10 to be innocent. Do you understand?

11 A Yes, I do.

12 Q And at the conclusion of the guilt phase, the jury
13 could find the defendant not guilty. Do you understand
14 that?

15 A Yes, I do.

16 Q And you have an open mind in that regard, correct?

17 A Yes, I do.

18 Q And there's no reason you would not be a fair and
19 impartial juror to both Mr. Barnes and the State in the
20 guilt phase of the trial?

21 A Yes.

22 Q All right. And let's say you were selected for the
23 jury in a trial such as this and you and other members of
24 the jury had returned a verdict of guilty of murder. Then
25 it would be up to the jury to determine the appropriate

1 punishment. In most cases the judge makes that decision.
2 In these types of cases in South Carolina, the jury makes
3 that decision. Do you understand?

4 A Yes, I do.

5 Q And there's only one of two choices to be made:
6 Either life without parole or the death penalty. Do you
7 understand?

8 A Yes, I do.

9 Q You've had the opportunity to review the form and I
10 believe you've circled and placed yourself in Category C.

11 As I understand Category C, that's that type of
12 juror that even though a defendant had been found guilty
13 of murder would not have made up his mind as to what the
14 appropriate punishment should be; is that correct?

15 A That's correct.

16 Q That's the type of juror that would want to hear the
17 additional evidence, any evidence in what is known as
18 aggravation, anything that increases the enormity, the
19 seriousness of the crime of murder; or any evidence in
20 mitigation, that lessens or tends to decrease the
21 culpability of the defendant, or things about the
22 defendant, before the individual made up his mind as to
23 what the appropriate punishment would be. Does that
24 describe you?

25 A That's right.

1 Q And that would also be the type of juror that would
2 not only listen to all those facts and all those
3 circumstances from both the State and the defense, but
4 would also listen to and follow the law as I told the jury
5 the law was. Does that describe you?

6 A Yes, it does.

7 Q Are there circumstances in your mind of murder that
8 after you've heard all the facts and circumstances, that
9 you believe a life sentence would be warranted?

10 A There could be.

11 Q All right. And if so, you could vote to impose a
12 life sentence; is that correct?

13 A That's right.

14 Q And are there also circumstances of murder in your
15 mind in which a death penalty is the appropriate
16 punishment?

17 A Yes, there is.

18 Q And under those circumstances you could vote to
19 impose the death penalty; is that correct?

20 A That's correct.

21 Q Do you firmly fit into that Category C juror,
22 Mr. Robbins?

23 A Uh-huh.

24 THE COURT: Thank you very much.

25 These attorneys may have some questions for you.

1 I believe we're at Mr. Tarr.

2 Thank you, Mr. Tarr.

3 DIRECT EXAMINATION

4 BY MR. TARR:

5 Q I'm David Tarr and this is Robert Harte. We
6 represent Steven Barnes. Just have a couple of quick
7 questions for you.

8 I see from your juror questionnaire you answered
9 the question about whether you or someone you knew was a
10 victim of a crime; you put burglary. Was that you or
11 somebody you know or a family member?

12 A It was me.

13 Q It was you?

14 A Uh-huh.

15 Q Were you home at the time?

16 A No, the house was broken into when I was away.

17 Q Okay. And I believe you indicated that there was
18 someone arrested, but while he was awaiting trial he was
19 shot to death committing another crime?

20 A That's exactly right.

21 Q So he never even went to trial for that?

22 A No, he didn't.

23 Q Was he breaking into somebody else's house?

24 A No. I think he was committing a robbery on a
25 convenience store at the time.

1 Q Do you have any feelings about the fact that he never
2 stood trial for breaking into your house, did it bother
3 you at all?

4 A Well, justice wasn't served for me, but, you know, I
5 guess he got what's coming to him. I don't know. I'm not
6 the judge of that.

7 Q Right. But I guess that kind of makes you feel a
8 little bit like he broke into your house and you never got
9 a chance to have a day in court --

10 A That's right.

11 Q -- to let the Court and the community know how it
12 makes you feel?

13 A That's right.

14 Q And I also see that your brother-in-law is a state
15 trooper?

16 A He was a state trooper. He's not now.

17 Q How long did he do that, though?

18 A It was about four and a half, five years I think he
19 was a state trooper before he went in the military.

20 Q Did you ever discuss his duties with him?

21 A No, other than asking what some of the highway -- the
22 traffic laws was. That's about it.

23 Q So would it be fair to say that you wouldn't respect
24 the opinions or testimony of a law enforcement officer
25 more because your brother was a state trooper than you

1 would just anybody else who came up in court?

2 A The way I look at it, he should know the law, yeah,
3 he's enforcing it, so --

4 Q Right.

5 A I would think than just the ordinary person, he
6 should know more because he was given the duty to do that.

7 Q But would you tend to believe a police officer more
8 than you would a normal citizen who came into the
9 courtroom?

10 A I would.

11 Q You would?

12 A Uh-huh.

13 Q If you felt like there was -- an officer was being
14 untruthful, would you be able to find that he was being
15 untruthful and use that in your deliberations, or would
16 you always believe what an officer said on the stand?

17 A Well, if it's untrue, I'm not going to -- if it's
18 concerning me, or for that matter anyone I know, if it's
19 wrong, it's wrong.

20 Q So if you heard conflicting testimony between two
21 officers, you could consider that fact that one of them
22 might not be being honest?

23 A I would say it would seem so if there was a conflict.

24 Q So you don't have a problem if it looks like
25 somebody's not being honest, even though they're a police

1 officer, you would be able to, as a juror, discount their
2 testimony?

3 A Well, I wouldn't discount it, but you've got to find
4 out who's factual and who's not, and the one that's
5 factual is the one that you should believe.

6 Q That's fair enough.

7 All right. Do you understand that this trial --
8 first, if you sit on the jury, the jury's going to have to
9 pass upon the question of whether or not Mr. Barnes is
10 guilty or not guilty before you ever even get to the
11 determination of whether there's a life sentence or the
12 death penalty?

13 A Yes, I understand that.

14 Q You understand that? So if you were to find him not
15 guilty, that would be it and the case would be over.

16 A Well, if that's the instruction we're given.

17 Q Okay. So you would follow the instruction and follow
18 the law as the judge gives it to you?

19 A Uh-huh.

20 Q I also see you're a Falcons fan?

21 A Yes, I am.

22 Q It's a good year to be a Falcons fan right now.

23 A Right now.

24 MR. TARR: That's all I have.

25 THE COURT: All right. Solicitor.

CROSS-EXAMINATION

1
2 BY MR. MYERS:

3 Q Mr. Robbins?

4 A How you doing?

5 Q Mr. Robbins, because the death penalty could be an
6 issue in this case, is an issue in this case, that's why
7 we get to talk with you a little bit and I just have a few
8 questions.

9 A Uh-huh.

10 Q Have you ever served on a jury before, Mr. Robbins?

11 A No, I haven't.

12 Q But you know that in a case 12 men and women would
13 have to sit as a jury.

14 A Uh-huh.

15 Q People would testify, and based on that evidence and
16 the law, that the jury would have to find him guilty or
17 not guilty. You understand that?

18 A Yes, I do.

19 Q That would be the same thing in this case. The
20 witness would have to testify, sit in that chair you're in
21 now, the judge would charge the jury what the law is, and
22 then the jury would come back with a guilty or not guilty
23 verdict.

24 What makes this different is upon the jury
25 finding him guilty, we would go into that second part, the

1 sentencing or the punishment part. You understand that?

2 A Yes, I do.

3 Q And the reason we're doing that is so the jury can
4 hear additional testimony. The judge would tell the jury
5 going into that second part to keep an open mind, don't
6 make up your mind what the sentence should be until you've
7 heard all the testimony and the law. Could you follow
8 that instruction?

9 A Yes, I do.

10 Q And I think you just told the judge that you're in
11 that Category C, that in cases of murder, life without
12 parole could be appropriate in some cases and in other
13 cases the death penalty could be appropriate; is that
14 correct?

15 A That's correct.

16 Q But it depends on the case and the facts and the
17 circumstances?

18 A That's right.

19 Q In that second phase, new testimony would be
20 presented, and that's where the judge is talking about
21 aggravating circumstances and mitigating circumstances,
22 about something maybe bad about the defendant, maybe
23 something good about the defendant, to give the jury more
24 information about the type of crime, the type of person.
25 Would you be willing to listen to all that before you

1 decided what the right sentence was?

2 A Yes I would.

3 Q Now, they asked you a little while go about police
4 officers.

5 A Uh-huh.

6 Q Do you think all police officers are honest, every
7 one of them?

8 A Well, according to human nature I'd say no.

9 THE COURT: What was that? I couldn't quite
10 understand.

11 MR. MYERS: According to human nature.

12 THE COURT: All right. I just couldn't
13 understand. Thank you very much.

14 BY MR. MYERS:

15 Q So if you heard testimony from law enforcement
16 officers and other different testimony, you'd have to look
17 at the person testifying?

18 A That's right.

19 Q See how they acted whether they're law enforcement or
20 not and then make up your mind what the truth is; is that
21 correct?

22 A That's correct.

23 Q Now in that second phase, if the jury decided that
24 life imprisonment was the appropriate sentence, then you
25 could so vote for life?

1 A Yes, I would.

2 Q And on the other hand, if you thought the death
3 penalty was the correct sentence, you could so vote for
4 death?

5 A Yes, I would.

6 Q The first part, Mr. Robbins, guilty or not guilty,
7 all 12 jurors would have to decide that unanimously,
8 guilty or not guilty. And if they, all 12, decided the
9 defendant was guilty, only the foreman would sign that
10 verdict. He'd be speaking for all 12, but only the
11 foreman would sign it. But if the jury decided the death
12 penalty would be the appropriate sentence, it too would
13 have to be unanimous, but all 12 jurors would have to sign
14 for that. Do you understand that?

15 A Yes, I do.

16 Q Now, because our law says if you give the death
17 penalty you have to sign your name on it, would that
18 interfere with your ability to return a death penalty if
19 you thought that was the correct sentence?

20 A No, it wouldn't.

21 MR. MYERS: That's all we can ask of you. Thank
22 you, sir.

23 THE COURT: Thank you.

24 Any follow up, Mr. Tarr?

25 MR. TARR: No, Your Honor.

1 THE COURT: Thank you.

2 Mr. Robbins, would you step back to the hallway
3 for me just momentarily, please?

4 THE JUROR: Right back around here?

5 THE COURT: Yes, sir, right back around where
6 you came from with the bailiff. Thank you.

7 (Juror leaves courtroom.)

8 THE COURT: All right. Mr. Tarr.

9 MR. TARR: I believe he's qualified, Your Honor.

10 THE COURT: Solicitor.

11 MR. MYERS: He's qualified.

12 THE COURT: All right. If you'd bring him back
13 in.

14 (Juror re-enters the courtroom.)

15 THE COURT: Mr. Robbins, I have found that you
16 are qualified to be a member of a pool of jurors from
17 which the trial jury would be selected.

18 What that means for you is I'm going to ask you
19 to please return to the courtroom at 9:30 Thursday
20 morning. If you'll have with you, and you can leave them
21 in your automobile, clothing and toiletries for yourself
22 to last approximately seven to ten days. I'm not sure
23 it's going to be seven or ten; however, I do want you to
24 be prepared for a stay with us of about that length.

25 During your time from now on forward, I would

1 remind you, do not discuss this case with anyone. If
2 anyone tries to talk with you about the case, please try
3 to get their names and let me know immediately.

4 Do not watch, listen to, or read any news
5 reports about the case, should there be any. Do not do
6 any independent investigation or any investigation on the
7 Internet concerning the case.

8 Do you have any questions?

9 THE JUROR: No, I don't.

10 THE COURT: All right, sir. I'll see you at
11 9:30 Thursday morning. I hope you have a pleasant
12 afternoon and tomorrow. Thank you very much, Mr. Robbins.

13 (Juror leaves the courtroom.)

14 THE COURT: All right. If you'll bring us,
15 please, our next juror, No. 129, Mr. Hoffmann.

16 THE CLERK: Raise your right hand and place your
17 left on the Bible.

18 CHRISTIAN HOFFMANN, after being duly sworn,
19 testified as follows:

20 THE CLERK: Have a seat. State your full name
21 and spell your last name, please.

22 THE JUROR: My full name is Johannes Christian
23 Hoffmann, III. You spell Hoffmann, H-O-F-F-M-A-N-N.

24 EXAMINATION

25 BY THE COURT:

1 Q Good morning, Mr. Hoffmann. Thank you for being with
2 us this morning.

3 Did you have the opportunity to review the form
4 prior to coming in the courtroom?

5 A Yes, sir.

6 Q Do you have that with you?

7 A Yes, sir.

8 Q May I see it, please?

9 A (Juror complies.)

10 Q Thank you very much. And I note that you have placed
11 yourself in the Category C juror; is that correct?

12 A Yes, sir.

13 Q And we'll discuss that momentarily.

14 Did you also get the opportunity to review the
15 potential witness list?

16 A Yes, sir.

17 Q Did you know any of those individuals?

18 A No, sir.

19 Q All right. Did not know or recognize any of those
20 names?

21 A No, sir.

22 Q Thank you.

23 A Well, I mean, I recognize one or two law enforcement
24 people, but I don't know them personally.

25 Q All right. You recognized the names of one or tow?

1 A Right.

2 Q Can you recall who those were?

3 A Honestly, no, I can't without seeing the names on the
4 list.

5 Q All right. There were many names on the list. Thank
6 you very much.

7 Now I want to go back and just review a little
8 bit of what I reviewed with the entire jury panel
9 yesterday morning.

10 You understand, Mr. Hoffmann, in a trial such as
11 this, there could potentially be two parts of one trial?

12 A Yes, sir.

13 Q And the first part of a trial such as this is known
14 as the guilt phase.

15 If you were selected as a member of a jury in a
16 trial such as this, you and the other members of the jury
17 during the guilt phase would be solely focused on whether
18 or not the defendant were guilty or not guilty. Do you
19 understand that?

20 A Yes, sir.

21 Q Obviously at the conclusion of the guilt phase if the
22 defendant, a defendant were found not guilty of the crime
23 of murder, there'd be no need for the penalty phase. Do
24 you understand that?

25 A That's right.

1 Q This is the only opportunity we get to speak with
2 jurors and, of course, that's why we ask questions about
3 the death penalty at this time and your beliefs on that.
4 Do you understand?

5 A Yes, sir.

6 Q So assume you were selected for a jury for a trial
7 such as this and the jury had returned a verdict of guilty
8 of murder. Then and only then would we go into that
9 penalty phase. Do you understand?

10 A Yes.

11 Q As I understand it, you place yourself in Category C
12 juror, that being the type of juror that although an
13 individual had been found guilty of the crime of murder,
14 that juror would not have made up his mind in advance
15 concerning punishment. Does that describe you?

16 A Yes, sir.

17 Q In other words, that's that type of juror that would
18 need to hear all the facts and all the circumstances in
19 that penalty phase, any evidence or testimony in
20 aggravation, and that term means, as I'm sure you know,
21 something that increases the enormity of the crime of
22 murder; or any evidence and testimony in mitigation,
23 something either about the defendant or the circumstances
24 and characteristics of the defendant and his background,
25 or something that lessens the degree of culpability

1 surrounding the circumstances of the crime; the good and
2 the bad so to speak, that you would want to hear all that
3 before you made your decision as to what the appropriate
4 punishment should be. Do you understand?

5 A Yes.

6 Q Does that describe you?

7 A Yes, sir.

8 Q And you would also be among that type of juror that
9 would want to and would listen and would follow the law as
10 I told you the law was; is that correct?

11 A Yes, sir.

12 Q You understand that the jury does the sentencing in
13 this case?

14 A Yes.

15 Q In most cases the judge does the sentencing, but in a
16 case such as this, the jury does the decision, the
17 sentencing. There's only one of two choices: Life
18 without parole or the death penalty. Do you understand
19 that?

20 A Yes, sir.

21 Q There are circumstances in your mind of murder that
22 would warrant a life without parole sentence; is that
23 correct?

24 A Yes, sir.

25 Q And you could vote to impose a life without parole

1 sentence in those circumstances; is that correct?

2 A Yes.

3 Q And there are also circumstance in your mind of
4 murder -- I'm not asking you what they are, don't want to
5 know what they are -- but there are circumstances in your
6 mind of murder which warrant the death penalty; is that
7 correct?

8 A Yes, sir.

9 Q And you could impose the death penalty if it were so
10 warranted under all the facts and circumstances; is that
11 correct?

12 A Yes, sir.

13 Q Do you firmly fit into that C category of jurors?

14 A Yes.

15 THE COURT: Thank you very much.

16 Mr. Hoffmann, the attorneys may have a few
17 questions for you, I believe.

18 Solicitor.

19 MR. MYERS: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. MYERS:

22 Q Mr. Hoffmann, have you ever served on a jury panel
23 before?

24 A No, sir.

25 Q So all this is kind of new?

1 A Yes, sir.

2 Q You know in a normal case 12 jurors sit over here in
3 the jury box?

4 A Yes, sir.

5 Q They listen to people testify from that same chair
6 that you're seated in now. The judge will tell them what
7 the law is and then the jury must go back to the jury room
8 and find a verdict of guilty or not guilty. Do you
9 understand that?

10 A Yes, sir.

11 Q Is there any reason why you couldn't be a fair and
12 impartial juror, listen to the evidence in this case and
13 return a verdict of guilty or not guilty based on the
14 evidence in this courtroom?

15 A No, sir.

16 Q Now, Mr. Hoffmann, if the defendant were found
17 guilty, then we have to go into that second part, and
18 that's something a little different because normally the
19 judge hands down the sentences, but in this case the jury
20 is going to hand down the sentence.

21 The judge normally would say, Well, tell me
22 something about the defendant so I can know better what
23 sentence to apply to this person. That's what that second
24 part is for. That second part is to present evidence
25 called aggravating evidence or mitigating evidence, maybe

1 something good about the defendant or maybe something bad
2 about the defendant. It will let the jury hear more
3 additional testimony.

4 Would you be willing to listen to all of that
5 additional testimony before you decided what the
6 appropriate sentence was?

7 A Yes, sir.

8 Q As a matter of fact, the judge will tell the jury,
9 Don't make up your mind until you've heard all the
10 evidence, and until he tells the jury what the law is,
11 could you abide by those instructions?

12 A Yes, sir.

13 Q After the jury has heard everything, the first phase,
14 the second phase, the judge will tell the jury what the
15 law is and he would give a detailed instruction of what
16 aggravating circumstances are and he would give those in
17 writing to the jury. He'd tell the jury what the
18 mitigating circumstances were and he would give some of
19 those to the jury also.

20 Would you consider those as he would instruct
21 you to do?

22 A Yes, sir.

23 Q And then he would tell the jury that now and only now
24 are you to go to your jury room and return a sentence for
25 the case, life without parole or the death penalty. You

1 understand that?

2 A Yes, sir.

3 Q And I think I just heard you tell the judge that in
4 some cases maybe life would be appropriate; is that right?

5 A Yes, sir.

6 Q And in some cases of murder maybe the death penalty
7 would be the appropriate sentence?

8 A Yes, sir.

9 Q In that first part, the guilty or not guilty, all 12
10 jurors would have to agree on the verdict. All 12 would
11 agree, but only the foreman would have to sign his name.
12 The foreman would be speaking for all 12 jurors. Do you
13 understand that?

14 A Yes, sir.

15 Q But our law says this: In a death penalty case where
16 all 12 jurors agree that the death penalty is the
17 appropriate sentence, then all 12 must sign that sentence.
18 Do you understand that?

19 A Yes, sir.

20 Q The fact that our law would require a signature on
21 the death verdict, would that in any way interfere with
22 your ability to return a death penalty sentence if you
23 thought that was the correct sentence?

24 A No, sir.

25 MR. MYERS: Thank you, sir. That's all we have

1 at this time.

2 THE COURT: Mr. Harte.

3 CROSS-EXAMINATION

4 BY MR. HARTE:

5 Q Good morning.

6 A Good morning.

7 Q It's almost afternoon.

8 Mr. Hoffman, my name is Bob Harte and I along
9 with David Tarr represent Steven Barnes.

10 I notice from your questionnaire that you're
11 connected with the Edgefield County School Board?

12 A Yes.

13 Q And in what capacity?

14 A I represent District Seven.

15 Q So that is an elected position?

16 A Yes, sir.

17 Q And I also see that at some point in time you were or
18 a close personal friend were the victims of a crime. Is
19 that you or somebody that you know?

20 A Somebody I know.

21 Q Okay. Would the fact that have to -- are you
22 planning to run for reelection?

23 A No, sir.

24 Q You don't? You believe in term limits, right?

25 A Yes.

1 MR. HARTE: Good for you.

2 Thank you.

3 THE COURT: Can you imagine that today?

4 Any other questions?

5 MR. HARTE: No, Your Honor.

6 THE COURT: Thank you very much.

7 Mr. Hoffmann, would you step back out into the
8 hallway for me just momentarily, please.

9 THE JUROR: Yes, sir.

10 THE COURT: Did you have another issue?

11 THE JUROR: Well, I talked with Ms. Newby
12 yesterday about the potential -- I'm self-employed.
13 Yesterday when you explained the -- you know, I had no
14 idea of what we might be facing as far as the commitment.
15 I want to do my civic duty, but I didn't expect the
16 potential for a couple or three weeks from work, so I
17 didn't know if this would be the time to talk to you about
18 that.

19 THE COURT: Well, it is. And if it concerns
20 you, it obviously concerns me.

21 I don't think it will be a couple or three weeks
22 to begin with.

23 THE JUROR: Okay.

24 THE COURT: My goal is -- let me rephrase that.
25 Not my goal. I anticipate that we will select the trial

1 jury for the trial of this case Thursday morning and begin
2 the trial.

3 I intend to, and I believe I indicated to the
4 entire panel, I intend to work a full day Saturday.

5 I say a full day. I know some folks have some
6 commitments on Saturday evening, so I may stop at 4
7 o'clock rather than 5 or 5:30, but substantially a full
8 day Saturday and half a day on Sunday is my anticipation,
9 unless the jury would want to work all day Sunday and I
10 may consider that.

11 I would anticipate that the trial would go into
12 next week.

13 THE JUROR: Right.

14 THE COURT: I cannot say how deep into next week
15 in totality.

16 THE JUROR: Right.

17 THE COURT: Next weekend I don't -- I try not to
18 go too much into the future, quite frankly.

19 THE JUROR: Right.

20 THE COURT: I would like for you to stay with
21 us. Just because you're a member of the pool now doesn't
22 mean you're going to be selected. Now, with that being
23 said, you know, you could end up being right here.

24 THE JUROR: Right.

25 THE COURT: You can tell me how that fits within

1 your schedule. Of course, when you're in for a penny
2 you're in for a pound obviously, right?

3 THE JUROR: Right.

4 THE COURT: I can't predict the future.

5 THE JUROR: Well, I hate to bail out. I mean,
6 like I said, I want to be able to fulfill my civic
7 obligation, but there is definitely some concern with the
8 length of the trial.

9 THE COURT: Well, I don't think it will be, like
10 you say, a full two or three weeks.

11 THE JUROR: Well, I'll see how it goes.

12 THE COURT: Of course, my schedule was such I
13 missed last week because of some health issues, and I try
14 to really keep my promises to jurors because I don't like
15 to break my promises, but again I would say I'd like for
16 you stay with us.

17 THE JUROR: I guess we'll just see how it goes
18 then.

19 THE COURT: All right. Thank you.

20 THE JUROR: Yes, sir.

21 THE COURT: And, you know, if you want me to
22 revisit that Thursday morning, I'll certainly consider
23 that.

24 THE JUROR: Thank you. Appreciate it.

25 THE COURT: Thank you.

1 (Juror leaves courtroom.)

2 THE COURT: All right. Solicitor.

3 MR. MYERS: I think he's qualified.

4 MR. HARTE: He's qualified.

5 THE COURT: All right. And do you all have any
6 position on his other issue, his scheduling issue? If you
7 do, fine. If you don't, fine. I'm just asking about it.

8 Is that a "no"?

9 MR. HARTE: That's no.

10 THE COURT: All right. No, Solicitor? No
11 position on his scheduling issue?

12 MR. MYERS: No, sir. I think when you told him
13 it wouldn't have to be two or three weeks, I think that
14 kind of alleviated his concerns.

15 THE COURT: All right. If you'd have Mr.
16 Hoffmann step back in.

17 (Juror re-enters the courtroom.)

18 THE COURT: All right. Mr. Hoffmann, I have
19 found that you are qualified to be a member of a pool of
20 jurors from which the trial jury will be selected.

21 What that means for you is I'm going to ask you
22 to please return to the courthouse, to the courtroom at
23 9:30 Thursday morning. And have with you adequate
24 supplies to stay with us for seven to ten days. Although
25 I'm not sure that you would need seven to ten days, I

1 believe it's important to be prepared in that regard. You
2 can certainly leave those in your automobile.

3 During this time and throughout the course of
4 this trial, do not discuss this case with anybody. If
5 anyone tries to talk with you about the case, please try
6 to get that person's name and let me know immediately.

7 Do not watch, listen to, or read any news
8 accounts about the case should there be any. And do not
9 do any independent investigation or any investigation on
10 the Internet.

11 I'm going to ask you to stay with us. As I
12 said, I would revisit your issue Thursday morning. That
13 doesn't mean I'll change my mind. I don't want to give
14 you false hope in that regard. Again, I do not think it
15 will be two to three weeks. I have some individuals on
16 the panel who have commitments the week of Thanksgiving,
17 for example, and I feel comfortable that they'll make
18 those commitments in that regard. But again, I don't mean
19 to simplify it, but it kind of is what it is.

20 THE JUROR: All right.

21 THE COURT: Okay?

22 THE JUROR: Thank you.

23 THE COURT: Thank you very much for your
24 service.

25 (Juror leaves the courtroom.)

1 THE COURT: All right. If you'd please bring us
2 Juror No. 210, Dennis D. Peterson.

3 THE CLERK: Raise your right hand and place your
4 left hand on the Bible.

5 DENNIS PETERSON, after being duly sworn,
6 testified as follows:

7 THE CLERK: If you would have a seat. State
8 your full name and spell your last name, please.

9 THE JUROR: Dennis Diante Peterson,
10 P-E-T-E-R-S-O-N.

11 EXAMINATION

12 BY THE COURT:

13 Q Good morning, Mr. Peterson. Thank you for being with
14 us. Well, good afternoon. I think it may be a few
15 minutes after 12.

16 Did you get the opportunity to review the
17 questionnaire of the category of jurors.

18 A Yes.

19 Q You have that with you? May I see it, please?

20 A (Juror complies.)

21 Q All right. I see you've placed yourself in the B
22 category; is that correct?

23 A Yes, sir.

24 Q And I'll talk with you about that in a few moments.

25 A Okay.

1 Q Did you also get the opportunity to review the
2 potential witness list?

3 A Yes, sir.

4 Q Did you know any of those individuals?

5 A Yes, sir.

6 Q Could you share with us who you know?

7 A I knew Shedall Stevens, went to high school with her,
8 and Leigh Bouknight. They're on the right-hand side.

9 Q All right. Let's see. Leigh Bouknight, employed
10 with the Edgefield County Sheriff's Department?

11 A Yes, sir.

12 Q And Shedall Stevens, Edgefield County Sheriff's
13 Department?

14 A Yes, sir.

15 Q The fact that you know Ms. Stevens and Ms. Bouknight
16 and that they're employed with the Edgefield County
17 Sheriff's Department, could you still be a fair and
18 impartial juror in the trial of this case for both
19 Mr. Barnes and the defendant (sic)?

20 A Yes, sir.

21 Q Thank you. Now, I want to review a few things that
22 we talked about with the entire jury panel yesterday
23 morning.

24 You understand in a trial such as this, there
25 could potentially be two parts of one trial. You

1 understand that?

2 A Yes, sir.

3 Q And the first part is known as the guilt phase. If
4 you were selected as a juror in a trial such as this, you
5 and the other members of the jury in the guilt phase would
6 be solely focused on the issue of whether or not the
7 defendant were guilty or not guilty. Do you understand
8 that?

9 A Yes, sir.

10 Q If a defendant were found not guilty of murder,
11 obviously there would be no need for the penalty phase,
12 and you understand that?

13 A Yes, sir.

14 Q It's only in those situations in which a defendant is
15 found guilty of murder in which there would ever be the
16 necessity for the penalty phase. Do you understand.

17 A Yes, sir.

18 Q Now, experience has told us or tells us that most
19 individuals fit into one of these three categories, either
20 A, B, or C. And in looking at your form, I see that you
21 have circled B, that you fit into that B category; is that
22 correct.

23 A Yes, sir.

24 Q And that is the type of juror that even though an
25 individual had been convicted of the crime of murder,

1 would always vote to impose a sentence of life without
2 parole. Does that describe you, Mr. Peterson?

3 A Yes, sir.

4 Q Are there any circumstances under which you could
5 impose or vote to impose the death penalty?

6 A No, sir.

7 Q There are no circumstances in your mind in which you
8 could vote for the death penalty; is that correct?

9 A No, sir.

10 Q And there's absolutely nothing wrong -- there's only
11 right answers in this courtroom and those are your
12 answers. You understand that?

13 A Yes, sir.

14 Q Is this a firmly held belief of yours?

15 A Yes, sir.

16 Q And have you held this for a long period of time?

17 A Yes, sir, 32 years.

18 Q Yes, sir. I see you're the age of my youngest son.
19 So for your adult life you have held this belief?

20 A Yes, sir.

21 Q And you believe in all circumstances in which an
22 individual is found guilty of murder the appropriate
23 sentence should be life without parole?

24 A Correct.

25 Q And never the death penalty; is that correct?

1 A Correct.

2 THE COURT: All right. Thank you, Mr. Peterson.

3 All right. I believe this would be Mr. Tarr.

4 MR. TARR: Yes, Your Honor.

5 THE COURT: All right. If you would answer any
6 questions Mr. Tarr may have.

7 DIRECT EXAMINATION

8 BY MR. TARR:

9 Q Mr. Peterson, I don't want to be repetitive, I know
10 the judge has asked you a lot of questions.

11 Is this a moral conviction that you have against
12 the death penalty or is it religious based or how would
13 you describe it?

14 A I would assume religious. I mean, it's no worse than
15 the actual punishment if you just succumb and say, Hey,
16 yeah, go with the death penalty. That's no worse than --
17 that's no better than what -- for something you're trying
18 to do. You know what I mean?

19 Q You're saying if somebody murders somebody, if you
20 vote for death, you're doing something just as bad as --

21 A I'm just as bad as they are, exactly.

22 Q And basically no matter how bad the crime is and how
23 bad the defendant is, there's never a situation where you
24 could ever say, I really think the death penalty is
25 appropriate in this case?

1 A No, sir.

2 MR. TARR: That's all I have, Your Honor.

3 THE COURT: All right. Solicitor.

4 MR. MAYE: No questions, Your Honor. Thank you.

5 THE COURT: All right. You care to be heard,

6 Mr. Tarr?

7 MR. TARR: No, Your Honor.

8 THE COURT: Thank you.

9 Mr. Peterson, I'm going to excuse you for
10 service on this jury with our thanks for your presence
11 yesterday and today and your patience.

12 Again, please do not discuss your jury service
13 with anyone.

14 Thank you very much. Good luck to you. You are
15 now excused.

16 (Juror left the courtroom.)

17 THE COURT: Mr. Tarr, for the record, what is
18 your position as to Mr. Peterson?

19 MR. TARR: I wish he wasn't, but it appears he's
20 disqualified.

21 THE COURT: All right. Thank you. I certainly
22 understand that position, Mr. Tarr. Thank you very much.

23 I did not think he's qualified. He's clearly in
24 Category B. He's clearly an intelligent young man also
25 with a college degree, if not several college degrees.

1 All right. If you'd please bring me -- before I
2 bring out this next juror, No. 156, this is the young lady
3 that came forward yesterday morning that had the
4 possession of more than an ounce, I believe.

5 Has that been reviewed to determine whether or
6 not she's qualified?

7 MR. MAYE: Beg the Court's indulgence, Your
8 Honor.

9 THE COURT: All right. I just don't want to
10 waste time. I think she's not disqualified based on that,
11 but if she is disqualified, I don't want to --

12 MR. MAYE: It currently carries six months. We
13 didn't return anything.

14 THE COURT: Do you agree with that, Mr. Harte?

15 MR. HARTE: Yes, sir.

16 THE COURT: All right. If you'd bring out,
17 please, No. 156, Ms. Tammy Renee Kirby.

18 THE CLERK: Raise your right hand and place your
19 left hand on the Bible.

20 TAMMY KIRBY, after being duly sworn, testified
21 as follows:

22 THE CLERK: Have a seat. State your full name
23 for and spell your last name.

24 THE JUROR: Tammy Renee Kirby, K-I-R-B-Y.

25 EXAMINATION

1 BY THE COURT:

2 Q Good morning, Ms. Kirby. How are you?

3 A Doing great. How about yourself, sir?

4 Q Fine. Did you get the opportunity to review the
5 form?

6 A The one out back?

7 Q Yes, ma'am.

8 A Yes.

9 Q Do you have it with you?

10 A Yes. This one?

11 Q Yes, ma'am. May I see it, please?

12 A (Juror complies.)

13 Q All right. And I see you've placed yourself in the C
14 category; is that correct?

15 A That's correct.

16 Q All right. Before I discuss that with you, I want to
17 revisit one issue, and I'm not trying to cause you any
18 embarrassment.

19 A Oh, not at all.

20 Q You came forward yesterday and discussed with me the
21 fact that you had a prior conviction for possession of
22 more than one ounce of marijuana; is that correct?

23 A That's correct.

24 Q When was that?

25 A Oh, God, about 30 years ago.

1 Q About 30 years ago. Well, you've got a good memory
2 then.

3 A Yes.

4 Q Let me think if I remember 30 years ago. What was 30
5 years ago, 1960?

6 MR. HARTE: Nice try.

7 THE COURT: Nice try.

8 BY THE COURT:

9 Q I believe you can stay with us in that regard.

10 A Okay. And I am in the middle of a pardon. I don't
11 know how far along it is.

12 Q Well, I believe you can stay with us anyway. A
13 person's only disqualified if they're convicted of a crime
14 of a sentence of more than one year and the attorneys
15 agree that that would not carry more than one year. I
16 agree with them, so you can stay with us. I just wanted
17 to clarify that for the record.

18 A Okay. I didn't know that.

19 Q That's fine. Did you also -- go ahead.

20 A I was wanting to be honest with you.

21 Q I appreciate that. That's refreshing.

22 Did you also get the opportunity to review the
23 potential witness list?

24 A Yes, sir.

25 Q Did you know any of those individuals?

1 A The only one I know is Randy Doran by name. I might
2 know some other officers when I see them because I work
3 convenience stores.

4 Q All right. But you know Mr. Doran by --

5 A Just by working at a store.

6 Q You know him on sight?

7 A Yes. His brother run a store up there in Johnston
8 when I did.

9 Q All right. The fact that you know Mr. Doran and the
10 fact that Mr. Doran may be and is, I believe, the chief
11 investigating officer on this case, could you still be a
12 fair and impartial juror to both Mr. Barnes and the State?

13 A Yes, sir.

14 Q All right. You could set aside the fact that you
15 know him and be a fair juror in that regard, correct?

16 A That's correct.

17 Q All right. Now let's talk a few moments what I
18 discussed with you and the entire jury panel yesterday
19 morning.

20 You understand on a case like this there could
21 potentially be two parts of one trial. You understand
22 that?

23 A Yes, sir.

24 Q And the first part of a trial in a case such as this,
25 if you're selected for the jury of a trial such as this,

1 the jury would solely be focused on the issue of whether
2 the defendant was guilty or not guilty. You understand
3 that?

4 A Yes, sir.

5 Q Obviously if a person's found not guilty of murder --

6 A You don't have the second.

7 Q You don't have the second part. No need for
8 sentencing, correct?

9 A That's correct.

10 Q All right. It's only in those situations in which an
11 individual is found guilty of murder that you get to that
12 second phase, that penalty phase. Do you understand that?

13 A Yes, sir.

14 Q And you place yourself in Category C, correct?

15 A That's correct.

16 Q And that, as I understand it, is that type of juror
17 that although an individual had been found guilty of the
18 crime of murder, that juror would not have her mind made
19 up in advance concerning punishment.

20 A No, sir.

21 Q You understand in most cases the judge does the
22 sentencing.

23 A Yes, sir.

24 Q But in this case the jury does the sentencing. You
25 understand that?

1 A Yes, sir.

2 Q And there's only one of two choices: Life without
3 parole or the death penalty. Do you understand that?

4 A Yes, sir.

5 Q Would you be that type of juror that would want to
6 hear all the facts and circumstances in aggravation,
7 anything that increases the enormity of the crime, the
8 seriousness of the crime --

9 A Yes, sir.

10 Q -- and in mitigation, anything that increases the
11 crime or anything about the particular defendant that may
12 lessen his culpability before you made the decision as to
13 what the appropriate punishment should be?

14 A I'd have to know that.

15 Q You'd have to know that before you made --

16 A Yes.

17 Q And you'd have to know what the law is, correct?

18 A Yes, sir.

19 Q And if me being the law giver in this case, you would
20 follow the law and apply the law as I told you the law
21 was; is that correct?

22 A That's correct.

23 Q You would not make your decision until you heard all
24 the evidence and testimony, both aggravation and
25 mitigation, and the law; is that correct?

1 A That's correct.

2 Q There are circumstances in your mind, don't want to
3 know what they are, but there are circumstances in your
4 mind of murder, in which a person's found guilty of murder
5 in which the appropriate punishment should be life without
6 parole; is that correct?

7 A No, sir.

8 Q Well, explain that to me, then.

9 A It's according to -- you know, like the judge had to
10 shoot somebody from coming in his home, he had to do it.
11 You have to protect -- certain things you have to protect.

12 Q All right.

13 A And that's what I go by.

14 Q All right. But let's back up a minute.

15 If a person's found guilty of murder --

16 A Uh-huh, murder.

17 Q -- no justification, no excuse, no self defense,
18 nobody's breaking in your house --

19 A Oh, okay.

20 Q -- you know, nobody's hurting your child, that
21 person's been guilty of aggravated murder, you understand?

22 A Yes.

23 Q That's when you make the sentencing decision as to
24 whether life without parole or the death penalty is the
25 appropriate sentence. Do you understand that?

1 A Yes, sir.

2 Q So that's when you make those choices, you and the
3 other members of the jury. Do you understand?

4 A Yes, sir.

5 Q And I'm asking you this: Are there circumstances of
6 murder in your mind in which a person should be sentenced
7 to life without parole?

8 A No, sir.

9 Q All right. Explain that to me.

10 A Well, sometimes a crime can be so bad --

11 Q That?

12 A That the death penalty should become a factor.

13 Q All right. Become a factor. But if the crime is not
14 so bad, what should be done?

15 A I guess life without parole.

16 Q All right. That's what I'm talking about. There's
17 aggravation -- and perhaps I'm not explaining it properly,
18 perhaps it's my inability to appropriately explain it, but
19 after that, after the guilt phase and a defendant is
20 guilty of murder, the jury decides the appropriate
21 punishment. There's one of two choices: Life without
22 parole or the death penalty. Do you understand?

23 A Yes, sir.

24 Q The State can bring forth additional evidence and
25 testimony known as evidence of aggravation, the defense

1 can bring forward additional evidence and testimony known
2 as evidence in mitigation, something that increases the
3 enormity of the crime, aggravation, something that may
4 lessen or mitigate the seriousness of the crime,
5 mitigation. Do you understand that?

6 A Yes, sir.

7 Q And would you look at all that before you made your
8 decision as to the appropriate punishment?

9 A Yes, sir. You'd have to.

10 Q And are there times in which the appropriate
11 punishment -- after looking at all those facts and
12 circumstances and the law, are there times in which the
13 appropriate punishment would be life without parole?

14 A Yes, sir, there'd be times.

15 Q All right. And I don't want to know what those times
16 are in your mind, but are there times in which life
17 without parole would be the appropriate punishment?

18 A Yes, sir.

19 Q Depending on the facts and circumstances; is that
20 correct?

21 A Yes, sir.

22 Q And are there also times in which the death penalty
23 would be the appropriate punishment?

24 A Yes, sir.

25 Q Could you vote for life without parole if the facts

1 and circumstances so warranted it?

2 A Yes, sir.

3 Q By the same token, could you vote for the death
4 penalty if the facts and circumstances so warranted it?

5 A Yes, sir.

6 Q We don't want a type of juror that's going to sit
7 over there on that jury panel --

8 A And already have in their mind --

9 Q Right, that if this person's convicted of murder, I'm
10 going to give him the death penalty. That's not the type
11 of juror we want. Do you understand?

12 A You want me to be open minded?

13 Q Exactly. You would not be that type of juror that
14 had already made up her mind?

15 A No, I couldn't.

16 Q And at the same token, we don't want a juror sitting
17 over there that's already made up their mind that
18 regardless of whether or not Mr. Barnes is found guilty of
19 murder, he's going to get a life sentence. Do you
20 understand?

21 A Yes, sir.

22 Q So you would not have already made up your mind?

23 A No, sir.

24 Q It would depend on the facts and circumstances?

25 A Yes, sir.

1 Q And you could vote for a life sentence or the death
2 penalty depending on the facts and circumstances; is that
3 correct?

4 A Yes, sir.

5 THE COURT: All right. Thank you very much, Ms.
6 Kirby.

7 I'm going to allow these attorneys to ask you a
8 few questions. I believe we will be at -- Solicitor.

9 MR. MAYE: Thank you.

10 THE COURT: All right.

11 DIRECT EXAMINATION

12 BY MR. MAYE:

13 Q Ms. Kirby, I believe you've already written down on
14 your questionnaire, you've never been on a jury before,
15 have you?

16 A No, sir.

17 Q And so since the judge already talked about it, you
18 understand in this case we begin with the first phase
19 which would be to decide whether or not he's guilty or
20 innocent of murder. You understand that, right?

21 A Yes.

22 Q And you could follow the judge's oath to be open
23 minded and not to prejudge that until you've heard all the
24 facts as they came from the witness stand right there
25 where you're sitting --

1 A Yes.

2 Q -- you would hear all of that and be open minded
3 until such time when all of that testimony was before you
4 and the judge gave you the law, that you went back there,
5 that's when you'd make your decision, correct?

6 A Yes, sir.

7 Q Okay. And you could either find somebody guilty or
8 not guilty based on that, right?

9 A Yes, sir.

10 Q Normally after that takes place in the trial, we're
11 here on a capital case and it's a little bit different.
12 That's why I'm up here. The lawyers have a chance to ask
13 you a few questions because we're seeking the death
14 penalty in this case.

15 Normally after a trial like that takes place,
16 the jury comes back with a verdict. If they find them
17 guilty, they leave and the judge determines the sentence.

18 A Right.

19 Q In this case it's a little bit different. If you
20 find a guilty verdict of murder in this case, then we come
21 back and we have a trial for sentencing and it's up to the
22 jury to decide at that point in time.

23 Back in the initial trial, or the guilt phase,
24 only the foreman signs that verdict. But because this is
25 a death penalty case, when you have the sentencing phase,

1 if after hearing all of the evidence you all determine
2 that death was an appropriate verdict, you'd have to sign
3 that form individually, not just the foreman. Would you
4 have any problem signing your name to that if you thought
5 after hearing all the evidence that the death penalty was
6 appropriate?

7 A I wouldn't have a problem at all.

8 Q Okay. Just as surely as you wouldn't have trouble
9 with that, though, you wouldn't prejudge it, you would
10 listen to everything that occurred during the sentencing
11 phase, maybe you'd hear some good stuff about him and
12 maybe you'd hear some bad stuff, you wouldn't prejudge
13 that, you would listen to all of that and then decide at
14 the end whether or not it was life or death, right?

15 A Yes, sir.

16 Q But you wouldn't have made up your mind ahead of
17 time?

18 A Unh-unh.

19 Q And you could follow the oath as the judge would tell
20 you because the judge would tell you not to prejudge and
21 you could do that and fulfill that oath, can't you?

22 A Yes, sir.

23 MR. MAYE: Okay. That's all we could ask of
24 you. Thank you.

25 THE COURT: Thank you. Answer any questions

1 also that Mr. Harte may have for you.

2 CROSS-EXAMINATION

3 BY MR. HARTE:

4 Q Ms. Kirby, my name is Bob Harte and I along with
5 David Tarr represent Steven Barnes in this case.

6 Let me correct one thing that Solicitor Maye
7 said. He said that initially the verdict is either guilty
8 or innocent.

9 A It's guilty or not guilty.

10 Q Correct. And there's a big difference in that
11 because Mr. Barnes doesn't have to prove anything, the
12 State has to prove him guilty. And if they fail to proof
13 that guilt beyond a reasonable doubt, then it's not
14 guilty. And you understand that difference?

15 A Yes.

16 Q Okay. Now, I'm a little confused because at one
17 point when the judge asked you if you would vote for -- if
18 you could vote for life after a conviction for murder, you
19 said no, that it would always be death. And then when he
20 asked you later on, you said that it would depend on the
21 circumstances, and I just want to make sure that that's --

22 A If I said that, I didn't mean to. I really didn't.

23 Q Okay. So there are circumstances where somebody has
24 been convicted of murder, as you understand that term to
25 be, where you could vote for a life sentence?

1 A Yes, sir.

2 MR. HARTE: Okay.

3 THE COURT: All right. Ms. Kirby, would you
4 step back around to the hallway for me just a moment,
5 please?

6 THE JUROR: Right there?

7 THE COURT: Yes, ma'am, right around there with
8 our bailiff. Thank you.

9 THE JUROR: Thank you.

10 THE COURT: Yes, ma'am.

11 All right. Solicitor.

12 MR. MAYE: I think she's qualified, Your Honor.

13 THE COURT: Mr. Harte.

14 MR. HARTE: Well, reluctantly I think she's
15 qualified.

16 THE COURT: And I may be misstating this, I
17 think at one point she said -- I asked her a question
18 about could she vote for life without parole and she said
19 no, but I don't think she follow that up as always the
20 death penalty. I think it was my inartful explanation to
21 her in that regard. I think she is qualified. She's
22 placed herself in Category C and she said she'd listen to
23 all the facts and circumstances, aggravation or
24 mitigation, and follow the law.

25 If you'd bring her back Ms. Kirby back out here.

1 (Juror re-enters the courtroom.)

2 THE COURT: All right. Ms. Kirby, I have found
3 that you are qualified to be a member of a pool of jurors
4 from which the trial jury will be selected.

5 What does that mean to you?

6 THE JUROR: That means I have to be here
7 Thursday morning.

8 THE COURT: At 9:30. That's exactly right.

9 Also, please have with you -- you can leave them
10 in your automobile -- clothing and toiletry supplies to
11 last you for a period of seven to ten days.

12 THE JUROR: Okay. Can I bring it with me?

13 THE COURT: Yes, ma'am, just leave them in the
14 car, but bring it with you.

15 Further, do not discuss this case with anyone.
16 If anyone attempts to talk with you about the case, please
17 try to get their name if possible and then let me know
18 immediately.

19 Further, do not watch, listen to, or read any
20 news reports about the case should there be any. Do not
21 do any independent investigation or any investigation on
22 the Internet.

23 THE JUROR: You don't have to worry about me
24 trying to get on the Internet.

25 THE COURT: All right. Thank you very much.

1 See you Thursday morning at --

2 THE JUROR: 9:30.

3 THE COURT: Thank you very much.

4 THE JUROR: Thank you.

5 (Juror leaves the courtroom.)

6 THE COURT: All right. If you'd bring us,
7 please, Valerie Moore.

8 THE CLERK: Please raise your right hand and
9 place your left hand on the Bible.

10 VALERIE MOORE, after being duly sworn, testified
11 as follows:

12 THE CLERK: Have a seat. State your full name
13 and spell your last name, please.

14 THE JUROR: Valerie Moore, M-O-O-R-E.

15 EXAMINATION

16 BY THE COURT:

17 Q Good afternoon, Ms. Moore.

18 A Good afternoon, sir.

19 Q Thank you for being with us and thank you for your
20 patience.

21 A Yes, sir.

22 Q Did you get the opportunity to review the categories
23 of jurors?

24 A Yes, sir.

25 Q Do you have that form with you?

1 A Yes, sir.

2 Q May I see it, please?

3 A (Juror complies.)

4 Q All right. Thank you very much.

5 And I see you've placed yourself in the A
6 category; is that correct?

7 A Yes, sir.

8 Q As I understand that A category, that is the type of
9 juror that once an individual has been found guilty of
10 murder, that juror would always sentence that individual
11 to death. Does that describe you?

12 A Yes, sir.

13 Q Are there any circumstances of murder in which you
14 could sentence a person to a life sentence?

15 A No, sir.

16 Q It would always be the death penalty?

17 A Yes, sir.

18 Q And that's a firmly held belief of yours?

19 A Yes, sir.

20 Q And have you held that for -- I know you're a young
21 lady. I didn't look at your age, I apologize, but you've
22 held that for a substantial period of time; is that
23 correct?

24 A Yes, sir.

25 THE COURT: All right. Any questions,

1 Solicitor?

2 MR. HARTE: It's his turn.

3 THE COURT: I apologize. Any questions, Mr.
4 Tarr?

5 MR. TARR: No questions.

6 THE COURT: Solicitor?

7 MR. MAYE: Just briefly.

8 DIRECT EXAMINATION

9 BY MR. MAYE:

10 Q If you were given an instruction not to prejudge --
11 you know, in a case where the State's seeking the death
12 penalty it's a two-part trial. You first have a trial on
13 the murder, to see if somebody's guilty or not guilty of
14 murder and the judge would charge you not to prejudge that
15 or make up your mind until you have heard all the evidence
16 in the case. You understand that? You could do that,
17 couldn't you, if you were on a murder jury?

18 A Yes, sir.

19 Q If a jury returns a verdict of guilty, then you have
20 a second trial. You know, normally on a murder trial the
21 judge then sentences, the jury goes home and the judge
22 decides what the sentence is, but because we're seeking
23 the death penalty in this case, you would take an oath
24 then that you would -- the jury, if you sat on a
25 sentencing jury, that you would decide the verdict.

1 Are you saying that you would prejudge that and
2 not be open minded and hear maybe some good things about
3 the person or some bad things about the person before you
4 made that judgment?

5 A No, I'm not saying that. How I feel about murder, a
6 life for a life. You know, a person that's dead cannot
7 get their life back, cannot get an opportunity to get life
8 in prison, to get the choice, you know, so I'm set on the
9 death penalty.

10 MR. MAYE: Fair enough. Thank you.

11 THE COURT: Anyone care to be heard, Mr. Tarr,
12 Solicitor?

13 MR. TARR: No, sir.

14 MR. MAYE: No, sir.

15 THE COURT: All right. Ms. Moore, thank you
16 very much for being with us this week. I'm going to
17 excuse you from your jury service for the remainder of this
18 term.

19 THE JUROR: Thank you.

20 THE COURT: I would ask you, please do not
21 discuss your jury service with anyone.

22 THE JUROR: Thank you.

23 THE COURT: Thank you very much and thank you
24 for your service.

25 THE JUROR: Thank you.

1 THE COURT: Yes, ma'am.

2 (Juror leaves the courtroom.)

3 THE COURT: All right. I'm going to take about
4 a five-minute recess and then we'll start on the 12:30.

5 Five minutes. Thank you very much.

6 (A break was taken.)

7 THE COURT: All right. Let's see if we can
8 bring in No. 52, Bryan Carroll.

9 THE CLERK: Raise your right hand and place your
10 left hand on the Bible.

11 BRYAN CARROLL, after being duly sworn, testified
12 as follows:

13 THE CLERK: Have a seat. State your full name
14 and spell your last name, please.

15 THE JUROR: Bryan Joseph Carroll. Carroll's
16 C-A-R-R-O-L-L.

17 EXAMINATION

18 BY THE COURT:

19 Q Good afternoon, Mr. Carroll. How are you?

20 A Doing fine.

21 Q Thank you for being here today and thank you for your
22 patience.

23 Did you get the opportunity to review the form?

24 A Yes, Your Honor, I did.

25 Q Do you have that with you?

1 A Yes, sir.

2 Q May I see it, please?

3 A (Juror complies.)

4 Q All right. And I believe you indicated on this form
5 you would fit into Category B; is that correct?

6 A That's correct.

7 Q Category B would be that type of juror that although
8 an individual had been convicted of the crime of murder,
9 that juror would believe that the defendant would
10 always -- or that juror would always sentence a defendant
11 to life without parole; is that correct?

12 A Pardon me, Your Honor?

13 Q Type B juror would be that type of juror that
14 although a defendant had been found guilty of the crime of
15 murder, that that juror would believe that the defendant
16 would always be sentenced to life without parole?

17 A Well, actually, Your Honor, I would like to prefer
18 giving no judgment upon anyone.

19 Q All right. And speak up just a little bit for me.

20 A I would, you know, prefer giving judgment upon no
21 one.

22 Q And I noted that you came forward yesterday morning,
23 I believe, and spoke with me.

24 A Yes, Your Honor.

25 Q And I also note that I have a letter in the file

1 dated 9-17-10 where you stated that you asked to be
2 excused as a juror, that "I am a Catholic and my religion
3 does not allow me to pass my opinion on anyone or to judge
4 them anyway. Thank you for your understanding."

5 Just explain your position to me, Mr. Carroll.

6 A Your Honor, I just got a full belief in my heart
7 that I just can't put judgment upon no one, you know. I
8 personally leave that up to God. You know, that's how I
9 feel.

10 Q So you do not believe you have the ability to serve
11 as a juror?

12 A No, I really don't, Your Honor, to be quite honest
13 with you.

14 Q Because you couldn't sit on the jury and make a
15 decision as to whether or not an individual was guilty or
16 not guilty?

17 A That's correct, Your Honor. You know, I just
18 couldn't in my heart, you know, just sit there and convict
19 nobody, you know.

20 Q You just couldn't judge anybody?

21 A Couldn't judge anybody.

22 Q Even if you thought they were guilty, you couldn't
23 judge them?

24 A I couldn't judge them, Your Honor.

25 Q So you could not give both the State and the

1 defendant a fair trial?

2 A That's correct, Your Honor, I couldn't. You know,
3 and in your best interest, I couldn't do what really needs
4 to be done.

5 Q And is this a long-held belief of yours?

6 A Yes, Your Honor. And I've believed this as long as
7 I, you know, had my faith, you know.

8 Q Are you like me, are you what is known as a cradle
9 Catholic?

10 A No, sir, I believe --

11 Q Have you been Catholic all your life?

12 A I've been Catholic all my life.

13 Q So you were born Catholic?

14 A I was born Catholic.

15 Q And raised Catholic?

16 A Yes, sir.

17 Q Were you educated Catholic?

18 A I went to sixth grade elementary school and two
19 grades of Catholic school, so I wasn't a very good
20 student, to be quite honest with you.

21 Q That's like a sentence almost, going to Catholic
22 schools, you know. I served 13 years.

23 A I see. Yes, sir. But that's just deep within my
24 heart. That's just how I feel. You know, I can't -- you
25 know, I can't prejudge people.

1 Q And not only could you -- and don't let me put words
2 in your mouth, Mr. Carroll, you're a very intelligent man.
3 Is it correct that not only could you not judge an
4 individual in the guilt phase, but you could never impose
5 the death penalty on anyone?

6 A Could never impose the death penalty.

7 Q Under any circumstances?

8 A No, sir.

9 THE COURT: Any questions -- let's see. I
10 forgot what order we're at.

11 Any questions, Solicitor?

12 MR. MAYE: No, sir, Your Honor. Thank you.

13 THE COURT: Any questions, Mr. Harte?

14 MR. HARTE: No, sir.

15 THE COURT: Thank you. Anyone care to be heard?

16 MR. MAYE: No, sir.

17 THE COURT: All right. Thank you.

18 Mr. Carroll, I am going to excuse you from your
19 jury service. Thank you very much for being with us
20 yesterday and today and for your candid responses.

21 THE JUROR: I appreciate it.

22 THE COURT: Please do not discuss your jury
23 service with anyone. Thank you very much. You're now
24 excused.

25 THE JUROR: I can make you a promise for that.

1 THE COURT: All right. Good luck to you.

2 THE JUROR: Thank you, Your Honor.

3 THE COURT: Yes, sir.

4 (Juror leaves the courtroom.)

5 THE COURT: Mr. Harte, what is the defense's
6 position as to Mr. Carroll?

7 MR. HARTE: Your Honor, he's disqualified.

8 THE COURT: Thank you very much. I do find he's
9 disqualified.

10 I would further state for the record, when he
11 came forward yesterday morning, he was -- he appeared in
12 emotional turmoil concerning the situation. He did appear
13 in that same state to me today. He appeared much more
14 relaxed once I released him from jury service. It appears
15 he could not judge, could not be a fair and impartial
16 juror, could not reach a verdict, could not follow his
17 oath. Further, he places himself squarely -- even if he
18 could judge -- in Category B. He is not qualified.

19 Please bring us Nancy Jean Price, 215.

20 THE CLERK: Raise your right hand and place your
21 left hand on the Bible.

22 NANCY PRICE, after being duly sworn, testified
23 as follows:

24 THE CLERK: Have a seat. State your full name
25 and spell your last.

1 THE JUROR: My name is Nancy Jean Price,
2 P-R-I-C-E.

3 EXAMINATION

4 BY THE COURT:

5 Q Good afternoon, Ms. Price.

6 A Hello.

7 Q Thank you for being with us today and thank you for
8 your patience.

9 Did you get the opportunity to review the form?

10 A Yes, sir.

11 Q Do you have it with you, the form?

12 A The one with the names of witnesses?

13 Q No, ma'am, the one with the category of jurors.

14 A Yes, sir.

15 Q May I see it, please?

16 A Yes, sir. (Juror complies.)

17 Q All right. And I believe you've placed yourself in
18 Category B; is that correct?

19 A That's correct, sir.

20 Q All right. And we'll talk about that momentarily.

21 Did you also get the opportunity to review the
22 potential witness list?

23 A Yes, sir, I did.

24 Q Did you know any of those individuals?

25 A I'm acquainted with several of them. I don't them

1 well.

2 Q All right. And who is it you're acquainted with?

3 A One is Charles Tony Baughman, who I've just met
4 through my volunteering at the Discovery Center.

5 Q All right.

6 A Ms. Newby, I know that she's the Clerk of Court.

7 Q All right.

8 A I think there was one other official there, Mr. Doran
9 with the Edgefield County Sheriff's Department.

10 Q All right.

11 A He had to come out at a burglary on some of my
12 properties. So I'm acquainted with these people because
13 they're county officials, but I don't really know anyone
14 personally.

15 Q All right. The fact that you're acquainted with
16 them, could you still be a fair and impartial juror to
17 both Mr. Barnes and the State?

18 A Yes, sir, I could.

19 Q And if I tell you Mr. Doran is the chief
20 investigating officer on the case, could you still be a
21 fair and impartial juror to both the State and the
22 defense?

23 A Yes, sir.

24 Q All right. Thank you very much.

25 I see you've placed yourself in Category B.

1 A Yes, sir.

2 Q Now, Category B is that juror that regardless of the
3 fact that an individual had been convicted of a crime of
4 murder could never impose the death penalty. They would
5 always vote for a life sentence or life without parole.
6 Does that describe you?

7 A Yes, sir.

8 Q You could never vote to impose the death penalty on
9 anyone?

10 A I would have a real hard time with it and I would be
11 haunted by it.

12 Q Now explain that to me. And you understand that your
13 answers are the only right answers.

14 A I understand.

15 Q And I'm certainly not challenging your position, you
16 understand that?

17 A Yes, sir.

18 Q Let me back up and explain the process to you a
19 little bit.

20 A Yes, sir.

21 Q In a trial such as this, you understand there could
22 be two phrases of one trial. Do you understand that?

23 A Yes, sir, I understand that.

24 Q In the first phase, the jury would be focused on the
25 decision of whether a defendant were guilty or not guilty.

1 Do you understand that?

2 A Yes, sir.

3 Q Obviously if the defendant were found not guilty of
4 murder, there would be no need for that second phase.

5 A Yes, sir.

6 Q It's only if the defendant's found guilty of murder
7 that we would go to that second phase of the trial, that
8 penalty phase. Do you understand?

9 A Yes, sir, I do.

10 Q Most criminal trials at the conclusion of the guilt
11 phase if an individual -- if a defendant's found guilty of
12 the crime charged, the judge does the sentencing.

13 A Yes, sir, I understand.

14 Q But in this type of case the jury does the sentencing
15 and they have one of two choices: Life without parole or
16 the death penalty. Do you understand?

17 A Yes, sir.

18 Q And we're looking for those jurors that would not sit
19 over here in the jury box and say, Well, I found him
20 guilty of the crime of murder -- not him, I'm talking an
21 individual guilty of the crime of murder, I'm going to
22 sentence him to death always, your mind's made up.

23 A Yes, sir.

24 Q You commit the crime of murder, you deserve the death
25 penalty, that's what I'm going to give you.

1 A Yes, sir.

2 Q We're not looking for that type of juror. You
3 understand that?

4 A I understand.

5 Q Also, we're not looking for the type of juror that
6 would say, Well, although he's been convicted of the crime
7 of murder, my mind's made up, I'm sentencing him to life
8 without parole. We're not looking for that type of juror.
9 Do you understand that?

10 A Yes, sir.

11 Q We're looking for the type of juror that would go
12 into that penalty phase, if there is a penalty phase, with
13 an open mind.

14 A Yes, sir.

15 Q That would not have pre-determined the appropriate
16 punishment.

17 A I understand.

18 Q That was always in favor of the death penalty or
19 always against the death penalty.

20 Now, you've circled Category B. And I don't
21 question your opinions, but could you sentence a person to
22 death?

23 A I would have a very hard time signing my name.

24 Q All right. And when you say you'd have a hard time
25 signing your name, do you know something about that law

1 that would require you to sign your name?

2 A I don't know a lot about the law. I just know that
3 in the past I have had really bad dreams about it. I
4 couldn't do it.

5 Q And when you say you've had really bad dreams, you're
6 about in the past just with this case or in cases --

7 A No, sir, years ago, just in general with the death
8 penalty, yes, sir.

9 Q Were you ever called before on a death penalty trial?

10 A I served on a jury in Anderson County. It was a
11 murder trial, but they were not seeking the death penalty.

12 Q Right.

13 A And I served and I was fair and impartial in that.

14 Q Sure. I'm sure you would be.

15 A I only have a problem with the death penalty.

16 Q Ma'am?

17 A I only have a problem with the death penalty.

18 Q Are you against the death penalty?

19 A Yes, sir, more or less.

20 Q More or less. And I guess it's that "more or less"
21 I'm trying to explore a little bit.

22 A I understand. If it happened to a member of my
23 family, I'm sure I might change my mind, but right now I
24 just could not sign -- to me it's like signing a death
25 warrant, and that to me is something I can't do.

1 Q Are you telling me -- and please, you're a very
2 intelligent, educated young lady -- are you telling me
3 that you could only vote for the death penalty in
4 circumstances in which it was a family of yours that had
5 been murdered? And like I say, please don't let me put
6 words in your mouth.

7 A I think if a family member of mine had been murdered
8 in a heinous crime, which certainly murder is, I might
9 feel differently, but fortunately that has not happened,
10 so -- and I hope it doesn't, but right now I could not --
11 in this case I could not sign my name on a death warrant.

12 Q In this case you couldn't?

13 A No, sir.

14 Q You've already made that decision?

15 A Yes, sir.

16 Q So regardless of whether or not this individual were
17 found guilty of murder, you've already made your opinion
18 as to what the appropriate punishment would be?

19 A On capital punishment, yes, sir.

20 Q That it should be life without parole?

21 A Yes, sir.

22 Q Under no circumstances of aggravation or mitigation
23 in this particular case could you vote for the death
24 penalty?

25 A Probably not.

1 Q When you say "probably not," again that gives me room
2 to kind of explore a little bit. Nothing wrong with that.

3 A Yes, sir. I just don't want to be haunted for the
4 rest of my life.

5 Q And would this be a firmly held decision or opinion
6 of yours?

7 A It'd be firm, yes, sir.

8 Q And I know that you got emotional at one stage just
9 thinking about it, correct?

10 A Yes, sir.

11 Q And do you think that emotion would interfere with
12 your ability to be a fair and impartial juror for both the
13 State and the defense?

14 A Yes, sir.

15 Q Are you telling me -- and if you are, fine, and if
16 you're not, fine -- that you could not vote to impose the
17 death penalty in this case?

18 A Yes, sir, I could not. And I don't want to waste
19 time or hang the jury.

20 THE COURT: All right. Thank you very much,
21 Ms. Price.

22 THE JUROR: Yes, sir.

23 THE COURT: Just a few more moments. Maybe the
24 lawyers have some questions for you.

25 I believe we're even. That would be Mr. Tarr.

1 MR. TARR: Yes, Your Honor.

2 THE COURT: Mr. Tarr.

3 DIRECT EXAMINATION

4 BY MR. TARR:

5 Q Ms. Price, do you realize that if you sat on this
6 jury and you wanted to vote for life and everybody else
7 wanted to vote for death --

8 MR. MAYE: Your Honor, I'm going to object to
9 that. We've let that go up to this point in time. We're
10 talking about being influenced by a majority of his
11 jurors. I would object to that.

12 THE COURT: Go ahead with your question. Let me
13 hear your whole question, Mr. Tarr.

14 MR. TARR: I was basically just wanting to ask
15 her whether she realized that she would not hang a jury up
16 if she disagreed with other jurors. In the sentencing
17 phase it doesn't have to be unanimous unless it's for
18 death, so it's not going to be a hung jury.

19 THE COURT: No, sir, I disagree with that. It
20 has to be a unanimous verdict.

21 MR. TARR: One juror can vote life and it would
22 be a life sentence.

23 THE COURT: Mr. Tarr, it has to be a unanimous
24 verdict. That would be up to the judge in that regard.
25 The jury's charged the verdict has to be unanimous.

1 Step out for me a moment, please, Ms. Price.
2 Step out to the hallway.

3 THE JUROR: Yes, sir.

4 (Juror leaves courtroom.)

5 THE COURT: Please tell me what you're referring
6 to, Mr. Tarr.

7 MR. TARR: Your Honor, did you ask me a
8 question?

9 THE COURT: Yes, sir. Please tell me what
10 you're referring to as far as a non-unanimous verdict in
11 the sentencing phase.

12 MR. TARR: My understanding of the law was if
13 anybody votes for life, then it's a life sentence to be
14 imposed.

15 THE COURT: Sir?

16 MR. TARR: I was just stating my understanding
17 of the law. If I'm incorrect, I'm incorrect.

18 MR. HARTE: My understanding is that if the jury
19 decides that they cannot reach a verdict --

20 THE COURT: Correct.

21 MR. HARTE: -- unanimously, then the sentence is
22 a life sentence.

23 THE COURT: Correct. But the jury's not
24 informed of that.

25 MR. HARTE: That's correct.

1 THE COURT: Yes, that's the point I'm making.
2 The jury is charged that their verdict must be a unanimous
3 verdict. And if they come back and say, Judge, we can't
4 reach a verdict, they're not informed of what occurs after
5 that. That was my concern with this.

6 MR. TARR: Then I apologize.

7 THE COURT: That's all right. I'm not fussing
8 at you, Mr. Tarr, but that's my concern because that's not
9 part of the law that concerns the jury.

10 Now, of course, with Ms. Price, the question is
11 you realize you can stand firm with your opinion --

12 MR. TARR: Yes, Your Honor.

13 THE COURT: -- and, you know, that you can hold
14 your belief. And it's not a matter of would you go with
15 the majority, I don't think she would, quite frankly, from
16 my evaluation of it, but a jury's not informed of what may
17 occur if there is a non-unanimous verdict. That was my
18 point.

19 I think you're correct, if there's 11 to one as
20 Mr. Harte says, but it's not a part of the charge to the
21 jury. That was my concern.

22 MR. TARR: I apologize.

23 THE COURT: So we were both a little right and
24 both a little wrong, Mr. Tarr.

25 MR. TARR: Yes, Your Honor.

1 THE COURT: All right. If you'd have Ms. Price
2 come back around, please.

3 (Juror re-enters the courtroom.)

4 THE COURT: All right. Ms. Price, if you'd come
5 back around to the witness stand for us, please. I
6 apologize for that brief delay.

7 All right. Mr. Tarr, you may continue.

8 BY MR. TARR:

9 Q I just basically have one more question, Ms. Price.
10 The judge asked you a little bit about this.
11 You had given three responses to some questions that seem
12 to indicate that you might be able to consider both
13 punishments. You said that you would have a real hard
14 time voting for death, which could lead someone to believe
15 that you might be able to vote for death. Then you said
16 you were more or less against the death penalty. Then you
17 said you probably couldn't vote for the death penalty. So
18 it leaves a little bit of leeway there. If you could
19 state for the record exactly what your feeling is in
20 concrete terms.

21 A I'm not in favor of capital punishment, in
22 particularly in this case.

23 Q Do you know anything about this case?

24 A I know nothing about this case.

25 Q Okay.

1 A So in any other regard I could definitely be fair and
2 impartial because I know absolutely nothing about the
3 victim or the accused or any of the circumstances involved
4 in this case.

5 MR. TARR: Okay. I have nothing further.

6 THE COURT: Solicitor.

7 CROSS-EXAMINATION

8 BY MR. MAYE:

9 Q Just briefly.

10 I think the judge kind of alluded to it and I
11 think he even asked you because it's so specific in this
12 case.

13 If a person sits on a jury and they're in the
14 sentencing phase and they decide that death is
15 appropriate, in a normal murder case if you were involved
16 in one previously, you know, the foreman's the only one
17 that has to sign the verdict. In South Carolina, the law
18 is that if you sit on a jury on the sentencing phase and
19 return a verdict of death, each individual has to sign his
20 name just as you were stating.

21 A Right.

22 Q You know, essentially as I think you termed it, a
23 death warrant. Well, the jurors have to sign that
24 individually. And you just said you absolutely can't do
25 that and you'd be haunted by that; isn't that right?

1 A That's correct.

2 Q And you said you realized that just -- you don't need
3 to be on the jury for that reason because you couldn't
4 fulfill your obligation to do that?

5 A That's right.

6 MR. MAYE: Thank you.

7 THE JUROR: Thank you.

8 RE-EXAMINATION

9 BY THE COURT:

10 Q Ms. Price, would you step back -- let me ask you this
11 before you step out.

12 A Yes, sir.

13 Q What did you do? What was your occupation?

14 A I was an aide to the U.S. Congress.

15 Q In Washington?

16 A No, sir, I worked in the state offices.

17 Q In the state offices?

18 A Yes, sir.

19 Q Which congressman did you work for?

20 A I work for 20 years for Congressman Butler Derrick in
21 Edgefield.

22 Q Mr. Derrick, yes, ma'am.

23 A And I worked 11 and a half years for now Senator
24 Lindsey Graham.

25 Q All right. So Mr. Graham followed Mr. Derrick?

1 A That's correct.

2 Q All right. And you worked for both of them?

3 A Yes, sir.

4 Q Well, thank you for your service. That's a lot of
5 time to serve, isn't it?

6 A Yes, sir. Thank you.

7 THE COURT: Well, step out for me a minute,
8 please.

9 (Juror leaves courtroom.)

10 THE COURT: All right. Mr. Tarr.

11 MR. TARR: I don't believe she's qualified.

12 THE COURT: Solicitor?

13 MR. MAYE: She's not qualified.

14 THE COURT: I agree with you, Mr. Tarr, and this
15 is the type juror that we could question for hours and
16 just come back to the same point.

17 She obviously circled B. She's opposed to the
18 death penalty, yet she does leave that glimmer for the
19 Court and the defense, of course, to explore. And she
20 even said at one point in this case that she would not
21 vote for the death penalty in this case.

22 She's one of those equivocating jurors that is
23 not qualified under Spann, Elmore, Copeland, Longworth,
24 and further states that perhaps a family member and all,
25 so Ms. Price is not qualified.

1 If you'd bring Ms. Price out for me, please.

2 (Juror re-enters the courtroom.)

3 THE COURT: Ms. Price, you can stand right
4 there.

5 I am going to excuse you from your jury service
6 in the trial of this case. So thank you very much for
7 being with us yesterday and today and for your time and
8 patience and for sharing your beliefs and feelings in this
9 matter and being as candid as you have been, but I am
10 going to excuse you again with my thanks.

11 THE JUROR: Yes, sir.

12 THE COURT: Do not discuss your jury service
13 with anyone.

14 THE JUROR: No, sir. Thank you.

15 THE COURT: Thank you very much, Ms. Price.
16 Good luck to you.

17 THE JUROR: Thank you, sir.

18 (Juror leaves the courtroom.)

19 THE COURT: If you'd please bring me Juror No.
20 42, Ruby L. Bussey.

21 MR. MAYE: Judge?

22 THE COURT: Yes.

23 MR. MAYE: If I could briefly --

24 THE COURT: Just hold her up.

25 MR. MAYE: These staking out -- well, not

1 staking-out questions, but these asking about the majority
2 versus the minority juror questions, it appears to me that
3 State versus Bennett addresses that and asking questions
4 about -- I know in the case of Bennett they were talking
5 about, Now, if you had some reservations about whether or
6 not the defendant should get the death penalty and all 11
7 other jurors put their name on the list, could you stand
8 up to that and not put your name on the list? I think
9 that the questions are improper where they're asking those
10 majority/minority questions under State versus Bennett and
11 I would object to that, Your Honor, because I know that's
12 come forward a second time now after the outset.

13 The Solicitor and I talked about it earlier,
14 about whether or not he was going to object to that, but I
15 think those questions about asking minority/majority
16 questions, like 11 to one or asking them whether or not
17 they'd be influenced by the majority, that would be
18 improper.

19 THE COURT: Mr. Tarr.

20 MR. TARR: I disagree, Your Honor. I think
21 standing firm on your ground and standing up to jurors
22 that have differing opinions is the same thing. I don't
23 see a distinction. I mean, asking if they'll stand firm
24 and they're asking on every juror, Will you sign your
25 name, I don't see much difference in those questions.

1 THE COURT: There may be a slight distinction in
2 that regard.

3 I think you can ask -- and some of the jurors
4 have been asked and have responded that, you know, you
5 say, Well, if you have your opinion and others have
6 different opinions, rather than put it in the
7 majority/minority complex. Just to others, because you
8 don't know what constitutes "others," if it's ten against
9 you or ten for you in the same position, would you be firm
10 in your convictions, in your opinion.

11 And, of course, this young lady's a little
12 different, but she brought up the hung jury issue herself,
13 kind of sua sponte, I guess. She said, Well, I wouldn't
14 want to waste y'all's time and have a hung jury. She of
15 course knew about signing her name from somewhere. I'm
16 not exactly sure where.

17 I'll take it on a question-by-question basis,
18 but I think you can certainly ask if you're the type
19 person that you've formed your opinion, that you would
20 hold firm to that opinion regardless of what others may
21 say.

22 MR. TARR: Could I ask if 11 people signed their
23 name for death, would you feel compelled to sign your
24 name?

25 THE COURT: Well, isn't the question, Do you

1 understand just because others have signed their name,
2 you're not required to sign yours, you know, it's your
3 decision.

4 It's an individual and a joint decision by the
5 jury to reach a unanimous verdict. All 12 jurors must
6 agree.

7 All right. And I haven't re-read Bennett, quite
8 frankly, Solicitor. I'll be glad to look at that part of
9 it. I'm not sure I have it up here.

10 All right. Bring us our next juror. That's No.
11 42, Ms. Busbee.

12 THE CLERK: Raise your right hand and place your
13 left hand on the Bible.

14 RUBY BUSSEY, after being duly sworn, testified
15 as follows:

16 THE CLERK: Have a seat. State your full name
17 and spell your last. Just pull the chair up.

18 THE JUROR: Ruby L. Bussey or Ruby Lohan Bussey.

19 EXAMINATION

20 BY THE COURT:

21 Q Good afternoon, Ms. Bussey. How are you?

22 A Fine.

23 Q Thank you very much for your time today and for your
24 patience with us, all right?

25 Ms. Bussey, did you get the opportunity to

1 review the form on the juror information while you were
2 waiting?

3 A Yes.

4 Q Do you have that with you? May I see it, please?

5 A (Juror complies.)

6 Q All right. Now, it appears that you have placed
7 yourself into Category A.

8 A Yes.

9 Q Now, Category A is that juror that once the crime of
10 murder -- once a defendant has been found guilty of the
11 crime of murder, that that juror believes the individual
12 should be sentenced to the death penalty.

13 A Yes.

14 Q Does that describe you?

15 A Yes, because you do -- as long as you do something
16 that you're really not supposed to do, you know you're not
17 supposed to, I think so. I do so.

18 Q Yes, ma'am. And I'm certainly not challenging your
19 opinion. Your opinion is the correct opinion as far as
20 this is concerned. I'm just exploring it a little bit for
21 the purposes of our jury selection. You understand that?

22 A Yes.

23 Q So you think in all cases in which an individual has
24 been found guilty of murder, in other words, the unlawful
25 killing of another human being with malice aforethought,

1 with no justification, with no excuse, no self defense,
2 anything of that nature, you think that person should be
3 sentenced to death?

4 A Death penalty.

5 Q Not get a life without parole sentence?

6 A Oh, no, that's too easy.

7 Q Always sentenced to death?

8 A I think so.

9 THE COURT: All right. Thank you very much.

10 Let me see if these questions have any questions
11 for you, Ms. Bussey.

12 Let's see where we're at. This is the 27th
13 juror.

14 Solicitor, any questions?

15 MR. MAYE: Your Honor, just a couple.

16 THE COURT: All right.

17 DIRECT EXAMINATION

18 BY MR. MAYE:

19 Q Ms. Bussey, because this is a death penalty or a
20 capital case, we get the chance to ask you some questions
21 which we normally wouldn't get to do in a normal case for
22 murder.

23 A You say a normal case?

24 Q In just a normal case, not a death penalty case, the
25 jury hears all the facts and all from the witness stand

1 just where you're sitting and the judge tells them at the
2 start, "You don't prejudge this case. You wait until you
3 hear all the evidence in this case before you make up your
4 mind one way or another." He tells them to do that and
5 then he gives them the law and they come back with a
6 verdict.

7 A Right.

8 Q Either guilty or not guilty. Now, you could do that,
9 correct?

10 A Yes.

11 Q You could do that, okay, you've indicated.

12 In a capital case, after that takes place then
13 you have a trial on the sentence, because normally on a
14 normal trial the judge does the sentence. The jury might
15 even leave and go home and the judge hands down the
16 sentence. The jury might be gone.

17 But in a death penalty case, if they find the
18 defendant guilty of murder, if the jury finds it, then
19 they come back and have a trial for mitigation and they
20 might hear some good stuff about the person or, on the
21 other hand, they might hear some bad things about that
22 person. And the judge would tell them not to prejudge it
23 and not to make up their mind ahead of time, but to listen
24 to both the good and the bad things --

25 A Right.

1 Q -- and determine what the verdict would be.

2 Now, could you do that? Could you listen to all
3 of that without prejudging it and always come back with
4 death if they found him guilty of murder? Would you do
5 that, listen to both the good and the bad before you made
6 up your mind?

7 A I could, because that's just in every -- you know,
8 every case you -- well, not case but situation in life,
9 you've got to weigh the good, weigh the bad, and you just
10 got -- like you say, you got to use your own opinion and
11 kind of see which way you yourself want to go. Because
12 you're going to have to live with that yourself.

13 Q Okay. So if you sat on the jury under those
14 circumstances and you all found somebody guilty of murder,
15 you wouldn't just automatically without hearing all of the
16 evidence in the case decide death without hearing it,
17 would you?

18 A No, no, because I'd have to hear, you know, or we'd
19 have to hear --

20 Q Both sides?

21 A -- and then decide.

22 Q Okay. And you could do that, and you're sure about
23 that?

24 A I'm sure.

25 Q Okay. On the first part of that, on the guilt or not

1 guilt -- guilty or not guilty on the murder trial, the
2 foreman signs his name to the verdict. If you come back
3 guilty or not guilty, the foreman signs his name on the
4 verdict.

5 On a capital case where as we talked about the
6 jury decides the sentence, if you find the sentence of
7 death, each juror has to sign their name on it. If you
8 heard the evidence and weighed it on both sides, could you
9 sign your name if it was a death verdict?

10 A (Nodding.)

11 THE COURT: Could you answer out loud for me? I
12 didn't hear you. What was your response?

13 THE JUROR: Yes.

14 THE COURT: I just didn't hear you.

15 THE JUROR: Well, I shook my head. I'm sorry.

16 THE COURT: Thank you very much.

17 BY MR. MAYE:

18 Q Okay. And just as surely if you heard all that
19 evidence and you heard some good things and some bad
20 things, you could decide that a person would get life
21 rather than death after you heard that, after you weighed
22 it and made up your own mind; is that right?

23 A Right.

24 Q Okay. So you would not prejudge it, you would wait
25 until you heard all the evidence --

1 A Yes.

2 Q --, and then you would make up your mind on both the
3 guilt phase and on the sentencing part of it?

4 A Right.

5 Q And you wouldn't prejudge it or always go one way or
6 another?

7 A No.

8 Q You'd make up your own mind after you heard all the
9 evidence?

10 A Right. Yes, sir.

11 MR. MAYE: Okay. Thank you. That's all anybody
12 could ask of you.

13 CROSS-EXAMINATION

14 BY MR. HARTE:

15 Q Ms. Bussey, my name is Bob Harte and I along with
16 David Tarr represent Mr. Steven Barnes.

17 I want to make sure we're on the same page with
18 regards to something in regards to the way this works.

19 When we talk about the first phase, whether the
20 verdict is guilty or not guilty, and we say all the
21 evidence has come in, when the jury goes to reach a
22 verdict, they will have heard both sides of the evidence
23 with regards to whether the person is guilty or not
24 guilty. So with regards to the verdict or the decision of
25 whether somebody's guilty or not guilty, the jury will