VOLUME TWO OF FOURTEEN

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Orangeburg County

Diane Schafer Goodstein, Circuit Court Judge

BAYAN ALEKSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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APPLICANT'S EXHIBIT 26-C, PHOTOGRAPH
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APPLICANT'S EXHIBIT 77, PHOTOGRAPH
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THE COURT: EXCUSED FOR CAUSE AT HER REQUEST.

(THE NEXT JUROR ENTERS THE COURTROOM.)

PHYLLIS BRICKLE, (WHITE FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q THIS IS MRS. PHILLIS BRICKLE?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q GOOD AFTERNOON, MRS. BRICKLE.

A GOOD AFTERNOON.

Q MRS. BRICKLE, I WILL ASK YOU TO SPEAK LOUDER, PLEASE. I WILL HAVE TO BE ASKING YOU SOME QUESTIONS, AND THIS YOUNG LADY HERE HAS TO TAKE DOWN WHAT YOU ARE SAYING.

A OKAY.

Q WE CAN'T TAKE DOWN NODS. I WOULD RESPECTFULLY ASK THAT YOU SPEAK AND SPEAK LOUD ENOUGH SO THAT EVERYBODY CAN HEAR YOU. DO YOU UNDERSTAND THAT?

A YES.

Q WE WANT TO ASK YOU SOME QUESTIONS. YESTERDAY SOME OF THE JURORS INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE WE ARE GETTING

READY TO TRY. WERE YOU ONE OF THOSE WHO STOOD UP?
A NO.
Q TALK A LITTLE LOUDER.
A NO.
Q HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE?
A NO.
Q YOU DON'T KNOW ANYTHING? YOU HAVEN'T SEEN IT ON T.V.?
A NO.
Q HAVEN'T READ IT IN THE NEWSPAPER?
A NO.
Q DO YOU LIVE IN ORANGEBURG?
A YES.
Q WHERE HAVE YOU BEEN?
A I WAS WORKING.
Q YOU WORK AT BURGER KING, I BELIEVE?
A YES.
Q WHAT ARE YOUR DUTIES THERE, PLEASE, MA'AM.?
A RUNNING THE GRILL.
Q RUNNING THE GRILL. DID YOU GET A CHANCE TO READ THE LETTER ABOUT THE THREE TYPES OF JURORS?
A YES.
Q DID YOU UNDERSTAND THE LETTER?
A YES.
Q WOULD YOU LIKE FOR ME TO EXPLAIN IT OR DO YOU

THINK YOU UNDERSTAND IT?

A I ALREADY UNDERSTAND.

Q THERE ARE THREE TYPES OF JURORS. WHICH GROUP DO YOU THINK YOU WOULD BE IN, THE FIRST, SECOND OR THIRD?

A THIRD.

Q THIRD. WHAT IS YOUR VIEW OF THE THIRD GROUP, PLEASE?

A JUST HAVE TO FIND OUT THE FACTS AND, YOU KNOW...

Q THE THIRD GROUP OF JURORS SAYS THIS. WE HAVE CONVICTED THIS INDIVIDUAL OF MURDER WITH MALICE AFORETHOUGHT. I AM NOW GOING TO FIND ALL THE FACTS I CAN.

DEPENDING ON HOW I FEEL, I CAN IMPOSE THE DEATH PENALTY; BUT EQUALLY IMPORTANT, I CAN IMPOSE A PENALTY OF LIFE. IT WOULD DEPEND ON THE FACTS. IS THAT WHAT YOU ARE SAYING TO ME?

A YES.

THE COURT: YOU MAY EXAMINE.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. BRICKLE, I'M WALTER BAILEY. I WANTED TO ASK A FEW MORE QUESTIONS TO KIND OF FOLLOW UP ON WHAT

THE JUDGE JUST ASKED YOU. YOU UNDERSTAND THAT IF WE REACH THAT SECOND PART OF TRIAL THAT WILL MEAN THE DEFENDANT HAS BEEN FOUND GUILTY OF MURDER BEYOND A REASONABLE DOUBT IN THE FIRST PART OF THE TRIAL?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q THE PURPOSE OF THAT SECOND PHASE IS FOR THE JURY TO DECIDE WHAT THE PUNISHMENT IS GOING TO BE. THE JURY, NOT THE JUDGE, MAKES THAT DECISION IN THIS STATE.

A YES.

Q SO IF THE JURY VOTES UNANIMOUSLY FOR LIFE WITHOUT PAROLE, THAT IS WHAT THE JUDGE WILL GIVE HIM AND THE SENTENCE WILL BE CARRIED OUT. IF THE JURY VOTES FOR THE DEATH PENALTY, THE JUDGE WOULD ORDER THAT SENTENCE TO BE PUT INTO EFFECT. HE WILL ACTUALLY BE EXECUTED BASED ON THAT JURY'S DECISION.

A RIGHT.

Q I WILL NOT ASK YOU WHAT YOU WILL DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS YET. MY QUESTION IS IF THE CASE IS BAD ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE IS ACTUALLY GOING TO BE CARRIED OUT AND THAT PERSON WOULD BE EXECUTED?

A YES.

Q IF THE OTHER 11 JURORS, AFTER HEARING THOSE FACTS, FELT THE SAME WAY YOU DID AND ALL 12 OF YOU VOTED FOR THE DEATH PENALTY, COULD YOU SIGN YOUR NAME TO A PIECE OF PAPER, A DEATH VERDICT FORM, ALONG WITH THOSE OTHER 11 JURORS THAT WOULD RESULT IN THAT EXECUTION TAKING PLACE?

A WHATEVER THE FACTS AND CIRCUMSTANCES ARE.

Q AND THE THIRD THING THAT WOULD HAVE TO HAPPEN AS FAR AS THE JURY'S INVOLVEMENT IS WHEN THE JURY CAME OUT AND THAT DECISION WAS ANNOUNCED, THEY WOULD CALL EACH JUROR'S NAME ONE AT A TIME. THE JUROR WOULD STAND UP AND YOU WOULD AFFIRM OUT LOUD THAT THAT IS YOUR VERDICT. COULD YOU DO THAT IF IT WAS YOUR VERDICT?

A YES.

Q NOW, THE JURY IN THIS CASE IS GOING TO BE PUT IN A MOTEL STARTING, SAY, THURSDAY WHEN WE START THE CASE FOR FOUR OR FIVE DAYS MAYBE. THAT IS AN INCONVENIENCE FOR EVERYBODY. WOULD IT CAUSE YOU ANY KIND OF UNUSUAL PROBLEMS, FAMILY PROBLEMS, WORK PROBLEMS, ANYTHING LIKE THAT?

A NO.

Q MRS. BRICKLE, I THINK THAT'S ALL I HAVE GOT. THANK YOU VERY MUCH. DON'T GO YET BECAUSE THESE LAWYERS MAY HAVE SOME QUESTIONS.

MR. STONE: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q MRS. BRICKLE, I'M DUFFIE STONE. I REPRESENT MR. ALEKSEY HERE, BAYAN ALEKSEY. MR. ALEKSEY IS, AS YOU KNOW BY NOW, ON TRIAL FOR THE MURDER OF A POLICE OFFICER. DO YOU UNDERSTAND THAT?

A YES.

Q NOW, I NOTICED IN YOUR QUESTIONNAIRE THAT YOU HAVE A COUSIN WITH THE POLICE DEPARTMENT?

A I HAVEN'T TALKED WITH HIM. IT'S BEEN A WHILE.

Q SO HE IS NOT SOMEBODY THAT YOU KEEP -- WHO IS YOUR COUSIN BY THE WAY?

A STEVE PADGETT.

Q STEVE PADGETT?

A I DON'T KNOW WHERE HE IS AT. I HAVEN'T TALKED WITH HIM IN SEVERAL YEARS.

Q THAT'S FINE. SO WOULD IT GIVE YOU ANY PROBLEMS TO BE ON THE JURY WHEN THE ISSUE IS WHETHER OR NOT MR. ALEKSEY SHOT A POLICE OFFICER? WOULD THAT GIVE YOU ANY TROUBLE WITH YOU HAVING A RELATIVE THAT IS A POLICE OFFICER?

A NO.

Q DO YOU HOLD WOMEN TO THE SAME STANDARD THAT YOU HOLD MEN?

A WHAT DO YOU MEAN STANDARD?
Q DO YOU HAVE -- DO YOU THINK THEY ARE EQUAL?
A NO, NOT NECESSARILY.
Q HOW DO YOU FEEL ABOUT THAT? I AM NOT TRYING TO PUT WORDS IN YOUR MOUTH. HOW DO YOU FEEL ABOUT THAT?
A WELL, MALES, YOU KNOW, THEY ARE MORE STRONGER AND INDEPENDENT, SUPPOSED TO MORE INDEPENDENT, HEAD OF THE HOUSEHOLD.
Q THAN FEMALES?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q THAT'S FAIR. THANK YOU.
MR. STONE: EXCUSE ME JUST A MOMENT, YOUR HONOR.
(PAUSE.)
Q MRS. BRICKLE, ARE YOU MARRIED?
A I'VE LEGALLY DIVORCED.
Q YOU ARE DIVORCED. HOW LONG HAVE YOU BEEN DIVORCED?
A SINCE ABOUT 1985.
Q THANK YOU, MRS. BRICKLE. I APPRECIATE YOU ANSWERING MY QUESTIONS.
(THE JUROR LEAVES THE COURTROOM.)
THE COURT: FOR THE STATE?
SOLICITOR BAILEY: QUALIFIED, YOUR HONOR.

THE COURT: FOR THE DEFENSE?

MR. STONE: YES, SIR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MRS. BRICKLE, YOU HAVE BEEN FOUND BY ALL THE ATTORNEYS AND THE COURT TO BE ONE OF THE 35 QUALIFIED JURORS. ON THURSDAY, THE DAY AFTER TOMORROW, AT 9:30 WE ARE GOING TO SELECT 14 JURORS FROM THAT 35. YOU MAY OR MAY NOT BE SELECTED, BUT YOU ARE AMONG THE 35.

PLEASE REPORT TO THIS COURTROOM AT 9:30 THURSDAY MORNING, BRINGING YOU WITH YOUR PERSONAL CLOTHING AND SO FORTH SO THAT IF YOU ARE SELECTED YOU WILL BE IN A POSITION TO STAY IN THE MOTEL. ANY QUESTIONS?

JUROR: NO.

THE COURT: THANK YOU SO MUCH.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

ERNEST MYERS, (WHITE MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MR. MYERS, GOOD AFTERNOON.

A GOOD AFTERNOON.

Q I WANT TO ASK YOU SEVERAL QUESTIONS IF I CAN,

PLEASE, SIR. I NOTICE THAT YOU FINISHED BRANCHVILLE HIGH SCHOOL AND ALSO ATTENDED THE UNIVERSITY OF SOUTH CAROLINA FOR ONE YEAR; IS THAT CORRECT?

A YES, SIR.

Q YOU ARE A FORKLIFT OPERATOR?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q YESTERDAY IN DISCUSSING THIS CASE WITH SEVERAL OF THE JURORS, SOME OF THEM INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE. WERE YOU ONE OF THOSE WHO STOOD UP?

A YES, SIR.

Q CAN YOU TELL ME WHERE YOU READ OR HEARD SOMETHING ABOUT IT?

A WHEN IT HAPPENED I READ ABOUT IT IN THE STATE NEWSPAPER AND HEARD ABOUT IT ON THE NEWS.

Q LET ME ASK YOU THIS. IF YOU ARE A JUROR, CAN YOU PUT ASIDE WHAT YOU MAY HAVE READ OR HEARD AND BASE YOUR VERDICT ON THE LAW AND EVIDENCE IN THIS COURTROOM?

A I WOULD LIKE TO THINK I COULD, SIR.

Q WELL, YOU UNDERSTAND --

A I AM PRETTY SURE I COULD.

Q I THINK SO, TOO. LET ME ASK YOU THIS. I NOTICE

THAT IN YOUR RETURN, AND I THANK YOU FOR THAT, YOU MENTIONED SOMETHING ABOUT YOU HAVE A BRACE THAT BOTHERS YOU SOME?

A YES, SIR.

Q WHERE IS THAT BRACE, PLEASE?

A IT RUN FROM MY HIPS UP UNDERNEATH MY ARMPIT.

Q WE UNDERSTAND THAT YOU WOULD NOT WISH TO BE UNCOMFORTABLE AND WE WOULD HAVE YOU SITTING IN THE JURY BOX AN HOUR, HOUR AND A HALF AT A TIME. CAN YOU HANDLE THAT?

A THESE CHAIRS ARE NOT TOO BAD. SOME OF THEM ARE VERY UNCOMFORTABLE SITTING.

Q WE WOULD MAKE YOU AS COMFORTABLE AS POSSIBLE. IF AT ANY TIME YOU NEED TO GET UP AND STRETCH, YOU KNOW THAT WE WILL LET YOU DO THAT. LET ME ASK YOU THIS. DID YOU HAVE A CHANCE TO READ THE LETTER DESCRIBING THREE TYPES OF JURORS?

A YES, SIR.

Q YOU UNDERSTAND THAT YOU MIGHT OR MIGHT NOT GET TO THAT ISSUE. THE FIRST PHASE DEALS WITH THE GUILT OR INNOCENCE. IF HE IS FOUND NOT GUILTY, OF COURSE, WE STOP RIGHT THERE. YOU UNDERSTAND THAT.

IF -- AND I USE THAT ADVISEDLY -- IF THE JURY FINDS HIM GUILTY, THEN THE NEXT QUESTION IS THE QUESTION OF PUNISHMENT. THERE IS ONLY ONE OF TWO

THINGS.

ONE IS A SENTENCE OF LIFE IMPRISONMENT. THE OTHER IS THE IMPOSITION OF THE DEATH SENTENCE. THAT LETTER INDICATED THREE TYPES OF JURORS. DO YOU UNDERSTAND THE THREE TYPES?

A YES, SIR.

Q WHICH GROUP WOULD YOU FALL IN, PLEASE?

A I BELIEVE I WOULD BE -- AS FAR AS I KNOW, I FALL IN THE LATTER GROUP.

Q IN THE LATTER. YOUR UNDERSTAND NOBODY IS ASKING YOU WHAT YOU WOULD DO BECAUSE YOU HAVEN'T HEARD ANY FACTS.

A RIGHT.

Q THAT LATTER GROUP OR THIRD GROUP SAYS WE HAVE FOUND HIM GUILTY OF MURDER. NOW I AM GOING TO CONSIDER ALL THE FACTS OF THE CASE, AND I CAN DECIDE WHETHER OR NOT LIFE IMPRISONMENT OR DEATH IS THE APPROPRIATE PUNISHMENT.

THAT JUROR SAYS DEPENDING ON THE FACTS IN THE CASE, I CAN IMPOSE A SENTENCE OF DEATH; BUT THAT JUROR EQUALLY SAYS DEPENDING UPON THE FACTS, I CAN IMPOSE A LIFE SENTENCE. IS THAT YOUR GROUP?

A YES, SIR.

THE COURT: SOLICITOR.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MR. MYERS, I'M WALTER BAILEY. I HAVE A FEW MORE QUESTIONS TO ASK YOU TO FOLLOW UP ON WHAT THE JUDGE ASKED. YOU INDICATED IN YOUR QUESTIONNAIRE THAT YOU WERE ON A CRIMINAL JURY ABOUT 15 YEARS AGO?

A I BELIEVE IT WAS ABOUT 15. I'M NOT REALLY EXACTLY SURE.

Q DID YOU ACTUALLY SIT ON A TRIAL OR WERE YOU JUST CALLED DOWN HERE?

A I WAS ON TWO TRIALS.

Q DO YOU RECALL WHAT KIND OF TRIALS THEY WERE?

A I REMEMBER WHAT THEY WERE ABOUT, BUT THE INDIVIDUAL I REALLY COULDN'T SAY. I DON'T REMEMBER.

Q WERE THEY WERE LIKE AN ARMED ROBBERY OR D.U.I.?

A ONE WAS ASSAULT AND BATTERY AND I DON'T KNOW WHAT THEY CALL THE OTHER ONE. IT WAS A GUY WHO SHOT ANOTHER ONE WITH A SHOTGUN. HE DIDN'T KILL HIM BUT HE JUST SHOT HIM.

Q WERE YOU A FOREMAN ON EITHER ONE OF THOSE JURIES?

A NO.

Q DO YOU REMEMBER HOW THE TRIALS CAME OUT?

A YES, SIR.

Q HOW DID THEY CAME COME OUT?

A GUILTY.

Q ON BOTH OF THEM?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q YOU UNDERSTAND THAT THE FIRST PART OF THIS TRIAL WOULD BE SIMILAR TO THOSE TRIALS THAT YOU WERE ON 15 YEARS AGO, WHENEVER IT WAS, WHERE THE JURY IS JUST CONCERNED WITH GUILT OR INNOCENCE.

IF THE DEFENDANT IS FOUND GUILTY OF MURDER IN THAT FIRST PART, THEN WE GO INTO THE SECOND PHASE WHERE THE JURY AND NOT THE JUDGE SETS THE PUNISHMENT. WHATEVER THE JURY SAYS THE PUNISHMENT SHOULD BE IS GOING TO BE THE ORDER OF THE COURT. THE JUDGE DOESN'T CHANGE THAT. HIS SENTENCE WILL BE WHAT THE JURY'S VERDICT IS.

YOU HAVE INDICATED YOU ARE THE THIRD TYPE OF JUROR THAT WOULD WANT TO HEAR ALL THE FACTS AND CIRCUMSTANCES. I AM NOT GOING TO ASK YOU TO PREDICT WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD THE FACTS.

MY QUESTION IF IS THE FACTS ARE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE IS ACTUALLY GOING TO GET CARRIED OUT BECAUSE OF THAT VOTE?

A YES, SIR.

Q IF THE OTHER 11 JURORS ALSO FELT THE SAME WAY YOU DID AFTER HEARING THE CASE, COULD YOU SIGN YOUR NAME TO A DEATH VERDICT FORM ALONG WITH THOSE OTHER JURORS KNOWING THAT WOULD RESULT IN AN EXECUTION TAKING PLACE?

A YES, SIR.

Q COULD YOU ANNOUNCE YOUR DECISION OUT LOUD IN OPEN COURT? IT'S PART OF THE PROCESS CALLED POLLING OF THE JURY WHERE THE CLERK ASKS EACH ONE TO STAND AND ANNOUNCE THEIR VERDICT.

A YES, SIR.

Q YOUR BACK PROBLEMS THAT YOU TALKED ABOUT IN YOUR QUESTIONNAIRE, YOU TOLD THE JUDGE THAT YOU THINK WITH THE KIND OF CHAIRS WE HAVE GOT HERE THAT YOU COULD SIT FOR AN HOUR AND A HALF OR SO AT A TIME.

A I DID ALL RIGHT YESTERDAY.

Q SO THAT SHOULDN'T BE A PROBLEM?

A NOT THAT I KNOW OF, NO, SIR.

Q CAN YOU THINK OF ANY PROBLEMS THAT YOU MIGHT HAVE, OTHER THAN JUST THE INCONVENIENCE EVERYBODY ELSE WOULD HAVE, IN HAVING TO SPEND THE NIGHT IN THE MOTEL FOR THREE OR FOUR DAYS OR FIVE DAYS, HOWEVER HOW LONG THIS TAKES?

A (WITNESS SHAKES HEAD.) (INDICATING NEGATIVE RESPONSE.) I CAN'T THINK OF NONE.

Q MR. MYERS, THAT'S ALL I'VE GOT. THANK YOU VERY MUCH.

VOIR DIRE EXAMINATION

BY MR. SIMS:

Q GOOD AFTERNOON, MR. MYERS. I'M THOMAS SIMS. I REPRESENT BAYAN. LET ME ASK YOU. INITIALLY YOU INDICATED THAT YOU HAD HEARD SOMETHING ABOUT THIS CASE OR YOU HAD READ SOMETHING ABOUT THIS CASE?

A YES, SIR.

Q IS THAT CORRECT? WHAT WAS THE SOURCE OF THAT AGAIN, PLEASE?

A THE NEWSPAPERS AND T.V. NEWS.

Q AND T.V. NEWS. AT THAT TIME DID YOU FORMULATE ANY OPINION IN REGARDS TO THIS CASE?

A NOT REALLY. I MEAN, NO, I CAN'T SAY I DID.

Q I THINK IN RESPONSE TO THE JUDGE'S QUESTION WHEN YOU WERE GIVEN THE THREE CATEGORIES OF JURORS, YOU SAID I BELIEVE, THAT YOU THOUGHT THAT YOU WOULD FALL OR FELL IN THAT LATTER CATEGORY. THAT WAS CATEGORY NUMBER THREE.

WAS THERE -- I GUESS I AM ASKING YOU. THERE ARE THE OTHER TWO SITUATIONS, ONE IN WHICH A JUROR WOULD ALWAYS SAY IF HE IS FOUND GUILTY, THEN I AM GOING TO VOTE FOR THE DEATH SENTENCE. THE OTHER ONE IS I WOULD NEVER VOTE FOR THE DEATH SENTENCE. ARE YOU

MORE INCLINED TO ONE OR TWO?

A ACTUALLY NEITHER ONE. IT WOULD DEPEND ON THE CIRCUMSTANCES.

Q YOU HAD INDICATED IN RESPONSE TO MR. BAILEY'S QUESTION THAT YOU SAT ON TWO JURIES ABOUT 15 YEARS AGO. WAS THAT IN ORANGEBURG COUNTY?

A YES, SIR.

Q WHO WAS THE PROSECUTOR THEN?

A I HAVE NO IDEA, SIR.

Q DO YOU BELIEVE THAT FOREIGN NATIONALS SHOULD ENJOY THE SAME RIGHTS AS AMERICAN CITIZENS?

A SURE.

Q AND DO YOU BELIEVE THAT WOMEN SHOULD BE HELD TO THE SAME STANDARD AS MEN?

A YES, SIR.

Q I ASSUME YOU OWN A CAR.

A OH, YEAH.

Q DO YOU HAVE ANY BUMPER STICKERS ON YOUR CAR?

A ONE.

Q WHAT KIND OF BUMPER STICKER IS THAT?

A CAROLINA.

MR. SIMS: THAT'S ALL I HAVE, YOUR HONOR.

(THE JUROR LEAVES THE COURTROOM.)

SOLICITOR BAILEY: QUALIFIED.

MR. STONE: QUALIFIED.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. JUROR, YOU HAVE BEEN FOUND QUALIFIED BY BOTH THE STATE AND THE DEFENDANT AND ARE THUS ONE OF THE 35 QUALIFIED JURORS, FROM WHICH 14 MEMBERS OF THIS JURY WILL BE CHOSEN AT 9:30 THURSDAY MORNING.

PLEASE REPORT BACK TO THIS COURTHOUSE WITH SUCH PERSONAL EFFECTS AS YOU WOULD REQUIRE FOR STAYING IN THE MOTEL IN THE EVENT THAT YOU ARE ONE OF THE 14. DO YOU HAVE ANY QUESTIONS?

JUROR: THERE IS ONE. DO I BRING THEM IN WITH ME OR JUST LEAVE THEM IN THE CAR?

THE COURT: YOU CAN BRING THEM IN OR LEAVE THEM. I WOULD GO AHEAD AND BRING THEM IN WITH YOU. I WILL SEE YOU AT 9:30. THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

LAKISHA DOWLING, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MS. DOWLING, GOOD AFTERNOON.

A GOOD AFTERNOON.

Q PLEASE ANSWER SO THAT EVERYBODY CAN HEAR YOU IF

YOU WILL, PLEASE, MA'AM.

A OKAY.

Q MS. DOWLING, I NOTE THAT YOU FINISHED HIGH SCHOOL AT ORANGEBURG WILKERSON HIGH SCHOOL; IS THAT CORRECT?

A YES, SIR.

Q AND YOU WENT TO SOME VOCATIONAL TRADE SCHOOL, COVAK (PH.)? WHAT IS THAT?

A IT'S A VOCATIONAL SCHOOL UP ON 601. I DID IT WHILE I WAS IN SCHOOL. I WENT THERE WHILE I WAS IN SCHOOL.

Q I SEE. WHERE IS IT THAT YOU WORK, PLEASE, MA'AM?

A NORTH AMERICAN CONTAINER CORPORATION ON ROSEVILLE ROAD.

Q WHAT DO YOU DO THERE?

A I AM A SAW OPERATOR.

Q A WHAT?

A SAW OPERATOR.

Q A SAW OPERATOR?

A YES, SIR.

Q AS I UNDERSTAND IT, YOU HAVE NEVER BEEN MARRIED. LET ME ASK YOU. YESTERDAY SOME OF THE JURORS INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE. WOULD YOU HAVE READ OR HEARD

ANYTHING ABOUT IT?

A YES, SIR.

Q DID YOU SEE SOMETHING ON T.V.?

A YES, SIR.

Q DID YOU READ SOMETHING IN THE PAPER?

A YES, SIR.

Q HAS ANYBODY DISCUSSED IT WITH YOU?

A NO, SIR.

Q LET ME ASK YOU THIS. DO YOU UNDERSTAND THAT HE IS INDICTED FOR MURDER. HE HAS PLED NOT GUILTY. THE STATE HAS GOT TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT. A JUROR MUST BASE THEIR VERDICT, WHATEVER IT IS, BASED ON WHAT THEY HEAR IN THIS COURTROOM UNDER OATH. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q CAN YOU SET ASIDE WHAT YOU HAVE READ OR HEARD AND BASE YOUR VERDICT ON WHAT YOU HEAR IN THIS COURTROOM?

A YES, I CAN.

Q YOU HAVE NOT MADE A FIRM OPINION AS TO THE GUILT OR INNOCENCE OF ANYBODY?

A NO, I HAVE NOT.

Q YOU CAN TELL ME UNDER YOUR OATH THAT YOU WILL BASE YOUR VERDICT ON WHAT YOU HEAR IN THIS COURTROOM?

A YES, SIR.

Q NOW, YOU UNDERSTAND THAT THIS COULD POSSIBLY BE A TWO-PART TRIAL?

A YES.

Q DO YOU UNDERSTAND THAT?

A YES.

Q DID YOU HAVE A CHANCE TO READ THAT JURY SHEET?

A YES.

Q THAT LETTER SAYS THAT WHEN CONFRONTED WITH THE QUESTION OF A SENTENCE, JURORS CAN GIVE EITHER LIFE IMPRISONMENT OR THE PENALTY OF DEATH. IN CONSIDERING THAT SERIOUS ISSUE, THEY FALL TWO THREE GROUPS.

ONE GROUP SAYS I WILL ALWAYS BE FOR THE DEATH PENALTY IF WE HAVE CONVICTED HIM OF MURDER. THE SECOND GROUP SAYS EVEN THOUGH WE HAVE CONVICTED HIM OF MURDER, I CAN NEVER BE FOR THE DEATH PENALTY. I WILL NEVER TAKE THE LIFE OF ANOTHER HUMAN BEING.

THE THIRD GROUP SAYS I AM GOING TO HEAR ALL THE FACTS IN THE CASE AND THEN I AM GOING TO DECIDE. THAT THIRD GROUP SAYS I CAN IMPOSE A SENTENCE OF DEATH IF I THINK IT'S APPROPRIATE. THAT GROUP ALSO SAYS I CAN ALSO IMPOSE A SENTENCE OF LIFE EVEN THOUGH WE HAVE CONVICTED HIM OF MURDER. WHICH WOULD YOU BE ONE, TWO OR THREE?

A NUMBER TWO.

Q NUMBER WHAT?

A NUMBER TWO.
Q NUMBER TWO. WHAT IS YOUR VIEW OF NUMBER TWO, PLEASE?
A I COULD NEVER SEND ANYBODY TO DEATH.
Q I SEE. YOU UNDERSTAND WE ARE NOT IMPOSING ON YOU. THERE ARE NO RIGHT OR WRONG ANSWERS. EVERYBODY IS ENTITLED TO THEIR OPINION ABOUT THIS. YOU UNDERSTAND THAT?
A YES, SIR.
Q YOU ARE SAYING THAT YOURS -- HOW LONG HAVE YOU -- HAVE YOU ALWAYS HELD THIS CONVICTION?
A YES.
Q IS IT PERSONAL OR RELIGIOUS OR DO YOU MIND TELLING ME?
A IT'S PERSONAL. IT'S NOT REALLY PERSONAL. IT'S JUST MY OWN FEELINGS.
Q THAT'S FINE. THANK YOU SO MUCH.

SOLICITOR BAILEY: NO QUESTIONS, YOUR HONOR.

THE COURT: DO YOU HAVE ANY QUESTIONS?

MR. STONE: NO, SIR.

THE COURT: THANK YOU SO MUCH.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: NOT QUALIFIED.

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THE COURT: WHAT SAYS THE DEFENSE?

MR. STONE: WE AGREE.

THE COURT: BRING THE JUROR IN.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MS. DOWLING, WE APPRECIATE YOUR PRESENCE HERE YESTERDAY AND TODAY. YOU HAVE NOW BEEN EXCUSED FOR THE REST OF THE WEEK. YOU WILL NOT HAVE TO COME BACK. I DO THANK YOU FOR YOUR PRESENCE.

JUROR: THANK YOU.

THE COURT: THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: THIS GENTLEMAN CAME UP SEVERAL TIMES. MR. BAILEY, DO YOU REMEMBER WHY?

SOLICITOR BAILEY: I'M SORRY?

THE COURT: THIS JUROR CAME UP SEVERAL TIMES.

SOLICITOR BAILEY: HE WAS THE ONE GROWING THE MARIJUANA AND DIDN'T WATER IT AND IT DIED.

THE COURT: THEN HE HAD ANOTHER LITTLE PROBLEM SOMEWHERE.

MR. SIMS: BREACH OF TRUST IN MAGISTRATE'S COURT.

SOLICITOR BAILEY: HE HAS ALSO GOT A D.U.I. AND D.U.S.

MS. GARRICK: HE ALSO SAID HE DIDN'T VOTE.

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THAT WAS THE FIRST TIME HE CAME UP.

THE COURT: DIDN'T VOTE. I NOTE HE HAS GOT A TENTH GRADE EDUCATION. HE IS HAVING SERIOUS DIFFICULTY READING THE LETTER.

MR. STONE: HE IS HAVING A DIFFICULT TIME READING THE LETTER?

THE COURT: WHAT DO YOU WANT TO DO?

MR. STONE: WE WILL AGREE THAT HE IS NOT QUALIFIED.

THE COURT: BRING HIM OUT. I THINK HE IS NOT QUALIFIED. I OBSERVED HIM YESTERDAY, TOO, CLOSELY. LET THE RECORD REFLECT BY AGREEMENT OF COUNSEL FOR THE STATE AND THE DEFENDANT THE JUROR IS NOT QUALIFIED. I HAD SERIOUS MISGIVINGS.

MR. STONE: YES, SIR, I UNDERSTAND. WE DID, TOO.

(THE JUROR ENTERS THE COURTROOM.)

THE COURT: MR. JUROR, WE THANK YOU FOR YOUR PRESENCE BUT WE HAVE EXCUSED YOU. YOU WILL NOT HAVE TO RETURN. THANK YOU SO MUCH.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: LET ME TAKE A SHORT BREAK, GENTLEMEN, AND THEN WE WILL START BREAK.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: AT THE END OF EACH RECESS, LET

THE RECORD REFLECT THE DEFENDANT'S PRESENCE IN THE COURTROOM. ARE WE READY TO PROCEED?

SOLICITOR BAILEY: THE STATE IS READY, YOUR HONOR.

MR. STONE: YES, SIR.

THE COURT: ALL RIGHT. BRING THE NEXT ONE.

(THE JUROR ENTERS THE COURTROOM.)

LUTHER ALLEN, (BLACK MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD AFTERNOON, MR. ALLEN.

A HOW ARE YOU DOING?

Q WE WOULD LIKE TO ASK OF YOU SOME QUESTIONS IF WE MAY. LET ME ASK YOU THIS. I NOTE THAT YOU ARE A TRUCK DRIVER?

A YES, SIR.

Q AND HOW LONG HAVE YOU BEEN EMPLOYED IN THAT POSITION?

A TWO YEARS AND A HALF.

Q WHERE WERE YOU EMPLOYED BEFORE THEN, PLEASE?

A I WAS EMPLOYED -- I USED TO WORK FOR A CONSTRUCTION COMPANY.

Q FOR A CONSTRUCTION COMPANY?

A AND NOW MCLENDON TRUCKING.

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Q DO YOU DRIVE WITHIN THE STATE OR THROUGH SEVERAL STATES?

A COAST TO COAST.

Q COAST TO COAST. YOU MAY NOT BE THE BEST IN THE WEST BUT YOU ARE THE MOST ON THIS COAST I HEARD THEM SAY; IS THAT RIGHT?

A YES, SIR.

Q LET ME ASK YOU THIS. I KNOW THAT YOU ARE A TRUCK DRIVER AND YOU MAKE YOUR LIVING DOING THAT. I KNOW THIS WOULD BE HARD ON YOU. DO YOU THINK YOU WILL BE ABLE TO SERVE IF SELECTED?

A YES, SIR.

Q LET ME ASK YOU THIS. SEVERAL JURORS INDICATED YESTERDAY THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE. HAVE YOU HEARD ANYTHING ABOUT IT ON T.V. OR READ ANYTHING IN THE PAPER?

A WELL, I'LL PUT IT LIKE THIS TO YOU, YOUR HONOR. ALL I HEARD IS WHEN I COME DOWN THE ROAD THAT NIGHT THAT THE OFFICER GOT KILLED -- I DIDN'T KNOW IT WAS AN OFFICER.

AT THE TIME I KNOW IT WAS A BODY BECAUSE I SEEN IT ON THE SIDE OF THE ROAD. I DON'T READ THE NEWSPAPER. I DIDN'T HEARD IT ON THE T.V. I HEARD, YOU KNOW, OTHER PEOPLE TALKING. THAT'S THE MOST I HEARD.

Q LET ME ASK YOU THIS. IF YOU WERE SELECTED AS A JUROR, CAN YOU PUT ASIDE WHAT YOU HEARD AND BASE YOUR VERDICT ON WHAT YOU HEAR IN THIS COURTROOM?

A YES, I COULD.

Q YOU HAVE NOT MADE ANY OR FORMED ANY OPINIONS AS TO THE GUILT OR INNOCENCE OF ANYBODY?

A NO.

Q I JUST WANT TO MAKE SURE THAT YOU WILL DECIDE YOUR VERDICT, NOT GUILTY OR GUILTY, BASED ON WHAT YOU HEAR IN THIS COURTROOM.

A YES, SIR.

Q DID YOU ACTUALLY SEE THIS INCIDENT?

A NO.

Q TELL ME ABOUT THAT. YOU SAID YOU CAME ALONG THERE?

A I WAS COMING DOWN 95 COMING. I WAS COMING HOME FROM WORK.

Q YES.

A IT WAS AN OFFICER IN THE ROAD, YOU KNOW WHAT I MEAN. LIKE I WAS COMING DOWN, COMING DOWN 95, AND THERE WAS AN OFFICER IN THE ROAD DIRECTING TRAFFIC OVER.

Q THE INCIDENT HAD ALREADY OCCURRED?

A YEAH, AND I SEE A BODY OVER THERE UNDER A WHITE SHEET, BUT I DIDN'T KNOW IT WAS AN OFFICER AT THE

TIME OR NOTHING. I DIDN'T KNOW WHO IT WAS.

Q LET ME LET YOU GO TO THE JURY ROOM JUST A MOMENT.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: I NOTE THAT YOU ARE EXPRESSING SOME CONCERN.

MR. STONE: YES, SIR. HE WITNESSED THE SCENE AFTER IT WAS OVER WITH. I WOULD ASK OUT OF AN ABUNDANCE OF CAUTION TO EXCUSE THIS JUROR.

THE COURT: I THINK THAT IS APPROPRIATE. WHAT SAYS THE SOLICITOR?

SOLICITOR BAILEY: I WILL NOT ARGUE WITH THE COURT IF YOU THINK THAT IS APPROPRIATE. I WOULD THINK IT MAY CERTAINLY BE GROUNDS FOR STRIKING HIM. THEY HAVE TEN STRIKES.

THE COURT: NO, SIR, I THINK NOT. HE HAS TOO MUCH PERSONAL KNOWLEDGE. I DON'T BELIEVE THE COURT WOULD LOOK AT THAT APPROPRIATELY.

MR. STONE: THANK YOU, YOUR HONOR.

THE COURT: LET THE RECORD REFLECT THAT I AM GOING TO EXCUSE HIM AT THE SPECIFIC QUESTION OF DEFENSE COUNSEL.

SOLICITOR BAILEY: YES, SIR.

THE COURT: AND I FIND IT FOR CAUSE.

(THE JUROR RETURNS TO THE COURTROOM.)

MR. STONE: YOUR HONOR, CAN WE APPROACH JUST REAL QUICK?

THE COURT: YES, SIR.

(THE FOLLOWING BENCH CONFERENCE WAS REPORTED.)

MR. STONE: WOULD YOU JUST ASK HIM IF HE HAS TALKED ABOUT THIS WITH ANYBODY BACK THERE?

THE COURT: OH, YEAH.

(THE BENCH CONFERENCE WAS CONCLUDED.)

VOIR DIRE EXAMINATION

BY THE COURT:

Q LET ME ASK YOU THIS, MR. JUROR. HAVE YOU DISCUSSED THIS CASE WITH ANYBODY BACK THERE?

A YES, I TOLD THEM.

Q WHAT DID YOU TELL THEM?

A OH, I TELL THEM I AM COMING HOME THAT NIGHT, LIKE I WAS COMING OFF THE ROAD TRYING TO MAKE IT HOME TO MY FAMILY FOR NEW YEAR NIGHT. I DIDN'T KNOW WHAT WAS GOING ON.

Q DID YOU JUST TELL THEM WHAT YOU SAW?

A YEAH. THAT'S ALL I SEE. I WAS COMING DOWN. I TOLD THEM THE MOST FUNNY THING ABOUT IT WHEN I WAS COMING DOWN, YOU KNOW, I THOUGHT IT WAS SOMEBODY BREAK DOWN ON THE SIDE OF THE ROAD. THE OFFICERS DIDN'T HAVE NO BLUE LIGHTS OR NOTHING ON.

THE COURT: DO YOU WANT TO EXPLORE WHAT HE IS SAYING?

MR. STONE: BRIEFLY.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q WAS IT JUST THESE PEOPLE YOU WERE IN THE ROOM WITH TODAY OR WOULD THIS HAVE BEEN THE PANEL WHEN YOU WERE TALKING TO THEM YESTERDAY?

A JUST THOSE PEOPLE.

Q JUST THESE PEOPLE BACK HERE, JUST 11 OTHER PEOPLE?

A ABOUT SIX MORE IS LEFT.

Q SIX OTHER PEOPLE BACK THERE?

A FIVE OR SIX.

Q DID YOU TELL THEM YOU SAY A BODY WITH A SHEET OVER IT ON THE SIDE OF THE ROAD?

A YEAH. I DON'T KNOW WHO WAS UP UNDER THERE UNTIL THE NEXT DAY I HEARD THAT A OFFICER GOT KILLED.

Q I SEE.

MR. STONE: EXCUSE ME JUST A MOMENT.

(PAUSE.)

Q WAS THIS THE SIX PEOPLE THAT YOU ARE IN THERE NOW WITH OR THE PEOPLE THAT YOU WERE IN THERE WITH BEFORE? I'M NOT SURE HOW MANY WE HAVE GOT BACK THERE SO I DON'T WANT TO ASK YOU ANYTHING.

A THE PEOPLE WHO ARE BACK THERE.
Q WHO ARE BACK THERE NOW?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q WHAT ABOUT THE PEOPLE THAT WERE OUT HERE BEFORE?
A MAYBE THE BLACK GUY WHO CAME IN BEFORE ME. MAYBE HE PROBABLY DID BUT THAT'S ALL.
Q DO YOU REMEMBER WHAT TIME THIS WAS THAT THIS HAPPENED?
A I WAS COMING HOME. LET ME BACK UP AND TELL YOU HOW THE WHOLE THING HAPPENED AGAIN.
Q OKAY.
A I WAS COMING HOME. THESE OFFICERS WAS -- FIRST I THINK IT WAS SOMEBODY WHO BREAK DOWN BESIDE THE ROAD AND LETTING THE KIDS RUN WILD, YOU KNOW, THEY PROBABLY WAS RUNNING OUT. I THOUGHT MAYBE SOMEBODY PROBABLY LET A KID GOT LOSE AND RUN OUT IN THE ROAD OR SOMETHING. I STARTED SLOWING DOWN. THEN I GOT A LITTLE CLOSER.

THE OFFICERS DIDN'T INDICATE -- YOU KNOW, THE OFFICERS WHO WAS STANDING THERE, THEY DIDN'T HAVE NO BLUE LIGHTS. THEY AIN'T HAD NO NOTHING TO LET ANYBODY KNOW WHAT HAPPENED THERE.

I MOVE INTO THE LEFT LANE. AS I GOES CLOSER, THERE WAS A OFFICER IN THE RIGHT-HAND LANE. I COULD HAVE HIT HIM BY ACCIDENT. THEN BY THAT TIME I GOT

THERE AND I SLOWED, I SAW A WHITE SHEET OVER THERE AND I FIGURED THAT MUST HAVE BEEN A BODY, BUT WHO IT WAS I DID NOT KNOW.

Q THANK YOU.

VOIR DIRE EXAMINATION

BY THE COURT:

Q YOU DIDN'T KNOW WHAT HAD HAPPENED?

A I DIDN'T KNOW NOTHING WHAT HAPPENED.

Q DIDN'T KNOW WHO WAS INVOLVED?

A I DON'T KNOW WHO WAS INVOLVED.

Q YOU HAVEN'T TOLD ANYBODY WHO WAS INVOLVED?

A HUH?

Q YOU HAVEN'T TOLD ANYBODY WHO WAS INVOLVED?

A I DIDN'T KNOW WHO WAS INVOLVED.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q DID ANYBODY ASK YOU BACK THERE ABOUT IT, OTHER THAN WHAT YOU TOLD ANYBODY?

A NOBODY ASKED ME. WE WAS JUST TALKING.

VOIR DIRE EXAMINATION

BY THE COURT:

Q WHEN WAS THIS, PLEASE?

A WHAT?

Q WHEN WERE Y'ALL TALKING BACK THERE?

A JUST A FEW MINUTES AGO.

Q I THOUGHT I ASKED Y'ALL NOT TO TALK ABOUT THIS CASE WHEN YOU CAME IN AT 2:30. YOU DIDN'T HEAR ME SAY THAT?

A I THOUGHT ONCE WE BEEN APPOINTED. I DON'T KNOW THAT MUCH ABOUT THE LAW.

Q I KNOW YOU DON'T. I KNOW YOU DON'T.

A I THOUGHT ONCE, YOU KNOW, WE GOT APPOINTED AS A JUROR WE NOT SUPPOSED TO.

Q YOU HAVEN'T BEEN APPOINTED YET.

A THAT'S WHAT I'M SAYING.

Q I AM GOING TO EXCUSE YOU.

A ALL RIGHT. THANK YOU, SIR. HAVE A GOOD DAY.

Q THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: GENTLEMAN, IT'S ADMITTED THAT THIS INCIDENT OCCURRED, THAT SOMEBODY DID IT. THERE WAS UNFORTUNATELY A BODY BY THE SIDE OF THE ROAD. I AM GOING TO EXCUSE HIM BECAUSE HE CAME BY THE SCENE, BUT HE HAS NO INFORMATION SUCH THAT IT WOULD IMPUGN THE INTEGRITY OF THIS JURY IN ANY WAY. I WOULD BE GLAD TO HEAR FROM YOU.

MR. STONE: AND I APPRECIATE IT. THIS IS THE CONCERN THAT I HAD YESTERDAY AND I THINK THAT'S WHY YOU RECHARGED THIS JURY ON THE FACT THAT THEY ARE BACK THERE AND SHOULDN'T BE TALKING ABOUT IT.

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OBVIOUSLY HE DISREGARDED IT AND THE OTHER JURORS THAT WERE BACK THERE WITH HIM DISREGARDED YOUR INSTRUCTIONS AS WELL. I THINK OUT OF AN ABUNDANCE OF CAUTION, WE SHOULD AT THE VERY LEAST QUESTION -- I DON'T KNOW HOW MANY PEOPLE WERE BACK THERE WITH HIM.

I AM CONFUSED TO SEE IF HE WAS AT THE FRONT END OF THE GROUP OR THE BACK END. I DON'T KNOW HOW THEY ARE ASSEMBLED BACK THERE. I THINK ANY OF THE JURORS THAT WERE BACK THERE WITH HIM, WE NEED TO ASK ABOUT THAT.

THE COURT: I WILL AS THEY CAME COME OUT.

MR. STONE: I THINK OUT OF AN ABUNDANCE OF CAUTION THOSE JURORS SHOULD BE EXCUSED. I DON'T KNOW WHAT THEIR PROFILE IS. I DON'T KNOW ANYTHING ABOUT THEM.

THE COURT: NO, SIR, I WILL NOT DO THAT. I WILL FIND OUT WHAT REALLY OCCURRED. I AM NOT SO SURE HE HAS TOLD US EVERYTHING.

MR. STONE: I UNDERSTAND. I AM CONCERNED THAT THEY ARE IGNORING YOUR INSTRUCTIONS. I THINK YOU WERE PRETTY CLEAR ABOUT THAT THIS MORNING AND YET WE HAVE GOT THIS PROBLEM.

SOLICITOR BAILEY: MY UNDERSTANDING OF WHAT HE SAID WAS THAT HE HAD DISCUSSED IT WITH THE LAST JUROR. HE SAID IT WAS A BLACK MAN WHO WAS THERE THAT

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HAS ALREADY BEEN EXCUSED AND THE REST OF THEM HAVE COME OUT.

THE COURT: BRING THE WHOLE PANEL OUT HERE AND I WILL RESOLVE IT RIGHT NOW. I WANT ALL OF THEM. I WANT EVERYONE BACK THERE OUT HERE.

MR. STONE: THE LAST ONE WAS EXCUSED. HE IS NOT A PROBLEM.

THE COURT: THE LAST TWO HAVE BEEN EXCUSED.

MR. STONE: THAT SHOULD ALLEVIATE THAT CONCERN.

THE COURT: BRING THE JURY OUT, PLEASE.

(THE REMAINING FOUR MEMBERS OF THE JURY PANEL ENTER THE COURTROOM.)

THE COURT: YOU REMEMBER AT 2:30 I ASKED ALL THE JURORS NOT TO DISCUSS THIS CASE WITH ANYONE. PERMIT NO ONE TO DISCUSS IT WITH YOU. DO NOT EVEN DISCUSS IT AMONG YOURSELVES. DO YOU RECALL THAT, ALL OF YOU?

(ALL JURORS INDICATE IN THE AFFIRMATIVE.)

THE COURT: THAT LAST JUROR INDICATED THAT HE WAS HAVING SOME CONVERSATION BACK THERE WITH Y'ALL. WAS HE TALKING ABOUT THIS CASE IN ANY WAY?

FIRST JUROR: HE WAS TALKING ABOUT HIS TRUCK.

THE COURT: WHAT DID HE SAY ABOUT HIS

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TRUCK?

SECOND JUROR: THE TAXES THAT HE HAD TO PAY FOR SOUTH CAROLINA.

THE COURT: DID HE TALK ABOUT ANYTHING INVOLVING THIS CASE?

SECOND JUROR: NOT THAT I KNOW OF.

THE COURT: DID HE INDICATE THAT HE HAD SEEN IT OR KNEW ABOUT IT?

THIRD JUROR: OH, YEAH. YEAH, HE DID.

THE COURT: WHAT DID HE SAY?

THIRD JUROR: HE SAID THAT WHEN HE WAS DRIVING HOME, HE SAW A CAR -- HE SAW A CHASE GOING ON AND LIGHTS GOING ON AND OFF LIKE TO SEE THEIR WAY TO MAKE SURE THEY COULD SEE WHERE HE WAS GOING, WHOEVER THE POLICE WERE CHASING.

FIRST JUROR: HE PASSED BY.

THE COURT: DID HE SAY ANYTHING ELSE?

FIRST JUROR: NO, HE JUST SAID HE PASSED BY.

THE COURT: DID YOU ASK HIM ABOUT WHAT OCCURRED?

THIRD JUROR: NO.

THE COURT: DID ANYBODY TELL HIM THAT HE WAS NOT SUPPOSED TO TALK ABOUT THIS CASE?

THIRD JUROR: HE DIDN'T KNOW IF IT WAS THIS

CASE OR NOT. HE WAS SAYING ON THAT DAY THAT'S WHAT HE SAW.

THE COURT: BUT HE WASN'T SURE IT WAS THIS CASE?

THIRD JUROR: RIGHT.

THE COURT: YOU AGREE WITH THAT?

FOURTH JUROR: YES.

THE COURT: HE WAS JUST TELLING YOU THAT HE SAW A HIGH SPEED CHASE? IS THAT WHAT HE SAID?

FOURTH JUROR: HE DIDN'T KNOW IT WAS ABOUT THIS.

THE COURT: HE DIDN'T KNOW IT WAS THIS CASE?

FOURTH JUROR: NO.

THE COURT: HE DIDN'T INDICATE THAT HE KNEW ANY OF THE PARTIES INVOLVED OR ANYTHING LIKE THAT?

THIRD JUROR: NO, SIR.

THE COURT: THAT'S ALL WE WANT TO KNOW. YOU MAY GO BACK TO THE JURY ROOM. I JUST WANT TO HAVE IT CLEAR. THANK YOU SO MUCH.

(THE JURY PANEL LEAVES THE COURTROOM.)

THE COURT: GENTLEMEN, I SUSPECT THAT FELLOW WANTS TO SAY MORE THAN HE KNEW. DO YOU HAVE ANY CONCERNS NOW?

MR. STONE: ESPECIALLY SINCE THERE WASN'T A

HIGH SPEED CASE ON THE INTERSTATE, YES, SIR. THAT'S AWFULLY IMPORTANT. THAT IS AWFULLY IMPORTANT. THERE WAS A SUBSTANTIAL GAP OR AT LEAST A GAP, WHETHER SUBSTANTIAL OR NOT, IS GOING TO BE IN CONTENTION BETWEEN THE TIME THAT THE OFFICER WAS SHOT AND THE TIME THE CHASE BEGAN.

WHAT HE JUST TOLD THAT JURY WAS THAT THERE WAS A HIGH SPEED CHASE ON THE INTERSTATE AND THERE WASN'T. THE PROBLEM IS IF THEY BELIEVE THAT --

THE COURT: HE SAID HE DIDN'T KNOW WHETHER IT WAS THIS OR NOT.

MR. STONE: I DON'T KNOW WHAT HE SAID BECAUSE HE IS NOT TELLING US WHAT HE SAID.

THE COURT: THE JURY SAID IT.

MR. STONE: AGAIN, WHAT REALLY DISTURBS ME IS THAT YOU WERE VERY CLEAR ABOUT THIS. YOU TOLD THEM SPECIFICALLY NOT TO TALK ABOUT THIS, AND THEY ARE BACK THERE HAVING A CONVERSATION ABOUT HIGH SPEED CHASES.

THE COURT: IN FAIRNESS NOW THE ONE JUROR SAID, "JUDGE, HE SAID HE DIDN'T KNOW WHETHER IT WAS THIS OR NOT." SO HE THOUGHT HE WAS TALKING ABOUT SOMETHING ELSE. DO YOU HAVE ANY CONCERNS ABOUT THIS, SOLICITOR?

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SOLICITOR BAILEY: JUDGE, MY ONLY CONCERN WOULD HAVE BEEN WITH THAT PARTICULAR JUROR. HE APPARENTLY WAS THE ONLY ONE TALKING. THESE PEOPLE WERE LISTENING.

THEY WERE NOT VIOLATING ANY OF YOUR INSTRUCTIONS BY LISTENING. I DON'T THINK ANYTHING HE SAID COULD HAVE TAINTED THEM. THEY CAN CERTAINLY BE ASKED INDIVIDUALLY WHETHER ANYTHING HE SAID TAINTED THEIR OPINION.

THE COURT: WE WILL EXPLORE THAT INDIVIDUALLY.

MR. STONE: AS LONG AS -- AND I THINK MY OBJECTION IS ON THE RECORD AND I HAVE MADE THAT MOTION.

THE COURT: WELL, THERE'S FOUR OF THEM. I MEAN, IF THERE IS ANY BIG PROBLEM, I COULD JUST EXCLUDE THEM ALL. ARE YOU ASKING THAT I DO THAT? YOU TELL ME WHAT YOU ARE ASKING THAT I DO.

MR. STONE: I THINK WE HAVE TO ASK YOU TO EXCLUDE THEM ALL, SIR. I KNOW THAT IS NOT CONVENIENT.

SOLICITOR BAILEY: JUDGE, WOULD YOU CONSIDER THIS, MAYBE JUST MOVING THEM DOWN TO THE LAST PANEL IN CASE WE HAVE TO GET THEM INSTEAD OF JUST TOTALLY EXCLUDING THEM?

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THE COURT: LET'S DO IT THAT WAY. DOES THAT SUIT YOU?

MR. STONE: THEN WE CAN ADDRESS THAT IF WE COME TO IT.

THE COURT: YES, SIR.

MR. STONE: THANK YOU.

THE COURT: EVERYBODY IS AGREED NOW THAT WE WILL MOVE THEM TO THE LAST PANEL. I WILL NOT EVEN QUALIFY THEM UNLESS WE NEED THEM.

MR. STONE: OF COURSE, IF IT COMES UP THAT THEY COME UP, THEN WE WILL HAVE TO ADDRESS THAT ISSUE THEN. I AM NOT NECESSARILY WAIVING MY OBJECTION TO THAT.

THE COURT: I WILL DEAL WITH IT AT THAT TIME.

MR. STONE: THAT'S FINE.

THE COURT: WE ARE IN AGREEMENT WE WILL BEGIN PANEL NUMBER FIVE AT 4:30.

MR. STONE: CAN WE JUST MAKE SURE THIS CROWD IS CLEARED OUT BEFORE WE GET THE NEW CROWD IN THERE.

THE COURT: THEY WILL BE GONE IN JUST A MOMENT. BRING THEM ALL IN.

(THE PANEL OF FOUR JURORS RETURN TO THE COURTROOM.)

THE COURT: JUST FOR THE RECORD LET ME IDENTIFY YOU. YOUR NAME, PLEASE?

JUROR: KAREN SHANAHAN.

THE COURT: DO YOUR REMEMBER YOUR JURY NUMBER?

JUROR: 351.

THE COURT: YOUR NAME, SIR?

JUROR: MORRIS JENKINS, 168.

THE COURT: AND YOUR NAME?

JUROR: SHIRLEY KELLER. I THINK IT'S 185.

THE COURT: AND YOUR NAME, PLEASE?

JUROR: OPAL O'CAIN, 231.

THE COURT: A MOMENT AGO -- AND IDENTIFY YOURSELF AGAIN?

JUROR: KAREN SHANAHAN.

THE COURT: YOU TELL ME, PLEASE, ONE MORE TIME FOR THIS RECORD EXACTLY WHAT YOU UNDERSTAND OCCURRED.

JUROR SHANAHAN: HE WAS TALKING ABOUT ON NEW YEAR'S EVE IT BEING RIGHT BEFORE 12 O'CLOCK, WITNESSING A HIGH SPEED CAR CHASE AND WHOEVER THEY WERE CHASING WAS FLASHING THE LIGHTS ON AND OFF LIKE TO SEE WHERE THEY WERE GOING EVERY NOW AND THEN. HE REMEMBERS BECAUSE HE JUST MADE IT HOME FOR THE WHATEVER, THE NEW YEAR.

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THE COURT: DID HE IDENTIFY THAT AS ARISING OUT OF THIS INCIDENT WE ARE CONCERNED WITH TODAY?

JUROR SHANAHAN: HE WASN'T SURE. HE DIDN'T KNOW.

THE COURT: SO IS THIS WHY Y'ALL DISCUSSED IT WITH HIM? YOU DIDN'T REALIZE HE WAS DISCUSSING --

JUROR SHANAHAN: IT JUST CAME UP. THERE WERE SO MANY PEOPLE IN THE ROOM. WE WEREN'T REALLY PAYING ATTENTION. IT WAS SAID AND WASN'T REALLY THOUGHT ABOUT.

SECOND JUROR: NOBODY SAID ANYTHING.

JUROR SHANAHAN: NOBODY FED INTO IT. I WAS READING READER'S DIGEST.

THE COURT: BOTH OF ALL Y'ALL AGREE THAT THAT HAPPENED LIKE THAT?

THIRD JUROR: YES, SIR.

FOURTH JUROR: YES.

MR. STONE: WOULD YOU ASK WHO ELSE WAS IN THE ROOM, WHAT OTHER JURORS?

THE COURT: WHO ELSE WAS IN THERE? THE OTHER TWO THAT CAME IN --

JUROR SHANAHAN: THE ONE RIGHT BEFORE HIM WAS IN THERE. I DON'T KNOW IF THE OTHER GUY WAS OR NOT.

MR. STONE: IT WASN'T ANYMORE THAN JUST

THOSE TWO OTHER PEOPLE?

JUROR SHANAHAN: RIGHT.

MR. STONE: CAN WE APPROACH JUST BRIEFLY?

THE COURT: YES, SIR.

COURT REPORTER: IS THIS ON THE RECORD?

MR. STONE: YES, PLEASE.

(THE FOLLOWING BENCH CONFERENCE WAS REPORTED.)

COURT REPORTER: I CAN'T HEAR ANYTHING YOU ARE SAYING.

MR. STONE: I WILL TELL YOU IN JUST A MINUTE.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE FOUR JURORS BUT OUT OF THE HEARING OF THE FOUR JURORS.)

THE COURT: HERE IS WHAT I WILL DO. I WANT YOU TO UNDERSTAND, THERE IS ABSOLUTELY NO IMPROPRIETY ON YOUR PART. I AM SURE THAT THAT JUROR DID NOT UNDERSTAND. HE WAS TALKING ABOUT SOMETHING ELSE. BUT WHAT I AM GOING TO DO IS I AM GOING TO MOVE YOU FOUR JURORS TO PANEL NUMBER SEVEN, AND I WILL EXCUSE FOR THE REST OF THE DAY.

PANEL NUMBER SEVEN IS TO REPORT BACK AT 11:30 TOMORROW. YOU UNDERSTAND THAT. NOW, LET ME GET STRAIGHT, PANEL NUMBER SEVEN, THERE WERE

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INITIALLY 15 JURORS.

THESE FOUR JURORS WILL BE QUALIFIED AS 16, 17, 18 AND 19 -- TWO WERE ALREADY EXCUSED FROM THAT. THEY WILL BE 14, 15, 16 AND 17. THEY WILL BE QUALIFIED IN THE SAME SEQUENCE THAT THEY WERE ORIGINALLY DRAWN. DO YOU FOLLOW ME?

SOLICITOR BAILEY: JUDGE, WILL THEY BE A SEPARATE PANEL COMING IN AFTER THE LAST PANEL THAT WE HAVE GOT OR WILL THEY BE A PART OF THE LAST PANEL?

THE COURT: DO YOU WANT TO LEAVE THIS PANEL SEPARATE?

MR. STONE: YES, SIR.

THE COURT: LET ME DESIGNATE THIS AS PANEL NUMBER EIGHT.

MR. STONE: THANK YOU.

THE COURT: THEY WILL BE QUALIFIED IN THE NUMBER IN WHICH THEY WERE DRAWN.

MR. STONE: WHAT TIME WILL THAT BE?

THE COURT: I AM GOING TO ASK THAT THIS PANEL REPORT IN HERE AT 12 O'CLOCK TOMORROW. EVERYBODY UNDERSTAND THAT?

JUROR: YOU HAVE CHANGED THE PANEL BACK?

THE COURT: YOU WILL BE PANEL NUMBER EIGHT, YOU FOUR. YOU ARE EXCUSED UNTIL 12 O'CLOCK TOMORROW. PLEASE DO NOT LET ANYBODY DISCUSS THIS -- STOP A

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MINUTE, PLEASE. COME BACK HERE, PLEASE. THIS IS NOT YOUR FAULT.

DO NOT LET ANYBODY DISCUSS ANY ISSUE OF THIS CASE IN YOUR PRESENCE. THIS IS NOT YOUR FAULT. I WILL SAY IT AGAIN. IT'S CERTAINLY NOT YOUR FAULT BUT THAT LAST JUROR SHOULD NOT HAVE MADE THE REMARKS HE DID AND HE SHOULD HAVE BEEN STOPPED AT THAT TIME. IF THAT OCCURS AGAIN, STOP THEM PLEASE AND DON'T LET THAT HAPPEN. IT'S NOT YOUR FAULT. HE SHOULDN'T HAVE DONE IT BUT HE DIDN'T KNOW.

JUROR: IT'S MORE WORK I HAVE TO MISS NOW.

THE COURT: MA'AM?

JUROR: IT'S MORE WORK I HAVE TO MISS NOW.

THE COURT: I UNDERSTAND THAT BUT WE ALL ARE HAVING TO DO OUR CIVIC DUTY HERE. I CAN'T HELP THAT. BE BACK AT 12 O'CLOCK.

(THE PANEL OF FOUR JURORS LEAVES THE COURTROOM.)

COURT REPORTER: JUDGE, I NEED MR. STONE TO PUT ON THE RECORD WHAT HE SAID AT THE BENCH CONFERENCE.

MR. STONE: THAT'S FINE. WHAT I SAID AT THE BENCH, YOUR HONOR, AS YOU KNOW IS THAT I DON'T THINK FROM THE DEFENSE STANDPOINT WE WILL EVER -- THAT WE WILL ALWAYS OBJECT TO ANY OF THE MEMBERS OF

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THAT PANEL BEING ON THIS JURY. WE WOULD ALWAYS MOVE, NO MATTER IF THEY GET PUT INTO PANEL NUMBER EIGHT OR WHATEVER, WE WILL ALWAYS ASK THE COURT TO EXCUSE THEM FOR CAUSE.

WHAT IS MOST IMPORTANT TO ME, OTHER THAN THE FACT YOU HAD SOMEBODY WHO DESCRIBED THE SCENE HE SAW, A HIGH SPEED CASE, WHICH IS NOT A PART OF IT; BUT AS WELL AND I THINK PROBABLY THE MOST IMPORTANT, HE SPOKE TO THEM ABOUT THE TIME THAT IT TOOK PLACE.

I THINK HE SAID OR AT LEAST ONE OF THE JURORS SAID IT HAPPENED RIGHT BEFORE MIDNIGHT AND HE KNEW THAT BECAUSE HE WAS HEADING HOME AND IT WAS RIGHT BEFORE NEW YEAR'S DAY. THAT'S AN AWFULLY IMPORTANT ISSUE IN THIS CASE.

THE COURT: YOU UNDERSTAND THAT HE ALSO SAID CLEARLY THAT HE DIDN'T KNOW WHETHER IT WAS INVOLVED IN THIS ONE OR ANOTHER ONE.

MR. STONE: I RECOGNIZE THAT BUT THE MINUTE THAT ANY OF THOSE PEOPLE GET ON A JURY THEY ARE GOING TO KNOW THAT'S EXACTLY WAY HE WAS TALKING ABOUT. THERE WASN'T ANY OTHER MURDERS OF A HIGHWAY PATROLMAN THAT TOOK PLACE RIGHT BEFORE MIDNIGHT.

THE COURT: LET ME ASK YOU. IS THERE ANY CONTENTION AS TO WHETHER OR NOT THERE WAS A HIGH SPEED CHASE? I DON'T KNOW A THING ABOUT THE FACTS.

IS THAT A SERIOUS CONTENTION?

MR. STONE: WHEN IT HAPPENED IS GOING TO, I BELIEVE, BE IN CONTENTION. I BELIEVE THERE IS, ESPECIALLY AS FAR AS A HIGH SPEED CHASE, THERE IS ONE; BUT IT DOESN'T TAKE PLACE ON THE INTERSTATE.

THE COURT: FACTUALLY, WHAT IS YOUR POSITION? IF THE TESTIMONY IS GOING TO COME OUT, AND I DON'T KNOW WHETHER IT IS OR NOT, IF THAT OCCURRED IT WOULD NOT BE AN ISSUE ANYWAY.

SOLICITOR BAILEY: YOUR HONOR, THERE WAS A PURSUIT THAT EXTENDED OVER APPROXIMATELY 40 MILES. I THINK THE MAJORITY OF THE PURSUING OCCURRED AFTER THE MUSTANG TURNED OFF ONTO 176. THERE WERE CARS SPEEDING DOWN 95 BUT THEY WERE NOT CLOSE UP ON THE MUSTANG AT THAT POINT IN TIME.

THE COURT: WELL, IT MAY BE ACADEMIC. IF WE GET A JURY WITHOUT THOSE FOUR, WE ARE ALL RIGHT. IF WE DON'T AND WE COME TO THEM, I WILL DECIDE WHAT TO DO.

MR. STONE: THANK YOU.

THE COURT: EVERYBODY IS AGREEABLE AND UNDERSTANDS THAT THESE FOUR ONLY COULD HAVE BEEN THOSE CONTAMINATED, WITH THE POSSIBLE EXCEPTION OF THE OTHER ONE WHO HAS ALREADY BEEN EXCUSED.

MR. STONE: YES, SIR, WE AGREE WITH THAT.

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THE COURT: THE RECORD WILL REFLECT THAT WE ARE ONLY CONCERNED WITH THE POSSIBLE CONTAMINATION OF THESE FOUR.

MR. STONE: YES, SIR. THOSE ARE JURORS 168, 185, 231 AND 351.

THE COURT: YOU UNDERSTAND THAT IF WE START QUALIFYING THEM, THEY WILL BE QUALIFIED IN THE SAME CONSEQUENCE THAT THEY WERE PREVIOUSLY SELECTED. YOU AGREE WITH THAT?

SOLICITOR BAILEY: AS FAR AS THE FOUR OF THEM?

THE COURT: YES, SIR.

SOLICITOR BAILEY: YES, SIR.

THE COURT: THEY WILL BE AT THE END.

SOLICITOR BAILEY: THEY WILL BE DOWN AT THE END THOUGH AND WE WOULDN'T REACH THEM UNLESS WE NEED TO.

THE COURT: YES, SIR. THANK YOU. THAT GIVES US A BREAK UNTIL 4:30.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: BRING THE JURY PANEL IN, PLEASE.

(THE PANEL OF JURORS ENTERS THE COURTROOM.)

THE COURT: GOOD AFTERNOON, PANEL NUMBER FIVE. WE ARE READY TO BEGIN THE INDIVIDUAL VOIR DIRE

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QUESTIONING, AND WE WILL START IN JUST A MOMENT INDIVIDUALLY. LET ME MAKE A FEW REMARKS AGAIN BEFORE WE PROCEED.

IT IS IMPERATIVE THAT YOU DO NOT DISCUSS THIS OKAY WITH ANYONE. PERMIT NO ONE TO DISCUSS IT WITH YOU. YOU MUST NOT DISCUSS IT AMONG YOURSELVES. AFTER WE HAVE HAD THE INDIVIDUAL QUESTIONING, YOU MUST NOT DISCUSS THE QUESTIONS THAT WERE ASKED YOU. YOU MUST NOT DISCUSS THE ANSWERS.

A JURY IS ONLY PERMITTED TO DISCUSS THE CASE EVEN AMONG THEMSELVES AFTER ALL THE TESTIMONY IS IN, AFTER SUMMATIONS ARE HAD AND AFTER THE INSTRUCTIONS OF THE LAW. IT IS AT THAT TIME THAT I WILL SAY TO YOU: LADIES AND GENTLEMEN OF THE JURY, YOU MAY NOW BEGIN YOUR DELIBERATIONS.

NOW SOMETIMES, AND IT HAPPENED A MOMENT AGO AND IT'S ALL RIGHT, BUT ONE JUROR THOUGHT HE KNEW SOMETHING ABOUT THE CASE AND HE WAS GETTING READY TO TELL SOME OF THE OTHER JURORS ABOUT IT.

THEY SHOULD HAVE STOPPED HIM. HE DIDN'T REALIZE HE WAS VIOLATING MY ORDER AND THEY DIDN'T. IT WAS INNOCUOUS AND HAS NOT HURT A THING BUT IT COULD HAVE.

SO IF ANYBODY IN THAT JURY ROOM STARTS TO SAY ANYTHING ABOUT THIS CASE, STOP THEM AND TELL THEM

WHAT JUDGE COTTINGHAM JUST TOLD YOU. YOU CANNOT DO IT. YOU CANNOT LISTEN TO IT. YOU CANNOT BE A PARTY TO IT. PLEASE REMEMBER THAT.

GO TO THE JURY ROOM. WE ARE GOING TO MOVE ALONG JUST AS RAPIDLY AS POSSIBLE. I THANK YOU FOR YOUR PRESENCE HERE TODAY. I KNOW THAT ALL OF YOU HAVE GOT A LOT OF PLACES YOU NEED TO BE.

(THE PANEL OF JURORS LEAVES THE COURTROOM.)

THE COURT: ANY OBJECTION TO THOSE INSTRUCTIONS?

MR. STONE: NO, SIR, AND WE THANK YOU.

THE COURT: BRING THE FIRST ONE.

(THE JUROR ENTERS THE COURTROOM.)

BARBARA HANTON, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q YOU ARE MRS. BARBARA HANTON?

A YES, I AM.

Q IS IT MRS. HANTON?

A HANTON.

Q MRS. HANTON, I WANT TO ASK YOU SEVERAL QUESTIONS. I WANT YOU TO RELAX. I UNDERSTAND THAT THIS WOULD BE AN UNUSUAL CIRCUMSTANCE.

A YES, IT IS.

Q IF I WERE IN YOUR SHOES, I WOULD PROBABLY BE NERVOUS, TOO. SO TO THE EXTENT THAT YOU CAN, PLEASE RELAX. NOBODY WOULD ASK YOU ANY QUESTIONS THAT WOULD INVADE YOUR PRIVACY IN ANY WAY WHATSOEVER. IN OUR PROCEDURE IT IS REQUIRED THAT WE HAVE THIS EXPRESSION IN QUESTIONS.

FIRST, YESTERDAY A NUMBER OF JURORS INDICATED THAT THEY MAY HAVE READ, HEARD OR KNEW SOMETHING ABOUT THE CASE WE ARE GETTING READY TO TRY. WERE YOU ONE OF THOSE WHO HAPPENED TO STAND UP?

A YES, I WAS.

Q CAN YOU TELL ME WHAT YOU KNOW ABOUT THE CASE?

A THE ONLY THING I KNOW IS IT WAS A CRIME COMMITTED ON THE LAST DAY IN DECEMBER AND A STATE TROOPER WAS KILLED. I DON'T KNOW ANYTHING ELSE.

Q LET ME ASK YOU THIS. THIS DEFENDANT HAS BEEN INDICTED FOR THAT CHARGE, TO WHICH CHARGE HE HAS PLED NOT GUILTY.

A YES, SIR.

Q THE STATE MUST PROVE HIM GUILTY IF THEY CAN BEYOND A REASONABLE DOUBT. I WANT TO MAKE SURE THAT ALL JURORS, EVEN THOUGH THEY MAY HAVE HEARD OR READ SOMETHING ABOUT THIS, CAN BASE THEIR VERDICT, EITHER NOT GUILTY OR GUILTY, BASED ON THE TESTIMONY AND

EVIDENCE IN THIS COURTROOM. CAN YOU PROMISE ME YOU CAN DO THAT?

A YES, I CAN.

Q I THINK YOU CAN, TOO. I JUST WANT TO MAKE SURE. SOMETIMES HEARSAY TESTIMONY IN THE NEWSPAPER IS SIMPLY WRONG. I DON'T KNOW WHETHER IT'S RIGHT OR WRONG. I HAVEN'T READ IT.

A THAT'S TRUE.

Q BUT I WANT TO KNOW THAT YOU WILL BASE YOUR VERDICT ON WHAT YOU HEAR IN THIS COURTROOM UNDER OATH.

A I WILL.

Q DID YOU HAVE AN OPPORTUNITY A MOMENT AGO TO READ THE THREE TYPES OF JURORS?

A YES, I DID.

Q AND DID YOU UNDERSTAND THE THREE TYPES?

A YES, I DID.

Q I BELIEVE YOU WOULD UNDERSTAND THAT THIS IS POSSIBLY A TWO-PART TRIAL. THE FIRST PART IS GUILT OR INNOCENCE. IF HE IS FOUND NOT GUILTY, WE STOP THERE. YOU UNDERSTAND THAT?

A I UNDERSTAND.

Q NOW, IF -- AND I USE THAT ADVISEDLY -- IF HE IS FOUND GUILTY OF MURDER WITH MALICE AFORETHOUGHT, WE THEN AND ONLY THEN GO TO WHAT WE CALL THE SENTENCING

PHASE.

IN THE SENTENCING PHASE, THE JURY IS CONCERNED WITH ONE QUESTION. NOW THAT WE FOUND HIM GUILTY OF MURDER, WHAT SHALL THE SENTENCE BE? SHALL IT BE LIFE IMPRISONMENT OR SHALL IT BE DEATH? DO YOU UNDERSTAND THAT?

A I UNDERSTAND.

Q JURORS WHEN CONFRONTED WITH THIS QUESTION, AND IT'S AN ENORMOUS QUESTION, FALL INTO THREE GROUPS. THERE ARE NO RIGHT OR WRONG ANSWERS. WE JUST SIMPLY GET INTO ONE GROUP OR THE OTHER.

THERE IS A GROUP WHO SAY HAVING CONVICTED SOMEONE OF MURDER, I SHALL ALWAYS BE FOR THE DEATH PENALTY. THERE IS A SECOND GROUP WHO SAY I CAN NEVER TAKE THE LIFE OF ANOTHER HUMAN BEING FOR ANY REASON EVEN THOUGH WE HAVE CONVICTED HIM OF MURDER.

THERE IS A THIRD GROUP WHO SAY WE HAVE CONVICTED HIM OF MURDER. I WILL NOW HEAR ALL OF THE FACTS IN THE CASE AND I THEN WILL DECIDE WHETHER OR NOT LIFE IMPRISONMENT OR THE DEATH PENALTY IS APPROPRIATE.

WOULD YOU WOULD BE THE FIRST WHO SAYS ALWAYS, THE SECOND WHO SAYS NEVER OR THE THIRD WHO SAYS IT WILL DEPEND UPON THE FACTS IN THE CASE? WHICH WOULD YOU BE, PLEASE?

A NUMBER THREE.

Q THREE.

THE COURT: YOU MAY EXAMINE. THANK YOU SO MUCH.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. HANTON, I'M WALTER BAILEY. I WANT TO ASK YOU JUST A COUPLE MORE QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE ASKED YOU. THERE ARE A COUPLE OTHER PEOPLE THAT WERE ON THE ORIGINAL JURY LIST WITH THE LAST NAME HANTON. THERE WAS A RICKY HANTON AND A WILLIE H. HANTON. ARE YOU RELATED TO EITHER ONE OF THEM?

A RICKY HANTON IS MY EX-HUSBAND'S FAMILY, BUT I HAVE BEEN DIVORCED FOR ABOUT 15 OR 16 YEARS. SO I DON'T REALLY KNOW. I KNOW HIM BY FACE BUT I DON'T KNOW HIM.

Q I UNDERSTAND. MRS. HANTON, I WANT TO ASK YOU A LITTLE BIT ABOUT THE DEATH PENALTY QUESTIONS. YOU UNDERSTAND WE WOULDN'T EVEN GET TO THAT POINT UNLESS THE JURY FINDS THE DEFENDANT GUILTY OF MURDER IN THE FIRST PART OF THE TRIAL --

A RIGHT.

Q -- LIKE THE JUDGE SAID. IF WE REACH THAT STAGE, WE ARE DEALING WITH SOMEBODY HAS BEEN CONVICTED OF MURDER. THEN THE JURY DECIDES, NOT THE

JUDGE, WHAT THE PENALTY IS GOING TO BE.

IN OTHER WORDS, IF THE JURY SAYS LIFE WITHOUT PAROLE OR A LIFE SENTENCE, THE JUDGE WOULD SENTENCE HIM TO LIFE WITHOUT PAROLE. IF THE JURY, AFTER HEARING ALL THE FACTS AND CIRCUMSTANCES, SAYS WE THINK IT'S AN APPROPRIATE CASE FOR THE DEATH PENALTY, THE JUDGE WOULD SENTENCE HIM TO DEATH AND HE WOULD BE EXECUTED.

A YES.

Q I AM NOT GOING TO ASK YOU WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS YET.

A NO.

Q BUT MY QUESTION IS IF THE FACTS OF THE CASE ARE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE WOULD ACTUALLY BE CARRIED OUT BASED ON THAT JURY'S VERDICT?

A I COULD, YES.

Q IF THE OTHER 11 JURORS VOTED THE SAME WAY YOU DID FOR THE DEATH PENALTY, COULD YOU SIGN YOUR NAME TO A DEATH VERDICT FORM THAT WOULD RESULT IN THAT PERSON BEING EXECUTED?

A YES.

Q IF YOU DID THOSE TWO THINGS, COULD YOU STAND UP HERE IN OPEN COURT WHEN YOUR NAME IS CALLED AND

ANNOUNCE THAT VERDICT OUT LOUD?

A WHEN?

Q IT'S A PROCEDURE CALLED POLLING THE JURY WHERE THE CLERK WILL CALL EACH PERSON'S NAME. IN TURN THEY WOULD STAND UP AND ASK THEM TO AFFIRM THAT VERDICT. COULD YOU DO THAT?

A YES, SIR.

Q THE JURY IN THIS CASE IS GOING TO BE KEPT IN A MOTEL STARTING ON THURSDAY. THEY WILL BE HERE IN THE DAYTIME WHEN THE TRIAL IS GOING ON AND IN THE MOTEL AT NIGHT, PROBABLY FOUR OR FIVE DAYS. DO YOU THINK THAT WOULD CAUSE YOU ANY UNUSUAL HARDSHIP?

A NO.

Q AS FAR AS YOUR PERSONAL LIFE OR FAMILY LIFE OR ANYTHING LIKE THAT?

A NO.

Q DO YOU KNOW OF ANY REASON THAT WOULD PREVENT YOU FROM BEING A FAIR JURY BOTH TO THE STATE AND THE DEFENDANT?

A NO, I DON'T.

Q IS THE DEATH PENALTY SOMETHING YOU HAVE EVER HAD OCCASION TO THINK ABOUT IN THE PAST BEFORE YESTERDAY?

A NEVER, NEVER.

Q BUT NOW THAT YOU KNOW THAT YOU MAY BE ON A JURY WHERE THAT IS AN ISSUE, DO YOU THINK YOU HAVE HAD

ENOUGH TIME TO THINK ABOUT AND KIND OF GET YOUR THOUGHTS TOGETHER ON IT?

A NOT ENOUGH TIME BUT I GUESS I COULD DEAL WITH IT IF I HAVE TO.

Q MRS. HANTON, THAT'S ALL I HAVE. THANK YOU VERY MUCH.

VOIR DIRE EXAMINATION

BY MR. SIMS:

Q GOOD AFTERNOON, MRS. HANTON. I'M THOMAS SIMS. HOW ARE YOU?

A FINE.

Q LET ME ASK YOU A QUESTION. YOU INDICATED THAT YOU HAD SOME RESOURCE OR THAT YOU HAD SOME -- IN TERMS OF HEARING ABOUT THIS CASE. BECAUSE YOU DO KNOW I REPRESENT BAYAN.

A YES, IT WAS THE NEWSPAPER AND TELEVISION.

Q THE NEWSPAPER, THAT'S THE TIMES AND DEMOCRAT, OR SOME OTHER NEWSPAPER?

A YES, TIMES AND DEMOCRAT.

Q WAS IT W.I.S. NEWS?

A I DON'T KNOW WHICH CHANNEL.

Q LET ME ASK YOU THIS. BY THE SAME TOKEN YOU HAVE BEEN ASKED A LOT OF QUESTIONS ABOUT THE DEATH PENALTY; BUT IN A SITUATION IN WHICH YOU ARE A JUROR OR A MEMBER OF THE JURY, IF YOU ARE SITTING ON THAT

JURY AND THE STATE DOES NOT MEET ITS BURDEN OF PROOF, DOES NOT PRESENT ENOUGH EVIDENCE BEYOND A REASONABLE DOUBT, WOULD YOU ALSO BE ABLE TO GO BACK IN THE JURY ROOM AND FIND THAT PERSON NOT GUILTY?

A YES, I CAN.

MR. SIMS: THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: ALL RIGHT. HAVE HER STEP OUTSIDE.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: QUALIFIED.

MR. SIMS: QUALIFIED.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MADAME JUROR, WE ARE QUALIFYING 35 JURORS, FROM WHICH 14 WILL BE DRAWN AT 9:30 ON THURSDAY MORNING. YOU HAVE BEEN FOUND BY ALL COUNSEL AND THE COURT TO BE QUALIFIED IF SELECTED.

I WOULD ASK RESPECTFULLY THAT YOU RETURN TO THIS COURTROOM AT 9:30 THURSDAY MORNING. PLEASE BRING WITH YOU SUCH PERSONAL EFFECTS AS YOU WILL NEED IN THE EVENT YOU ARE SELECTED FOR STAYING IN THE MOTEL. SO I WILL SEE YOU AT 9:30 THURSDAY. ANY QUESTIONS?

JUROR: NO QUESTIONS.

THE COURT: THANK YOU SO MUCH.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: IF THE JUROR IS READY, PLEASE BRING HIM IN.

(THE JUROR ENTERS THE COURTROOM.)

MALCOLM SIMPSON, (BLACK MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MR. SIMPSON, GOOD AFTERNOON.

A HOW ARE YOU DOING?

Q I HAVE YOUR RETURN HERE AND I NOTE THAT YOU ARE 30 YEARS OF AGE?

A YES, SIR.

Q YOU FINISHED HIGH SCHOOL AND YOU INDICATE ALSO THAT -- WAS IT DENMARK COLLEGE FOR TWO YEARS?

A DENMARK TECHNICAL COLLEGE.

Q AND YOU ARE EMPLOYED AT MIDLANDS MANUFACTURING?

A YES, SIR.

Q HOW LONG HAVE YOU BEEN THERE?

A ABOUT A YEAR AND A HALF.

Q WHERE DID YOU WORK BEFORE THEN?

A AT CONCEPTS UNLIMITED.

Q WHAT DID YOU DO THERE?

A I WAS A WELDER.

Q AND YOU ARE A WELDER NOW; IS THAT CORRECT?

A YES, SIR.

Q SOME OF THE JURORS YESTERDAY WHEN I ASKED THEM STOOD UP AND INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE WE ARE GETTING READY TO TRY. DID YOU STAND UP, TOO?

A NO, SIR.

Q DO YOU KNOW ANYTHING ABOUT THIS CASE?

A NOT ONE THING.

Q NOBODY HAS DISCUSSED IT WITH YOU?

A NO, SIR.

Q YOU HAVEN'T READ ABOUT IT?

A NO, SIR.

Q HAVEN'T SEEN IT ON T.V.?

A NO, SIR.

Q ARE YOU MARRIED?

A YES, SIR.

Q HOW MANY CHILDREN HAVE YOU GOT?

A TWO.

Q DO YOU WATCH T.V.?

A I WATCH T.V. BUT NOT MUCH NEWS, THAT IS.

Q YOU DO NOT. SO YOU ARE TELLING ME YOU KNOW ABSOLUTELY NOTHING ABOUT THIS CASE?

A ABSOLUTELY NOTHING.

Q LET ME ASK YOU THIS. DID YOU HAVE AN OPPORTUNITY TO READ THAT DOCUMENT ABOUT THE THREE

TYPES OF JURORS?

A YES, SIR.

Q DO YOU UNDERSTAND THAT?

A YES, SIR.

Q DO YOU UNDERSTAND THAT THIS IS A POSSIBLE TWO-PART TRIAL?

A YES, SIR.

Q THE FIRST PART DEALS WITH THE INNOCENCE OR GUILT OF THE DEFENDANT. IF HE IS FOUND NOT GUILTY, WE STOP THERE. IF HE IS FOUND GUILTY OF MURDER, WE GO THEN TO THE SECOND PART WHICH DECIDES THE PUNISHMENT. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q IT IS THE JURY'S JOB TO DECIDE WHETHER A PERSON WHO HAS BEEN CONVICTED OF MURDER SHALL BE PUNISHED BY LIFE IMPRISONMENT OR DEATH BY THE ELECTRIC CHAIR OR LETHAL INJECTION, ONE OF THE TWO.

JURORS WHEN CONTINUED WITH THIS SITUATION IN DECIDING PUNISHMENT FALL INTO THREE GROUPS AS THAT LETTER INDICATED. WHICH GROUP WILL YOU BE IN DO YOU THINK?

A DEFINITELY THE THIRD GROUP.

Q THE THIRD GROUP. THANK YOU.

THE COURT: SOLICITOR, YOU MAY EXAMINE.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MR. SIMPSON, I'M WALTER BAILEY. I WANT TO ASK YOU JUST A COUPLE MORE QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE ASKED YOU. YOU UNDERSTAND THAT WE WOULDN'T EVEN BE GETTING INTO THE SECOND PHASE OF THE TRIAL UNLESS THE DEFENDANT HAD BEEN FOUND GUILTY OF MURDER IN THE FIRST PART OF THE TRIAL?

A YES, SIR.

Q AND IF WE REACH THE SECOND PHASE, OF COURSE, WE WILL BE DEALING WITH SOMEBODY WHO IS A CONVICTED MURDERER. THE JURY, NOT THE JUDGE, DECIDES WHAT THE SENTENCE IS GOING TO BE.

SO IF THE JURY VOTES UNANIMOUSLY FOR A LIFE SENTENCE, THE JUDGE WOULD SENTENCE THAT PERSON TO LIFE WITHOUT PAROLE; AND THAT'S WHAT HE WOULD SERVE.

ON THE OTHER HAND, IF THE JURY DECIDES THAT THE APPROPRIATE SENTENCE FOR THAT CRIME IS THE DEATH PENALTY, THAT PERSON IS ACTUALLY GOING TO BE EXECUTED.

I AM NOT GOING TO ASK YOU TO PREDICT WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS YET AND KNOW NOTHING ABOUT IT. MY QUESTION IS IF THE CASE IS BAD ENOUGH, COULD YOU VOTE

FOR THE DEATH PENALTY KNOWING THAT PERSON IS ACTUALLY GOING TO GET EXECUTED?

A IF IT WAS PROVEN BY THE FACTS, YES, I COULD.

Q IF YOU AND THE OTHER 11 JURORS ALL FELT THE SAME WAY AND VOTED FOR THE DEATH PENALTY, COULD YOU SIGN YOUR NAME ONTO A PIECE OF PAPER, A DEATH VERDICT FORM?

A YES, I COULD.

Q THAT WOULD RESULT IN THAT EXECUTION TAKING PLACE?

A YES, I COULD.

Q THE NEXT THING THE JURY WOULD BE INVOLVED IS YOU WOULD COME OUT OF THE JURY ROOM, SIT DOWN OUT HERE AND SOMEBODY WOULD CALL EACH JUROR'S NAME OUT ONE AT A TIME AND ASK YOU TO AFFIRM THAT VOTE OUT LOUD. COULD YOU DO THAT?

A YES, I COULD.

Q STARTING THURSDAY MORNING OR THURSDAY AFTERNOON, THE JURY WILL BE STAYING IN A MOTEL. THEY WILL BE HERE DURING THE DAYTIME. WHEN THE TRIAL IS OVER, THEY WILL GO OUT TO SUPPER AND TO A MOTEL. THAT'S AN INCONVENIENCE FOR EVERYBODY BUT WOULD IT CAUSE YOU ANY KIND OF UNDUE HARDSHIP?

A NOT ANY MAJOR INCONVENIENCE.

Q NOTHING IN YOUR WORK OR FAMILY LIFE THAT WOULD

CREATE ANY MAJOR CONFLICTS?

A NO.

Q MR. SIMPSON, THAT'S ALL I HAVE GOT. THANK YOU VERY MUCH.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q MR. SIMPSON, MY NAME IS DUFFIE STONE. ALONG WITH MR. SIMS I REPRESENT BAYAN ALEKSEY. HE IS ON TRIAL OBVIOUSLY FOR MURDER. YOU UNDERSTAND THAT, RIGHT?

A YES.

Q THE SOLICITOR HAS TALKED TO YOU A LITTLE BIT AND THE JUDGE HAS EVEN TALKED TO YOU A LITTLE BIT ABOUT THE DEATH PENALTY. THE FACT THAT THE SOLICITOR IS ASKING FOR THE DEATH PENALTY DOES THAT MAKE YOU FEEL ONE WAY OR THE OTHER ABOUT THE GUILT OR INNOCENCE OF MR. ALEKSEY?

A NO, IT DOESN'T.

Q SO YOU WOULD STILL REALIZE THAT WE MAY NEVER GET TO THE QUESTION OF WHETHER OR NOT THE DEATH PENALTY IS EVEN AN ISSUE? YOU UNDERSTAND THAT?

A YES.

Q YOU ARE OKAY WITH THAT DESPITE THE FACT THAT THIS IS A PRETTY IMPORTANT CASE. IT'S ABOUT THE DEATH OF A POLICE OFFICER. THAT'S OKAY?

A THAT'S OKAY WITH ME.

Q DO YOU LIVE HERE IN ORANGEBURG?

A CORDOVA. IT'S ON THE OUTSIDE OF ORANGEBURG.

Q HOW DID YOU GET YOUR INFORMATION? DO YOU WATCH TELEVISION, READ THE NEWSPAPER, ANYTHING LIKE THAT?

A OFF AND ON I READ THE NEWSPAPER AND WATCH THE NEWS FROM TIME TO TIME.

Q BUT YOU HAVEN'T HEARD ANYTHING ABOUT THIS CASE?

A NOT THIS PARTICULAR CASE, NO.

Q DO YOU FEEL LIKE WOMEN AND MEN ARE EQUAL AND SHOULD BE TREATED ACCORDINGLY?

A YES, I DO.

Q DO YOU FEEL LIKE WOMEN SHOULD BE HELD TO THE SAME STANDARDS AS MEN?

A YES, I DO. YES, THEY SHOULD.

Q THANK YOU, MR. SIMPSON. I APPRECIATE IT.

MR. STONE: THANK YOU, YOUR HONOR.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: FOR THE STATE?

SOLICITOR BAILEY: QUALIFIED, YOUR HONOR.

MR. STONE: YES, SIR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. SIMPSON?

JUROR: YES, SIR.

THE COURT: YOU HAVE BEEN FOUND QUALIFIED

TO SERVE IF SELECTED. AS I TOLD YOU, WE ARE QUALIFYING 35 JURORS. THE ATTORNEYS FOR THE STATE AND THE DEFENDANT FIND YOU QUALIFIED TO SERVE. SO I AM GOING TO ASK THAT YOU REPORT BACK HERE AT 9:30 THURSDAY MORNING.

JUROR: OKAY.

THE COURT: BRINGING WITH YOU SUCH PERSONAL EFFECTS AS YOU WILL REQUIRE FOR STAYING IN THE MOTEL IN THE EVENT THAT YOU ARE SELECTED. WE WILL SELECT 12 AND TWO ALTERNATES, 14. YOU MAY OR MAY NOT BE BUT YOU ARE ONE OF THE 35. DO YOU HAVE ANY QUESTIONS?

JUROR: NO, SIR.

THE COURT: SEE YOU AT 9:30 THURSDAY MORNING. THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

SHARON GOODWIN, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MRS. GOODWIN, YOU WERE BORN ON OCTOBER 28, 1962; IS THAT RIGHT?

A YES, SIR.

Q YOU FINISHED BOWMAN HIGH SCHOOL AND YOU WENT TO

A PROFESSIONAL SCHOOL?
A YES, SIR.
Q TRUCK DRIVING?
A YES, SIR.
Q YOU HAVE BEEN EMPLOYED WITH THE SOUTH CAROLINA DEPARTMENT OF TRANSPORTATION IN THE HOLLY HILL MAINTENANCE SHOP?
A YES.
Q WHAT ARE YOUR DUTIES THERE, PLEASE?
A MY DUTIES IS TO BE ON WORK ON TIME AT SEVEN O'CLOCK, AND MY DUTY IS TO GO OUT AND FIX ALL TYPE OF ROADS THAT HAVE HOLES THAT WE HAVE TO REPAIR. MY DUTIES IS TO DO DRIVEWAYS AND MY DUTIES IS TO LIKE SPRAY SOMETIME LIKE AROUND THE SIGNS AND STUFF. MY DUTY IS TO GO ON I-95 AND 26 AND PICK UP RUBBISH, JUST ALL TYPES OF DIFFERENT DUTIES WE HAVE TO DO.
Q DO YOU DRIVE ANY KIND OF MACHINERY OR ANYTHING?
A NO, I JUST DRIVE THE TRUCKS SOMETIME HAULING DIRT, CRUSH AND RUN.
Q HOW LONG HAVE YOU BEEN EMPLOYED WITH THE HIGHWAY DEPARTMENT?
A A YEAR AND EIGHT MONTHS.
Q WHERE WERE YOU EMPLOYED BEFORE THEN, PLEASE, MA'AM?
A AT AMBERS INTRODUCTION IN ORANGEBURG, SEWING

ROOM.

Q LET ME ASK YOU THIS. ON YESTERDAY SEVERAL JURORS STOOD UP WHEN I ASKED THEM IF THEY HAD HEARD OR READ ANYTHING ABOUT THIS CASE. WERE YOU ONE OF THOSE WHO HAPPENED TO STAND UP?

A YES, SIR.

Q CAN YOU TELL ME WHAT YOU KNOW ABOUT THIS CASE, WHAT YOU MAY HAVE READ OR HEARD?

A YES. BY WHERE I WORK AT, THE STATE TROOPERS ALWAYS COMES IN AND GAS UP. I HEARD A LOT ABOUT THE CASE. IT HAPPENED NEAR BE MY JOB RIGHT OFF I-95. I WORK RIGHT CLOSE, NOT TOO FAR FROM THERE WHEN IT HAPPENED.

I HEARD THAT IT WAS A YOUNG MAN AND HIS GIRLFRIEND. SHE WAS DOWN HERE VISITING HER FAMILY OR IT WAS FAMILY UNION TIME. HE BROUGHT HER UP HERE AND HE WAS SPEEDING AND THEY TRY TO STOP HIM. HE WOULDN'T STOP.

THEN WHEN THE OFFICER STOP HIM ON I-95, HE HAD -- THE GIRL WAS ALREADY OUT THE CAR AND HE HAD FIRED AT AN OFFICER AND KILLED HIM. THAT'S WHAT I HEARD.

Q THAT'S WHAT YOU HEARD. I WILL ASK THAT YOU STEP IN THE JURY ROOM JUST A MOMENT.

(THE JUROR LEAVES THE COURTROOM.)

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THE COURT: DOES THE DEFENSE DESIRE TO CONTINUE THIS QUESTIONING?

MR. STONE: NO, SIR. IT'S OUR POSITION SHE IS NOT QUALIFIED ON THIS TRIAL.

SOLICITOR BAILEY: YOUR HONOR, AT THE RISK OF SLOWING THIS THING DOWN UNNECESSARILY, I WOULD LIKE TO INQUIRE OF HER WHETHER OR NOT -- SHE WASN'T AN EYEWITNESS LIKE THE OTHER PERSON BUT JUST HEARD SOMETHING AND MAY BE ABLE TO SET IT OUTSIDE.

THE COURT: IN AN ABUNDANCE OF PRECAUTION THOUGH, SHE WORKS AT THE MAINTENANCE SHOP AT THE HIGHWAY DEPARTMENT. ALL OF THESE TROOPERS COME BY THERE. I THINK IN FAIRNESS TO THE PROCESS THAT WE HAVE GOT A NUMBER OF JURORS WHO DON'T HAVE THAT CLOSE PROXIMITY.

SOLICITOR BAILEY: YES, SIR.

THE COURT: I WILL EXCUSE HER.

MR. STONE: THANK YOU, YOUR HONOR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MRS. GOODWIN.

JUROR: YES, SIR.

THE COURT: I WANT TO THANK YOU FOR ATTENDANCE HERE. WE APPRECIATE IT. WE KNOW THAT WE HAVE INCONVENIENCED YOU. YOU HAVE BEEN VERY PATIENT. I DEEPLY APPRECIATE IT. I AM IN A POSITION TO EXCUSE

YOU FOR THE REST OF THE TRIAL. YOU WOULD NOT HAVE TO COME BACK. THANK YOU SO MUCH.

JUROR: THANK YOU.

MR. STONE: YOUR HONOR, CAN WE INQUIRE IF SHE DIDN'T SAY ANYTHING TO ANYONE OR IF SHE TALKED TO ANYBODY?

JUROR: NO.

MR. STONE: GREAT. THANK YOU. I APPRECIATE IT. I'M JUST A LITTLE NERVOUS AT THIS POINT.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

PATSY WILDER, (WHITE FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MRS. PATSY WILDER, I WANT TO ASK YOU A FEW QUESTIONS, PLEASE, AND WE APPRECIATE YOUR PRESENCE. I HAVE YOUR RETURN HERE AND I NOTE THAT YOU FINISHED BOWMAN HIGH SCHOOL AND THAT YOU WENT TO ORANGEBURG TECHNICAL COLLEGE, AND YOU ARE A LICENSED PRACTICAL NURSE?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q AND YOU WORK FOR THE ORANGEBURG FAMILY HEALTH CLINIC AS A NURSE; IS THAT CORRECT?

A CORRECT.

Q YESTERDAY SEVERAL JURORS INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE. WERE YOU ONE OF THOSE WHO INDICATED BY STANDING UP THAT YOU HAD READ SOMETHING ABOUT THIS CASE?

A (WITNESS SHAKES HEAD.) (INDICATING NEGATIVE RESPONSE.) NO.

Q YOU HAVE NEVER HEARD ANYTHING ABOUT IT?

A AS FAR AS IF I RAISED MY HAND ABOUT THE CASE, NO.

Q I MEAN, HAVE YOU READ ANYTHING OR DO YOU KNOW ANYTHING ABOUT THE CASE AT ALL?

A YES.

Q DID YOU SEE SOMETHING ON T.V.?

A YES.

Q DID YOU READ SOMETHING ABOUT IT?

A NEWSPAPER, YES.

Q HOW LONG AGO WAS THAT, PLEASE?

A WELL, I KNEW WHEN THE MURDER OCCURRED BECAUSE I HAVE LIVED IN ORANGEBURG, YOU KNOW, FOR A LONG TIME; BUT I DIDN'T EVEN KNOW WHAT I WAS CALLED TO JURY DUTY ABOUT UNTIL I GOT HERE. NOW I DO KNOW AND THAT'S IT.

Q LET ME ASK YOU THIS. THIS DEFENDANT HAS BEEN

INDICTED FOR MURDER, TO WHICH CHARGE HE PLEADS NOT GUILTY. I WANT A JURY AND WE ALL DO WHO WILL BASE THEIR VERDICT OF NOT GUILTY OR GUILTY BASED ON THE TESTIMONY AND THE EVIDENCE HEARD IN THIS COURTROOM DURING THIS TRIAL AND NOT ON WHAT THEY MAY HAVE READ OR HEARD.

CAN YOU PROMISE ME THAT YOUR VERDICT WILL BE -- THAT THAT CAN BE SET ASIDE AND YOU WILL BASE YOUR VERDICT ON THE TESTIMONY IN THE TRIAL OF CASE IF YOU ARE SELECTED?

A YES.

Q YOU WOULD NOT BE INFLUENCED IN YOUR VERDICT BY WHAT YOU MAY HAVE READ?

A YES -- I MEAN, NO.

Q NOW, DO YOU UNDERSTAND THAT THIS IS POTENTIALLY A TWO-PART TRIAL?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q THE FIRST PART DEALS SOLELY WITH THE GUILT OR INNOCENCE OF THE DEFENDANT. IF HE IS FOUND NOT GUILTY, WE STOP THERE. NOW, IF -- AND THAT IS ADVISORY -- IF HE IS FOUND GUILTY OF MURDER, THEN WE START THE SECOND PART OF THIS CASE WHICH IS THE PUNISHMENT PART. DO YOU UNDERSTAND THAT?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE

RESPONSE.)

Q IN THAT PART IT IS FOR THE JURY TO DETERMINE, HAVING FOUND HIM GUILTY OF MURDER IF THAT BE THE CASE, WHAT THE PUNISHMENT IS. THERE IS ONLY TWO THINGS. ONE, THE JURY SHALL ASSESS THE PUNISHMENT OF LIFE IMPRISONMENT OR THE JURY MAY ASSESS THE PENALTY OF DEATH. IT IS FOR THE JURY TO DECIDE. YOU READ THE LETTER ABOUT THE THREE TYPES OF JURORS?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q WHICH TYPE -- IF YOU ARE CONFRONTED WITH THIS SITUATION, WOULD YOU BE THE FIRST, SECOND OR THIRD GROUP?

A THE SECOND.

Q THE SECOND. WHAT IS YOUR VIEW OF THE SECOND GROUP?

A WITH THE DEATH PENALTY?

Q YES, MA'AM.

A I HAVE MIXED FEELINGS.

Q LET ME TELL YOU THE THREE GROUPS AND THEN YOU DECIDE FOR YOURSELF. WE ALL KNOW THAT VERY FEW PEOPLE ARE EVER FACED WITH THIS DECISION, AND IT'S AN ENORMOUS RESPONSIBILITY AND EVERYBODY RECOGNIZES THAT.

GENERALLY JURORS FALL INTO THREE GROUPS. THERE

IS A GROUP -- AND THERE'S NO RIGHT OR WRONG ANSWERS. THERE IS A GROUP WHO SAYS HAVING CONVICTED SOMEONE OF MURDER WITH MALICE AFORETHOUGHT, I WILL ALWAYS BE FOR THE DEATH PENALTY.

THE SECOND GROUP EQUALLY IMPORTANT SAYS I CAN NEVER TAKE THE LIFE OF ANOTHER HUMAN BEING EVEN THOUGH WE HAVE CONVICTED HIM OF MURDER. THE THIRD GROUP SAYS WE HAVE CONVICTED HIM OF MURDER AND I NOW AM GOING TO DECIDE THE APPROPRIATE PUNISHMENT. I CAN DECIDE ON THE DEATH PENALTY. EQUALLY IMPORTANT I COULD GIVE HIM LIFE IMPRISONMENT. I WILL HAVE TO DECIDE AFTER I HEAR ALL THE FACTS.

NOW, DO YOU THINK YOU ARE IN THE GROUP THAT SAYS YOU WOULD ALWAYS BE FOR THE DEATH PENALTY OR THE SECOND GROUP THAT SAYS I CAN NEVER BE FOR THE DEATH PENALTY OR THE THIRD GROUP WHO SAYS IT WILL DEPEND ON THE FACTS? WHICH WOULD THINK YOU MIGHT BE?

A THE THIRD GROUP.

Q WHAT IS YOUR VIEW OF THE THIRD GROUP?

A THE DEATH PENALTY, YOU KNOW, I HAVE MIXED FEELINGS ABOUT IT, YOU KNOW; BUT IF IT'S DECIDED, YOU KNOW, I WOULD...

Q ARE YOU SAYING THAT IF YOU THOUGHT IT WAS THE PROPER PUNISHMENT, THAT YOU COULD IMPOSE THE DEATH PENALTY?

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A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q EQUALLY IMPORTANT, EVEN THOUGH YOU HAVE CONVICTED HIM OF MURDER, ARE YOU SAYING IF YOU THOUGHT IT WAS APPROPRIATE, YOU COULD IMPOSE A SENTENCE OF LIFE?

A YES.

Q NOW, LET ME EXPLAIN OUR PROCEDURE TO YOU. I AM NOT SUGGESTING FOR A MOMENT WHAT YOUR DECISION WOULD BE IN THE FIRST OR SECOND CASE. BUT IF NOW -- LISTEN TO ME -- IF, IF YOU AND ALL 12 JURORS TOGETHER THOUGHT THAT THE PUNISHMENT OF DEATH WAS APPROPRIATE, THE FIRST THING WE WOULD DO IS BRING THE JURY OUT AND EACH ONE OF THEM WOULD BE ASKED TO STAND. THE QUESTION WOULD BE: IS THIS YOUR VERDICT AND IS IT STILL YOUR VERDICT? COULD YOU SAY YES IF THAT WAS YOUR VERDICT?

A YES.

Q NOW, THE NEXT THING WHICH IS REQUIRED IF ALL 12 JURORS THINK THE DEATH PENALTY IS APPROPRIATE, THE NEXT THING IS A VERDICT FORM WHERE EACH JUROR HAS TO SIGN SAYING THAT IT IS A UNANIMOUS DEATH PENALTY. COULD YOU SIGN SUCH A DOCUMENT?

A YES.

THE COURT: YOU MAY EXAMINE.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. WILDER, I'M WALTER BAILEY. I WANT TO ASK YOU A FEW MORE QUESTIONS. I HOPE YOU DON'T THINK I AM PICKING AT YOU OR ANYTHING, BUT THIS IS THE LAST CHANCE WE GET TO FIND OUT THE ANSWERS TO THESE QUESTIONS BEFORE YOU POSSIBLY SIT ON THE JURY. TO BE HONEST I AM LITTLE CONFUSED ABOUT SOME OF YOUR RESPONSES TO THE JUDGE. I WANT TO TRY TO CLARIFY THAT.

LIKE THE JUDGE SAID, THERE ARE NO RIGHT OR WRONG ANSWERS. DON'T GIVE ME A ANSWER BECAUSE YOU THINK I WANT TO HEAR IT, BUT IT'S WHAT YOU REALLY THINK. YOU INITIALLY SAID YOU WERE THE SECOND TYPE JUROR, THAT IF GIVEN THAT OPTION WOULD ALWAYS VOTE FOR A LIFE SENTENCE?

A YES.

Q DO YOU STILL FEEL THAT WAY?

A NO.

Q WHAT IS IT THAT CHANGED YOU FROM THAT TO THE THIRD TYPE JUROR?

A I WAS NERVOUS AND I WAS READING IT AND I DIDN'T GET IT CORRECT.

Q LIKE I SAID, THERE IS NO CORRECT ANSWER. IT'S

HOW YOU REALLY FEEL AND WHAT YOU COULD REALLY DO. YOU UNDERSTAND THAT WE WOULDN'T BE EVEN GETTING INTO THE SECOND PHASE OF THE TRIAL UNLESS THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST PART?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q BY DEFINITION IF YOU WERE IN THE SECOND STAGE, YOU ARE DEALING WITH A CONVICTED MURDERER. YOU UNDERSTAND THAT THE JUDGE DOESN'T DECIDE WHAT THE PENALTY IS?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q THE JURY DECIDES THAT AND WHATEVER THE JURY DECIDES IS GOING TO HAPPEN. IF THE JURY VOTES AFTER HEARING ALL THOSE FACT AND CIRCUMSTANCES ON LIFE WITHOUT PAROLE, THAT IS WHAT THE JUDGE WILL ORDER AND THAT IS WHAT THE SENTENCE WILL BE AND IT WILL BE CARRIED OUT.

IF THE JURY VOTES FOR THE DEATH PENALTY, THE JUDGE WILL ORDER THE DEATH SENTENCE AND THAT PERSON IS GOING TO BE EXECUTED. MY QUESTION IS IN ALL HONESTY COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT PERSON IS ACTUALLY GOING TO BE EXECUTED BASED ON THAT VOTE?

A YES.

Q IF YOU DID THAT AND THE OTHER 11 JURORS VOTED THE SAME WAY, COULD YOU SIGN YOUR NAME ONTO A DEATH VERDICT FORM KNOWING IT WOULD RESULT IN THAT PERSON BEING EXECUTED?

A YES.

Q COULD YOU STAND UP IN OPEN COURT AND ANNOUNCE THAT AS YOUR DECISION IF IT WAS YOUR DECISION?

A YES.

Q DO YOU FEEL LIKE THAT YOU COULD HONESTLY AND FAIRLY CONSIDER BOTH OPTIONS IF YOU WERE ON A JURY IN THIS TYPE OF CASE OR WOULD YOU BE LEANING STRONG ONE WAY OR THE OTHER?

A I DON'T KNOW ANY OF THE DETAILS.

Q RIGHT.

A SO I DON'T KNOW AS YET.

Q I AM NOT ASKING YOU FOR A PREDICTION OF WHAT YOU WOULD DO HERE. I AM JUST ASKING IF YOU FEEL LIKE YOU COULD FAIRLY CONSIDER BOTH OPTIONS.

A I COULD FAIRLY CONSIDER IT.

Q THE JURY WILL BE PUT IN A MOTEL STARTING AFTER COURT THURSDAY. THEY WILL BE SPENDING THE NIGHT IN THE MOTEL FOR THREE OR FOUR DAYS UNTIL THE TRIAL IS OVER. WOULD THAT CAUSE YOU ANY DIFFICULTY, ANY HARDSHIP?

A AT THIS TIME I DON'T THINK SO.

Q IS THERE ANYTHING YOU THINK MAY HAPPEN BETWEEN NOW AND THEN THAT COULD POSSIBLY CAUSE YOU ANY PROBLEMS?

A NO, NOT AT THIS TIME.

Q AGAIN, I HATE TO KEEP BELABORING THIS. WHEN YOU TOLD THE JUDGE ON TWO OCCASIONS THAT YOU HAD MIXED FEELINGS ABOUT THE DEATH PENALTY, COULD YOU EXPLAIN TO ME WHAT YOU MEANT BY THAT.

A EXPLAIN IT TO YOU?

Q YES, MA'AM.

A THAT, YOU KNOW, I DON'T BELIEVE THAT HUMANS SHOULD DECIDE, YOU KNOW, IF SOMEBODY SHOULD DIE OR NOT. BUT I DO KNOW MOST OF THE CASE AND I DO KNOW THAT I THINK THAT THE DEFENDANT IS GUILTY. IF THAT'S WHAT OCCURS BY MOST OF THE JURORS, YOU KNOW, I THINK THAT'S WHAT SHOULD BE DONE.

Q ARE YOU SAYING THAT YOU FEEL RIGHT NOW THAT HE IS GUILTY?

A I'M A NURSE. YOU KNOW I HAVE TO BE BIASED. I MEAN, YOU KNOW, I AM JUST BIASED AS FAR AS THAT IS CONCERNED. YES, I DO FEEL HE IS GUILTY.

SOLICITOR BAILEY: BEAR WITH ME A SECOND.

(ATTORNEYS CONFER.)

SOLICITOR BAILEY: NOTHING FURTHER, YOUR HONOR, OF THIS WITNESS.

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MR. STONE: NOTHING FURTHER, YOUR HONOR.

THE COURT: SIR?

MR. STONE: NO QUESTIONS.

THE COURT: STEP TO THE JURY ROOM.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: YES, SIR.

SOLICITOR BAILEY: YOUR HONOR, I WOULD MOVE TO DISQUALIFY MRS. WILDER FOR CAUSE. I THINK SHE STRUGGLED WITH THIS THING, BUT SHE CLEARLY GAVE INCONSISTENT ANSWERS AS TO THE DEATH PENALTY QUALIFICATION. SHE ALSO SAID SHE HAS GOT A PRECONCEIVED IDEA AS TO GUILT.

MR. STONE: I AGREE.

THE COURT: ASK HER TO COME BACK. YOU LOST ANOTHER FOREMAN WITH YOUR EXAMINATION.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MADAME JUROR, WE APPRECIATE YOUR ATTENDANCE HERE TODAY. I AM IN A POSITION NOW TO EXCUSE YOU FOR THE DAY AND THE REST OF THE TRIAL. THANK YOU SO MUCH.

JUROR: THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

ANGELA TOBIN, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS

FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q THIS IS MRS. ANGELA D. TOBIN?

A YES, SIR.

Q MRS. TOBIN, YESTERDAY WHEN I INQUIRED WHO KNEW WHO, I BELIEVE YOU SAID YOU AND THE YOUNG LADY WITH THE SOLICITOR'S OFFICE WERE CLOSE FRIENDS?

A YES, SIR.

Q Y'ALL TALK EVERY DAY?

A YES, SIR.

Q HOW IS IT YOU HAPPEN TO KNOW HER?

A I WORKS DOWN IN THE BASEMENT.

Q YOU WORK IN THE BASEMENT. YOU ARE THE ONE I BELIEVE WHO COMES IN ON THE CLEANING DETAIL?

A YES, SIR.

Q AND YOU ARE NOT EMPLOYED BY ANYBODY IN THE COURTHOUSE BUT YOU KNOW HER?

A YES, SIR.

Q YOU UNDERSTAND THAT THE SOLICITOR'S OFFICE IS PROSECUTING THIS CASE?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q WOULD THE FACT THAT YOU ARE GOOD FRIENDS WITH SOMEONE ON THE TEAM OVER THERE, WOULD THAT INFLUENCE

YOU?

A NO, SIR.

Q PARDON ME?

A NO, SIR.

Q CAN YOU PUT YOUR FRIENDSHIP ASIDE? I AM SURE SHE IS A DELIGHTFUL PERSON.

A YES, SIR.

Q BUT CAN YOU PUT THAT ASIDE AND BASE YOUR VERDICT ON THE LAW AND EVIDENCE IN THIS CASE?

A YES, SIR.

Q LET ME ASK YOU THIS. SEVERAL JURORS INDICATED THEY KNEW SOMETHING ABOUT THIS CASE. DID YOU KNOW ANYTHING ABOUT IT?

A NO, SIR.

Q HAVE YOU EVER SAW IT ON T.V.? YOU NEVER SAW ANYTHING?

A (WITNESS SHAKES HEAD.) (INDICATING NEGATIVE RESPONSE.)

Q YOU EVER READ ANYTHING IN THE PAPER?

A I DON'T READ THE PAPER.

Q IT'S ALL RIGHT THAT YOU DID, YOU UNDERSTAND?

A I DON'T READ THE PAPER.

Q WHY?

A I JUST DON'T.

Q YOU DON'T WATCH T.V.?

A NOT TOO MUCH OF THE NEWS NEITHER.
Q YOU WORK AROUND THIS COURTHOUSE?
A I DON'T REALLY TALK WITH PEOPLE AROUND THE COURTHOUSE.
Q YOU DON'T. HOW ABOUT YOUR FRIEND, HAVE YOU TALKED TO HER?
A I DIDN'T DISCUSS WHAT IS GOING ON WITH HER.
Q LET ME ASK YOU THIS. DID YOU READ THE LETTER ABOUT THE THREE TYPES OF JURORS?
A YES, SIR.
Q DO YOU UNDERSTAND THE THREE TYPES?
A YES, SIR.
Q WHICH TYPE WOULD YOU BE?
A PUNISH WITH LIFE IN JAIL.
Q LET ME TALK ABOUT THIS WITH YOU. THERE ARE THREE TYPES. IF WE GET TO THAT PHASE, THE ONLY QUESTION WOULD BE THE PUNISHMENT. IS IT LIFE IMPRISONMENT OR DEATH BY ELECTROCUTION OR LETHAL INJECTION. JURORS FALL INTO THREE GROUPS. LET ME TALK WITH YOU ABOUT THOSE GROUPS.
A YES, SIR.
Q THERE IS A GROUP WHO SAY ONCE WE FIND AN INDIVIDUAL GUILTY OF MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY. THEN THERE IS A GROUP WHO SAY EVEN THOUGH WE FIND HIM GUILTY OF MURDER, I CAN NEVER PUT

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SOMEONE TO DEATH.

THEN THERE IS THIRD GROUP WHO SAY WE FOUND HIM GUILTY OF MURDER. I WILL LISTEN TO THE FACTS. DEPENDING ON WHAT I BELIEVE, I CAN BE FOR THE DEATH PENALTY OR I CAN BE FOR LIFE IMPRISONMENT. THE FIRST GROUP SAYS I WILL ALWAYS BE FOR THE DEATH PENALTY, THE SECOND GROUP SAYS I WILL NEVER BE FOR THE DEATH PENALTY, THE THIRD GROUP SAYS IT WILL DEPENDS ON THE FACTS. WHICH WOULD YOU BE ONE, TWO OR THREE?

A TWO.

Q TWO. WHAT IS YOUR VIEW OF TWO, PLEASE?

A I COULDN'T TAKE NO ONE LIFE, SIR.

Q YOU UNDERSTAND THERE ARE NO RIGHT OR WRONG ANSWERS. YOU ARE ENTITLED TO YOUR OPINION. IT'S JUST AS GOOD AS ANYBODY ELSE'S.

A YES, SIR.

THE COURT: SOLICITOR, DO YOU CARE TO EXAMINE?

SOLICITOR BAILEY: NO, SIR.

THE COURT: YES, SIR.

MR. STONE: NO, SIR.

THE COURT: HAVE HER STEP OUT.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: NOT QUALIFIED.

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MR. STONE: YES, SIR.

THE COURT: BRING HER BACK PLEASE.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: WE ARE IN POSITION TO EXCUSE YOU AND THANK YOU FOR YOUR ATTENDANCE. YOU WILL NOT HAVE TO RETURN.

JUROR: THANK YOU, SIR.

(THE JUROR LEAVES THE COURTROOM.)

(THE JUROR ENTERS THE COURTROOM.)

COLE HAYWOOD, (BLACK MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q THIS IS COLE HAYWOOD?

A RIGHT.

Q MR. HAYWOOD, LET ME ASK YOU A FEW QUESTIONS IF I MAY. WOULD YOU HAVE HEARD OR READ ANYTHING ABOUT THE CASE WE ARE GETTING READY TO TRY? SOME JURORS INDICATED YESTERDAY THAT THEY MAY HAVE.

A I READ SOMETHING RIGHT AFTER IT FIRST HAPPENED.

Q SIR?

A I READ SOMETHING ABOUT IT WHEN IT FIRST HAPPENED.

Q SINCE THEN HAVE YOU DISCUSSED IT WITH ANYBODY?

A NO, SIR.

Q LET ME ASK YOU THIS. IF YOU WERE SELECTED AS A JUROR, WE WANT TO MAKE SURE THAT WHATEVER YOUR VERDICT IS, EITHER NOT GUILTY OR GUILTY, WOULD BE BASED ON THE EVIDENCE IN THIS COURTROOM AND NOT WHAT YOU HEARD OR READ IN THE PAPER. CAN YOU AGREE THAT YOUR DECISION WOULD BE BASED ON THAT?

A YES, SIR.

Q YOU CAN SET ASIDE WHAT YOU MAY HAVE READ OR HEARD IN THE NEWSPAPER?

A YES, SIR.

Q I THINK YOU CAN, TOO. DID YOU READ THE TYPE OF JURORS WHEN CONFRONTED WITH THE PUNISHMENT IN A CASE LIKE THIS?

A YES, SIR.

Q YOU UNDERSTAND THAT THERE ARE THREE GROUPS?

A YES, SIR.

Q THE FIRST PART OF THIS TRIAL WOULD BE THE GUILT OR INNOCENCE. IF HE IS FOUND NOT GUILTY, WE STOP THERE. IF HE IS FOUND GUILTY OF MURDER, IT WOULD BE THEN AND ONLY THEN THAT YOU WOULD CONSIDER THE POSSIBLE PUNISHMENT. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q THERE IS A GROUP THAT SAYS I WILL ALWAYS BE FOR THE DEATH PENALTY. THERE IS A SECOND GROUP WHO SAY I CAN NEVER BE FOR THE DEATH PENALTY. THERE IS A THIRD

GROUP WHO SAY I WILL LISTEN TO ALL THE FACTS. WE HAVE CONVICTED HIM OF MURDER. I WILL LISTEN TO ALL THE FACTS AND THEN I AM GOING TO DECIDE THE PROPER PUNISHMENT.

THAT JUROR SAYS I CAN IMPOSE A SENTENCE OF LIFE. THAT JUROR SAYS EQUALLY IMPORTANT IF I THINK IT APPROPRIATE, I CAN GIVE THE DEATH PENALTY. WOULD YOU BE THE FIRST, SECOND OR THIRD?

A I THINK I WOULD BE THE THIRD.

Q THE THIRD. THANK YOU SO MUCH.

THE COURT: SOLICITOR.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MR. HAYWOOD, I'M WALTER BAILEY. I WANT TO ASK YOU A COUPLE OF OTHER QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE ASKED YOU. IS THE DEATH PENALTY SOMETHING YOU HAVE THOUGHT ABOUT BEFORE TODAY AND YESTERDAY WHEN YOU FOUND OUT THAT YOU MIGHT BE ON THE JURY?

A I NEVER GAVE IT ANY CONSIDERATION.

THE COURT: I WILL ASK YOU TO PLEASE TALK IN THE MICROPHONE. WE ARE HAVING SOME DIFFICULTY.

Q I JUST WANT TO MAKE SURE YOU UNDERSTAND THE PROCESS HERE. THE JUDGE WENT THROUGH IT A LITTLE BIT WITH YOU. WE WOULD NOT GET TO THE PENALTY PHASE

UNLESS THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST PART OF THE TRIAL.

SO ANY TIME THAT YOU GET A DEATH PENALTY CASE AND WE ARE IN THE PENALTY PHASE, OF COURSE, THAT MEANS THAT YOU ARE DEALING WITH A CONVICTED MURDERER. IN SOUTH CAROLINA THE JUDGE DOESN'T DECIDE WHAT THE PENALTY IS. THE JURY MAKES THAT DECISION.

WHATEVER THE JURY SAYS, THE JUDGE WILL ORDER IT AND IT WILL HAPPEN. IN OTHER WORDS, IF THE JURY HEARS ALL THE FACTS AND CIRCUMSTANCES AND DECIDES UPON A LIFE SENTENCE, THE JUDGE WOULD SENTENCE THAT PERSON TO LIFE WITHOUT PAROLE AND HE WOULD SERVE THAT SENTENCE.

IF THE JURY DECIDES THE DEATH PENALTY, THAT'S WHAT THE JUDGE WOULD ORDER AND THAT PERSON WOULD BE EXECUTED. I AM NOT GOING TO ASK YOU OR NOBODY WILL ASK YOU TO TELL US WHAT YOU WOULD DO IN THE CASE BECAUSE YOU HAVEN'T HEARD THE FACTS.

MY QUESTION IS IF THE FACTS ARE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE WOULD ACTUALLY BE CARRIED OUT BASED ON THAT VOTE?

A IF THE FACTS AND EVIDENCE, A POSSIBILITY.

Q I'M SORRY?

A A POSSIBILITY. I CAN'T SAY. I HAVEN'T HEARD

THE FACTS. I CAN'T SAY WHAT YOU JUST SAID.

Q MY QUESTION IS -- AND I AM NOT ASKING YOU TO TELL ME WHAT YOU WOULD DO. I AM JUST ASKING IF THE FACTS WERE BAD ENOUGH, COULD YOU DO IT?

A IF THE FACTS ARE BAD ENOUGH.

Q IF THE OTHER 11 JURORS FELT THE SAME WAY YOU DID, THAT THESE FACTS ARE BAD ENOUGH FOR THE DEATH PENALTY AND ALL 12 VOTED FOR THE DEATH PENALTY, COULD YOU SIGN YOUR NAME TO A PIECE OF PAPER, A DEATH VERDICT FORM, THAT WOULD RESULT IN THAT PERSON BEING EXECUTED?

A WOULD I HAVE TO DO THAT IF I WAS ELECTED OR NOT? BEING A JUROR, THE JURY WILL FIND HIM GUILTY OR NOT GUILTY. AND THEN ANOTHER JURY WOULD BE WHERE THE SENTENCE WOULD BE?

Q WELL, THE SAME JURY.

A THE SAME JURY?

Q THE SAME JURY. FIRST OF ALL, THE JURY LISTENS TO THE EVIDENCE IN WHAT IS CALLED THE GUILT PHASE. THEY DECIDE WHETHER OR NOT THE STATE PROVES THAT PERSON GUILTY BEYOND A REASONABLE DOUBT.

A OH, OKAY.

Q AND LIKE THE JUDGE SAID IF THEY FIND HIM NOT GUILTY, THAT IS THE END OF IT; BUT IF THEY FIND HIM GUILTY, THEN WE GO INTO WHAT IS CALLED THE PENALTY

PHASE. THAT SAME JURY DECIDES WHAT THE PUNISHMENT IS.

A OKAY.

Q SO WE ARE NOT TALKING ABOUT TWO DIFFERENT JURIES.

A I GOT YOU.

Q IT'S THE SAME JURY ON TWO DIFFERENT DAYS.

A ALL RIGHT.

Q JUST TO KIND OF BACK UP AGAIN, IF YOU ARE ON A JURY IN THE SECOND PART OF THE TRIAL, ASSUMING THE PERSON IS FOUND GUILTY OF MURDER IN THE FIRST PART, IF THE CASE IS BAD ENOUGH, YOU SAID YOU COULD VOTE FOR THE DEATH PENALTY; IS THAT RIGHT?

A YES, I COULD.

Q AND THE NEXT QUESTION WAS WHETHER OR NOT IF THE OTHER 11 JURORS FELT THE SAME WAY YOU DID, THAT THE CASE WAS BAD ENOUGH FOR THE DEATH PENALTY, COULD YOU SIGN YOUR NAME TO A PIECE OF PAPER, TO A DEATH VERDICT FORM, KNOWING THAT WOULD RESULT IN THAT PERSON BEING EXECUTED AT SOME POINT?

A I GUESS I COULD.

Q I NEED TO ASK YOU A LITTLE BIT MORE ABOUT THAT BECAUSE WHEN YOU SAID YOU GUESS YOU COULD, WE ARE ASSUMING THAT YOU VOTED FOR THE DEATH PENALTY. IS THERE ANYTHING ABOUT THE ACT OF SIGNING THAT PAPER

AFTER THE VOTE THAT WOULD CAUSE YOU NOT BE ABLE TO DO IT?

A REALLY IT'S KIND OF HARD FOR ME TO SAY.

THE COURT: I DON'T THINK HE UNDERSTANDS. LET ME EXPLAIN IT TO HIM IN SUCH A WAY.

SOLICITOR BAILEY: YES, SIR.

VOIR DIRE EXAMINATION

BY THE COURT:

Q FIRST, NOBODY IS ASKING YOU WHAT YOUR VERDICT WOULD BE. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q YOU HAVEN'T HEARD THE FACTS. I HAVEN'T HEARD THE FACTS. BUT ASSUMING NOW THAT IN THE FIRST PHASE ALL 12 JURORS FOUND HIM GUILTY, WE WOULD THEN GO TO THE SENTENCING PHASE. YOU UNDERSTAND THAT?

A I UNDERSTAND THAT.

Q ALL RIGHT. NOW, UNDER OUR PROCEDURE IF -- AND IT'S ONLY IF -- IF ALL 12 JURORS IN THAT JURY ROOM DECIDE THAT HE IS GUILTY, YOU UNDERSTAND?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q EACH JUROR MUST COME OUT IN OPEN COURT AND SAY SO. DO YOU UNDERSTAND THAT?

A YES.

Q IF YOU AND 11 OTHERS AGREE, COULD YOU SAY SO IN

OPEN COURT?

A YEAH, I COULD SAY SO.

Q NOW, ONE OTHER THING IS REQUIRED. IF ALL 12 JURORS SAY THE PUNISHMENT IS DEATH AND AFTER THEY SAY SO IN OPEN COURT, THE LAW REQUIRES THAT ALL 12 JURORS SIGN A PAPER THAT SAYS THEIR PUNISHMENT IS THAT OF DEATH. DO YOU UNDERSTAND THAT?

A YES.

Q HE IS ASKING YOU IF YOU SAID IT WAS THE PENALTY OF DEATH BACK THERE AND IF YOU SAID IT IN OPEN COURT, COULD YOU SIGN THIS PAPER?

A YES.

Q SIR?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

SOLICITOR BAILEY: THANK YOU, JUDGE.

THE COURT: YOU MAY PROCEED.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MR. HAYWOOD, JUST A COUPLE MORE THINGS THAT I MEANT TO ASK YOU HERE. THE JURY IS GOING TO BE PUT IN A MOTEL STARTING THURSDAY EVENING FOR FOUR OR FIVE DAYS UNTIL THIS CASE IS OVER. THAT IS AN INCONVENIENCE FOR EVERYBODY. WOULD IT BE ANY KIND OF REAL SERIOUS PROBLEM WITH YOU TO BE IN A MOTEL?

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A NO, IT WON'T.
Q THE OTHER THING IS I NOTICE THAT YOUR WIFE IS A MINISTER?
A THAT'S RIGHT.
Q DO YOU HAVE ANY RELIGIOUS BELIEFS ABOUT THE DEATH PENALTY THAT MIGHT AFFECT YOUR ABILITY TO MAKE THAT DECISION ONE WAY OR THE OTHER?
A I HAVE NEVER GIVEN IT A THOUGHT.
Q AS YOU SIT HERE NOW, DO YOU HAVE ANY RELIGIOUS OR PERSONAL BELIEFS THAT YOU THINK MIGHT INTERFERE WITH YOUR ABILITY TO FAIRLY CONSIDER LIFE WITHOUT PAROLE AND THE DEATH PENALTY?
A NO, I DON'T.
THE COURT: MR. JUROR, I WILL ASK THAT YOU SPEAK IN THE MICROPHONE, PLEASE. WE CAN'T HEAR YOU. WHAT WAS YOUR RESPONSE?
A NO, I DON'T.
Q SIR, I BELIEVE THAT'S ALL I HAVE GOT RIGHT NOW. THANK YOU VERY MUCH.
THE COURT: YOU MAY EXAMINE.
MR. STONE: YES, SIR, I APPRECIATE IT.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q MR. HAYWOOD, I'M DUFFIE STONE. I REPRESENT MR. ALEKSEY OVER HERE. I ALONG WITH MR. SIMS WILL BE

TRYING THIS CASE. YOUR WIFE IS A METHODIST MINISTER?
A THAT'S RIGHT.
Q WHERE DOES SHE PREACH?
A ORANGEBURG CIRCUIT. THAT'S IN THE ORANGEBURG DISTRICT.
Q IT'S IN THE ORANGEBURG DISTRICT?
A YES, SIR.
Q DO YOU BELIEVE THAT WOMEN AND MEN ARE EQUAL?
A EQUAL?
Q YES.
A YES.
Q DO YOU HOLD WOMEN TO THE SAME STANDARD YOU HOLD MEN?
A WE ARE ALL CREATED EQUAL SO, YES.
Q ALL RIGHT, SIR. I DON'T HAVE ANY QUESTIONS. THANK YOU, MR. HAYWOOD. I APPRECIATE IT.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: YOUR HONOR, I WOULD SAY HE IS QUALIFIED BASED ON HIS ANSWERS.

MR. SIMS: YES, SIR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. JUROR, WE ARE QUALIFYING 35 JURORS. WE HAVE NOW QUALIFIED I THINK 25. YOU ARE ONE OF THE 35 QUALIFIED JURORS. YOU MAY OR MAY NOT

BE SELECTED AS ONE OF THE 14.

I RESPECTFULLY REQUEST THAT YOU REPORT BACK HERE PROMPTLY AT 9:30 THURSDAY MORNING. PLEASE BRING WITH YOU SUCH CLOTHING AND PERSONAL EFFECTS THAT YOU WOULD REQUIRE IN THE EVENT THAT YOU ARE SELECTED TO STAY IN THE MOTEL. DO YOU HAVE ANY QUESTIONS?

JUROR: (SHAKES HEAD.) (INDICATING NEGATIVE RESPONSE.)

THE COURT: I WILL SEE YOU THURSDAY MORNING AT 9:30. BRING YOUR BAGS WITH YOU. THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: LET'S TAKE A SHORT BREAK BEFORE WE BEGIN AGAIN.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: BRING THE JUROR IN, PLEASE.

(THE JUROR ENTERS THE COURTROOM.)

LAWRENCE LIVINGSTON, (WHITE MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD AFTERNOON, MR. LIVINGSTON.

A GOOD AFTERNOON.

Q I APPRECIATE YOUR PATIENCE. WE APOLOGIZE FOR KEEPING YOU WAITING. I NOTE THAT YOU FINISHED HIGH SCHOOL AT CLARENDON HALL ACADEMY?

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A YES, SIR.
Q WHERE IS THAT, PLEASE?
A SUMMERTON, SOUTH CAROLINA.
Q THEN YOU ATTENDED THE UNIVERSITY OF NORTH CAROLINA?
A AT WILMINGTON.
Q DID YOU GRADUATE THERE?
A NO, SIR, THREE YEARS.
Q YOU ARE A DOCK RECEIVER WORKING FOR FOOD LION, BEEN EMPLOYED THERE 15 YEARS?
A YES, SIR.
Q SO YOU ARE CAREER WITH FOOD LION?
A YES.
Q YOU ARE MARRIED AND YOU HAVE ONE DAUGHTER AGE 15 AND ONE BOY AGE THREE AND ONE AGE 11; IS THAT CORRECT?
A YES, SIR.
Q SEVERAL OF THE JURORS YESTERDAY INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE. WERE YOU ONE OF THOSE WHO STOOD UP?
A YES, SIR, I READ A GOOD BIT ABOUT IT IN THE PAPER.
Q CAN YOU TELL ME WHAT YOU MAY HAVE READ OR HEARD?
A I JUST READ WHAT WAS IN THE PAPER ABOUT IT.
Q I NEED TO KNOW THIS. IF YOU WERE SELECTED ON

THE JURY, CAN YOU TELL ME THAT YOU WILL BASE YOUR VERDICT, WHATEVER IT IS, ON THE LAW AND THE EVIDENCE IN THIS COURTROOM AND NOT BASED ON WHAT YOU HEARD?

A I CAN'T SAY THAT FOR SURE, NO, SIR.

Q WHY CAN'T YOU?

A I DON'T THINK I COULD GIVE A FAIR ACCOUNT OF IT FROM ALL I HEARD.

Q YOU THINK THAT YOU HAVE ALREADY MADE UP YOUR MIND?

A I'M NOT SAYING THAT BUT I DON'T THINK I COULD BE FAIR.

Q FAIR TO THE STATE OR FAIR TO THE DEFENDANT?

A FAIR TO THE DEFENDANT.

Q YOU DON'T THINK YOU CAN BE FAIR BECAUSE YOU -- I AM NOT FUSSING AT YOU. I JUST WANT TO KNOW.

A WELL, I HAVE HEARD A LOT BECAUSE I KNOW A BOY THAT DATES A GIRL THAT'S A HIGHWAY PATROLMAN. SHE IS HIS SECRETARY, THE CAPTAIN, AND I HEARD A LOT THROUGH HIM FROM HER.

Q I SEE. LET ME LET YOU GO TO THE JURY ROOM JUST A MOMENT.

(THE JUROR LEAVES THE COURTROOM.)

MR. STONE: WE DON'T THINK HE IS QUALIFIED, YOUR HONOR.

THE COURT: THAT'S TOO CLOSE A CONNECTION,

SOLICITOR. I WILL EXCUSE HIM.

MR. STONE: AND LIKE THE OTHER JURORS IF HE HAS SHARED ANY OF THAT INFORMATION WITH ANYBODY BACK THERE.

THE COURT: OKAY.

MR. STONE: THANK YOU.

THE COURT: YES, SIR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. JUROR, WE ALL EXTEND TO YOU OUR APPRECIATION FOR YOUR CANDID ANSWERS. I WANT TO MAKE SURE NOW. DID YOU SHARE ANY OF THIS INFORMATION WITH ANYBODY ON THAT JURY?

JUROR: NO, SIR.

THE COURT: YOU HAVE NEVER DISCUSSED IT WITH ANYBODY?

JUROR: NO, SIR.

THE COURT: BASED ON YOUR PRETTY MUCH EXHAUSTED KNOWLEDGE OF THIS MATTER AND YOUR RESPONSE, IN FAIRNESS TO YOU, WE HAVE AGREED TO EXCUSE YOU FROM PARTICIPATION. THANK YOU SO MUCH.

JUROR: THANK YOU, SIR.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

HAROLD HAILEY, (BLACK MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD AFTERNOON. THIS IS MR. HAROLD HAILEY?

A YES, SIR.

Q MR. HAILEY, WE APPRECIATE YOUR PATIENCE HERE. I NOTE FROM YOUR RESPONSE THAT YOU FINISHED HIGH SCHOOL AND THEN YOU ATTENDED OR GRADUATED FROM SOUTH CAROLINA STATE UNIVERSITY; IS THAT CORRECT?

A THAT'S CORRECT.

Q YOU ARE CURRENTLY EMPLOYED WHERE, PLEASE?

A SOUTH CAROLINA STATE UNIVERSITY.

Q IN WHAT CAPACITY ARE YOU THERE?

A I'M AN ACCOUNTANT AND PHYSICAL TECHNICIAN.

Q AND YOU HAVE BEEN SO EMPLOYED THERE FOR SOME 26 YEARS; IS THAT CORRECT?

A THAT'S CORRECT.

Q SEVERAL OF THE JURORS YESTERDAY INDICATED TO ME BY STANDING THAT THEY MAY HAVE READ OR HEARD OR DISCUSSED SOMETHING ABOUT THIS CASE. WERE YOU ONE OF THOSE WHO HAPPENED TO STAND UP?

A I STOOD UP WHEN YOU ASKED DID WE READ OR HEAR ABOUT IT.

Q YOU HAVE READ OR HEARD SOMETHING ABOUT IT?

A YES, I HAVE.

Q LET ME ASK YOU THIS. IF YOU WERE SELECTED AS A

JUROR, COULD YOU PUT ASIDE WHAT YOU MAY HAVE READ OR HEARD AND BASE YOUR VERDICT, WHATEVER IT IS, ON THE LAW AND EVIDENCE HEARD IN THIS COURTROOM OR DO YOU THINK YOU HAVE ALREADY MADE UP YOUR MIND ABOUT WHAT THE VERDICT OUGHT TO BE?

A I THINK I POSSIBLY COULD PUT IT ASIDE.

Q SIR?

A I POSSIBLY COULD PUT IT ASIDE.

Q YOU PROBABLY COULD. WELL, LET'S TALK ABOUT IT NOW. EVERY DEFENDANT AND THIS DEFENDANT IS PRESUMED INNOCENT. THAT PRESUMPTION OF INNOCENCE REMAINS WITH HIM AND ALL DEFENDANTS UNTIL THE STATE HAS PROVED HIS GUILT BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

A I UNDERSTAND.

Q IF YOU ARE A JUROR, YOU MUST BASE YOUR VERDICT, WHATEVER IT IS, ON THE LAW AND THE EVIDENCE HEARD IN THIS COURTROOM, NOT WHAT YOU MAY HAVE HEARD BY GOSSIP OR CONVERSATION OR WHAT YOU MAY HAVE READ BECAUSE IT MAY BE WRONG. IT'S NOT UNDER OATH AND IT'S HEARSAY.

I JUST HAVE TO BE SATISFIED IN MY MIND THAT IF YOU ARE A JUROR, YOU CAN PROMISE ME THAT YOU WILL BASE YOUR VERDICT, WHATEVER IT IS, BASED ON THE LAW AND THE EVIDENCE IN THIS COURTROOM AND NOT WHAT YOU MAY HAVE READ OR HEARD. I UNDERSTAND IT'S A

DIFFICULT QUESTION.
A IT IS.
Q I WANT YOUR HONEST ANSWER. IF YOU FEEL YOU CAN'T DO THAT, SAY SO.
A IT MAY BE DIFFICULT.
Q IT MAY BE DIFFICULT.
THE COURT: DO YOU WANT TO EXAMINE?
SOLICITOR BAILEY: YES, SIR.
VOIR DIRE EXAMINATION
BY SOLICITOR BAILEY:
Q MR. HAILEY, WHAT PAPER DO YOU READ WHERE YOU ARE GETTING THIS INFORMATION FROM?
A TIMES AND DEMOCRAT AND THE STATE PAPER.
Q HAVE YOU EVER READ ANYTHING IN EITHER ONE OF THOSE PAPERS THAT YOU HAD SOME PERSONAL KNOWLEDGE OF AND IT OCCURRED TO YOU, YOU KNOW, THAT THE TRUE FACTS MIGHT HAVE BEEN DIFFERENT THAN WHAT WAS IN THE PAPER?
A TRUE.
Q SO YOU DON'T NECESSARILY BELIEVE EVERYTHING YOU READ IN THE NEWSPAPER?
A NOT EVERYTHING.
Q LIKE THE JUDGE SAID, A JUROR IN THIS CASE OR ANY OTHER CRIMINAL CASE WOULD NEED TO BE ABLE TO MAKE A DECISION BASED SOLELY ON THE SWORN TESTIMONY FROM THAT WITNESS STAND AND NOT NECESSARILY FORGET ABOUT

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WHAT THEY HAVE READ OR SEEN OUTSIDE THE COURTROOM BUT TO KIND OF PUT THAT ASIDE. DO YOU THINK YOU WOULD BE ABLE TO DO THAT AND MAKE A DECISION BASED ON THE SWORN TESTIMONY AND NOT WHAT YOU HAVE READ?

A IT WOULD BE DIFFICULT. I UNDERSTAND WHAT YOU ARE SAYING THAT YOU SHOULD DO THAT; BUT, YOU KNOW, ONCE SOMETHING IS IN YOUR MIND, IT'S KIND OF HARD TO PUT IT ASIDE. FOR ME IT IS.

Q ALL RIGHT.

THE COURT: I AM GOING TO EXCUSE THIS JUROR SO THAT WE CAN DISCUSS THIS ISSUE A LITTLE BIT. PLEASE GO OUT INTO THE ROOM.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE DEFENSE?

MR. STONE: WE ASK THAT HE BE EXCUSED, YOUR HONOR.

THE COURT: MR. SOLICITOR, WITHOUT EQUIVOCATION HE HAS MADE UP HIS MIND.

SOLICITOR BAILEY: YES, SIR.

MR. STONE: THANK YOU.

THE COURT: EXCUSED PURSUANT TO REQUEST OF THE DEFENSE. BRING HIM OUT.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. HAILEY, I WANT TO THANK YOU FOR YOUR PARTICIPATION AND APPRECIATE THE CANDOR OF

YOUR REMARKS, BUT OBVIOUSLY THE DEFENDANT IS ENTITLED TO A JUROR WHO IS NOT PREDISPOSED IN ANY WAY.

I CAN UNDERSTAND IN THIS COUNTY A LOT OF PEOPLE HAVE READ OR HEARD SOMETHING ABOUT THE CASE. PLEASE DON'T DISCUSS THE QUESTIONS AND ANSWERS WITH ANYBODY THAT WERE MADE TO YOU TODAY. WOULD YOU DO THAT FOR ME?

JUROR: YES, SIR, I WILL.

THE COURT: I WILL EXCUSE YOU.

JUROR: THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

JOANNE GLOVER, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD AFTERNOON, MRS. GLOVER.

A GOOD AFTERNOON.

Q MRS. GLOVER, YOUR REPORT INDICATES THAT YOU WENT THROUGH THE ELEVENTH GRADE AT BOWMAN HIGH SCHOOL; IS THAT CORRECT?

A YES.

Q YOU ARE CURRENTLY EMPLOYED WITH AMERICAN YARD PRODUCTS AND ASSEMBLE LAWN MOWERS THERE?

A YES, SIR.

Q THAT IS WHAT I UNDERSTAND. YOU HAVE BEEN MARRIED AND YOU HAVE ONE DAUGHTER 16 AND YOU HAVE BOYS 17, 26 AND 31?

A YES, SIR.

Q IS THAT CORRECT?

A YES, SIR.

Q I THINK YESTERDAY IN TALKING TO ALL THE JURORS, YOU INDICATED THAT YOU MAY HAVE KNOWN SOMEBODY, A WITNESS OR SOMETHING. CAN YOU TELL ME ABOUT THAT?

A THE ONE WITNESS THAT I WANTED TO KNOW WAS PATSY RHETT.

THE COURT: IS THAT A WITNESS FOR SOMEBODY?

SOLICITOR BAILEY: SHE WORKS FOR ME, YOUR HONOR. SHE IS THE P.T.I. DIRECTOR AT THE SOLICITOR'S OFFICE.

Q YOU JUST KNOW HER?

A YES, SIR.

Q LET ME ASK YOU THIS. HAVE YOU EVER READ OR HEARD ANYTHING ABOUT THIS CASE?

A YES, SIR.

Q YOU READ SOMETHING IN THE PAPER ABOUT IT?

A YES, SIR.

Q WHEN WAS THAT, PLEASE?

A OH, WHEN THE INCIDENT FIRST HAPPENED.

Q WHEN IT FIRST HAPPENED?
A YES, SIR.
Q LET ME ASK YOU THIS. IF YOU WERE SELECTED AS A JUROR, COULD YOU PUT THAT ASIDE AND BASE YOUR VERDICT ON WHAT YOU HEAR IN THIS COURTROOM UNDER OATH?
A YES, I COULD PUT THAT ASIDE AND WHATEVER I HEAR IN THE COURTROOM WOULD BE A DIFFERENT SIDE OF THE STORY FROM WHAT I READ IN THE PAPER.
Q THAT'S ALL I WANT. WE CAN HEAR ANYTHING ON THE STREET. IT MAY OR MAY NOT BE THE TRUTH BUT UNDER OUR SYSTEM WE ASK JURORS ONLY TO CONSIDER THE TESTIMONY UNDER OATH HEARD IN THE COURTROOM.
A RIGHT.
Q LET ME ASK YOU THIS. YOU UNDERSTAND THAT THERE COULD BE TWO PARTS TO THIS TRIAL?
A RIGHT.
Q THE FIRST PART IS THE INNOCENCE OR GUILT. IF HE IS FOUND INNOCENT OR THE STATE HASN'T PROVEN HIM GUILTY, WE STOP THERE. IF THE STATE FINDS HIM GUILTY BEYOND A REASONABLE DOUBT OF MURDER, THEN THE JURY WILL BE CONFRONTED WITH THE ISSUE OF THE PROPER PUNISHMENT. DO YOU UNDERSTAND THAT?
A YES, SIR.
Q THERE'S TWO PUNISHMENTS AND IT'S FOR THE JURY TO DECIDE. WHATEVER THEY DECIDE WILL BE THE PUNISHMENT

I WILL IMPOSE. ONE POSSIBLE PUNISHMENT FOR MURDER IS LIFE IMPRISONMENT. THE OTHER POSSIBLE PUNISHMENT IS DEATH BY ELECTROCUTION OR LETHAL INJECTION. THAT'S FOR THE JURY TO DECIDE. DID YOU UNDERSTAND THE THREE TYPES OF JURORS?

A YES, SIR.

Q CAN YOU TELL ME WHICH GROUP YOU MIGHT FALL IN, ONE, TWO OR THREE?

A MOST LIKELY I WOULD FALL IN NUMBER THREE CATEGORY.

Q NUMBER THREE. CAN YOU TELL ME WHAT YOUR VIEW OF THE NUMBER THREE CATEGORY IS, PLEASE?

A MY VIEW OF NUMBER THREE CATEGORY WAS LISTEN TO EACH SIDE OF THE STORY, WHAT I HEARD IN THE COURTROOM, WHATEVER, TO TRY TO FIGURE OUT WHETHER HE IS GUILTY OR NOT GUILTY.

Q WELL, THAT WOULD BE THE FIRST PHASE.

A THAT'S FOR THE FIRST PHASE.

Q ONCE YOU HAVE FOUND HIM GUILTY, DO YOU UNDERSTAND THAT THE THIRD GROUP SAYS I CAN DO EITHER ONE --

A RIGHT.

Q -- DEPENDING ON HOW I FEEL?

A YES.

Q DO YOU UNDERSTAND THAT?

A YES, SIR.
Q YOU ARE SAYING TO ME UNDER YOUR OATH THAT EVEN THOUGH HE IS GUILTY OF MURDER, IF YOU THOUGHT THE APPROPRIATE PUNISHMENT WAS LIFE IMPRISONMENT, YOU COULD DO THAT?
A YES, SIR.
Q YOU ARE ALSO SAYING THAT IF YOU THOUGHT THE DEATH PENALTY WAS APPROPRIATE, YOU COULD IMPOSE THAT?
A YES, SIR.
Q LET ME TELL YOU WHAT OUR PROCEDURE IS AND THIS IS JUST IT. IF 12 JURORS DETERMINE THAT THE PENALTY OF DEATH WAS APPROPRIATE, THE JURORS ARE BROUGHT OUT IN OPEN COURT AND EACH ONE OF THEM MUST STAND AND SAY, "THAT IS MY VERDICT." DO YOU UNDERSTAND THAT?
A YES, SIR.
Q COULD YOU DO THAT IF THAT WAS YOUR VERDICT?
A YES, SIR.
Q IN ADDITION TO THAT, IF IT'S YOUR VERDICT, OUR RULES REQUIRE THAT YOU SIGN A PAPER SAYING SO. COULD YOU DO THAT?
A YES, SIR.
Q THANK YOU.
VOIR DIRE EXAMINATION
BY SOLICITOR BAILEY:
Q MRS. GLOVER, I'M WALTER BAILEY. I WANT TO ASK

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JOANNE GLOVER -VOIR DIRE- BY SOL. BAILEY

JUST A COUPLE MORE QUESTIONS. BEFORE YESTERDAY WHEN YOU FOUND OUT THE KIND OF CASE THIS WAS AND THAT YOU MIGHT BE ON THIS JURY, HAD YOU EVER GIVEN ANY THOUGHT TO THE DEATH PENALTY?

A WELL, I THOUGHT OF IT AT FIRST, YES.

Q CAN YOU TELL US WHAT YOUR THOUGHTS WERE ON IT BEFORE MONDAY, BEFORE YOU FOUND OUT WHAT KIND OF CASE THIS WAS?

A WELL, BEFORE I FOUND OUT, WELL I DIDN'T WANT TO JUMP TO CONCLUSION. I DON'T WANT TO JUMP TO CONCLUSION UNTIL I HEAR THE WHOLE SIDE OF THE STORY BEFORE I JUMP TO ANY CONCLUSION ABOUT THIS CASE.

Q I MIGHT HAVE ASKED THAT QUESTION WRONG. LET ME TRY IT AGAIN. I'M TALKING JUST IN GENERAL TERMS, NOT THIS CASE.

A OKAY.

Q WHAT YOUR THOUGHTS WERE ABOUT THE DEATH PENALTY.

A WELL, AT FIRST I REALLY THOUGHT IT SHOULD BE THE DEATH PENALTY.

Q NOT THIS CASE NOW. I AM JUST TALKING IN GENERAL.

A YES.

Q YOU SAID YOU ARE MOST LIKELY THE NUMBER THREE TYPE JUROR THAT WOULD WANT TO LISTEN TO ALL THE FACTS?

A RIGHT.
Q BEFORE YOU MADE UP YOUR MIND?
A RIGHT.
Q IF THOSE FACTS WERE BAD ENOUGH, YOU COULD VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE WOULD BE CARRIED OUT?
A YES.
Q YOU UNDERSTAND THE JUDGE DOESN'T DECIDE WHAT THE PENALTY IS IF WE GET TO THAT POINT?
A I UNDERSTAND THAT.
Q THE JURY DOES AND THE JUDGE IS GOING TO DO WHATEVER THE JURY SAYS.
A YES.
Q SO IF THE JURY SAYS LIFE, THE JUDGE WOULD SENTENCE THAT PERSON TO LIFE WITHOUT PAROLE. THAT'S WHAT THEY'D GET. THAT'S THE SENTENCE THEY WOULD GET.
A RIGHT.
Q IF THE JURY SAYS DEATH PENALTY, THAT PERSON IS GOING TO BE EXECUTED.
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q YOU ARE SAYING IF THE CASE IS BAD ENOUGH, YOU CAN VOTE FOR THE DEATH PENALTY KNOWING THAT IS GOING TO BE WHAT WILL HAPPEN?
A YES, IF IT'S BAD ENOUGH.

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Q AND YOU COULD SIGN YOUR NAME ON THAT PAPER THE JUDGE ASKED YOU ABOUT?

A YES, I CAN.

Q WHEN YOUR NAME IS CALLED OUT, YOU COULD ANSWER OUT LOUD IN OPEN COURT?

A YES.

Q THE JURY IS GOING TO BE PUT IN A MOTEL THURSDAY AFTER COURT IS OVER THURSDAY. THEY WILL HAVE TO SPEND THE NIGHT IN THAT MOTEL FOR THREE OR FOUR NIGHTS UNTIL THIS CASE IS OVER. I KNOW YOU HAVE GOT CHILDREN AT HOME. WOULD THAT CAUSE YOU ANY KIND OF REAL PROBLEMS TO BE IN A MOTEL FOR A FEW DAYS?

A WELL, I DO HAVE A 16-YEAR-OLD DAUGHTER.

Q IT'S AN INCONVENIENCE FOR EVERYBODY. WOULD IT CAUSE YOU ANY KIND OF UNUSUAL PROBLEMS THAT YOU COULDN'T HANDLE?

A I DON'T THINK IT WOULD CAUSE ANY UNUSUAL PROBLEMS THAT I COULDN'T HANDLE, NO, SIR.

Q A COUPLE OF YOUR CHILDREN, YOUR SON ONE IS 26 AND ONE IS AROUND 31. THEY ARE ROUGHLY THE SAME AGE AS THE DEFENDANT HERE. WOULD HAVING CHILDREN HIS AGE YOU THINK CAUSE YOU ANY DIFFICULTY IN SITTING IN JUDGMENT ON THIS DEFENDANT?

A NO, SIR.

Q MRS. GLOVER, THAT'S ALL I HAVE GOT. THANK YOU

VERY MUCH.

VOIR DIRE EXAMINATION

BY MR. SIMS:

Q GOOD AFTERNOON, MRS. GLOVER. I'M THOMAS SIMS AND I REPRESENT BAYAN. IN LOOKING AT YOUR JURY QUESTIONNAIRE, I SEE YOU GO TO A.M.E.?

A YES.

Q IS THAT GOOD HOPE?

A NO, NO, IT'S NOT.

Q AND MS. RHETT IN THE SOLICITOR'S OFFICE, YOU HAVE KNOWN HER FOR A LONG TIME?

A YES, SIR.

Q WHAT IS THE NATURE OF THAT RELATIONSHIP?

A WE ARE FIRST COUSINS.

Q YOU ARE FIRST COUSINS. SO MS. RHETT IS MORE THAN YOUR FRIEND, SHE IS YOUR FIRST COUSIN?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q YOU MENTIONED WHEN YOU WERE TALKING ABOUT THIS THAT YOU HAD READ SOME THINGS. HAVE YOU TALKED WITH ANYONE ABOUT THIS CASE?

A YES, WE HAVE SPOKEN ABOUT THE CASE.

Q YOU AND MS. RHETT HAVE TALKED ABOUT THIS CASE?

A NO, NOT WITH MS. RHETT, NO.

Q WHO DID YOU TALK TO ABOUT IT?

A THIS WAS IN OUR HOME LONG BEFORE THIS HAPPENED.

Q IN YOUR HOME LONG BEFORE YOU GOT TO THIS STAGE?
A RIGHT.
Q AND WHEN YOU TALKED TO, I ASSUME YOUR FAMILY MEMBERS AND CHILDREN AND YOUR HUSBAND, DID YOU ALL COME UP WITH A DECISION IN TERMS OF OR FORM AN OPINION ABOUT THIS CASE?
A WELL, THE ONLY THING WE DISCUSSED, YOU KNOW, IS HE GUILTY OR NOT GUILTY. THE ONLY THING I CAN SAY WELL, I DON'T KNOW IF HE GUILTY OR NOT. WE WASN'T THERE. WE DIDN'T KNOW WHAT HAPPENED. WE CAN'T REALLY SAY THE MAN IS GUILTY BECAUSE WE WASN'T THERE TO SEE WHAT HAPPENED.
Q AND WAS THIS AN ONGOING DISCUSSION OR JUST SOMETHING YOU ALL DID ONCE OR TWICE?
A ONCE OR TWICE WE DISCUSS IT WHEN WE READ THE PAPER. THAT WAS IT.
Q LET ME ASK YOU. DO YOU BELIEVE THAT WOMEN SHOULD BE TREATED THE SAME AS MEN, HELD TO THE SAME STANDARD AS MEN?
A YES, I DO.
Q AND WHAT WAS YOUR CHURCH AGAIN? I FORGOT.
A MOUNT OLIVE A.M.E. CHURCH.
Q I'M SORRY?
A MOUNT OLIVE.
Q MOUNT OLIVE A.M.E. CHURCH.

MR. SIMS: ONE MOMENT, YOUR HONOR.

THE COURT: ANYTHING ELSE?

MR. SIMS: NOTHING.

THE COURT: ANYTHING IN REPLY?

SOLICITOR BAILEY: YES, SIR, ONE QUESTION, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q I FORGOT TO ASK YOU THIS BUT MR. SIMS KIND OF PROMPTED THAT WHEN HE ASKED ABOUT YOUR CHURCH. DO YOU KNOW IF YOUR CHURCH OR DO YOU PERSONALLY HAVE ANY RELIGIOUS BELIEFS ABOUT THE DEATH PENALTY ONE WAY OR THE OTHER?

A NO, I DON'T.

Q THAT'S ALL I HAVE. THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: QUALIFIED, YOUR HONOR.

THE COURT: WHAT SAYS THE DEFENSE?

MR. SIMS: YOUR HONOR, IN LIGHT OF THE FACT THAT SHE IS THE FIRST COUSIN OF THE P.T.I. DIRECTOR FOR THE SOLICITOR'S OFFICE IN THIS MATTER, WE THINK THAT THAT RELATIONSHIP IS SUCH THAT IN THIS CASE IT SHOULD DISQUALIFY HER.

GIVEN THE GRAVITY OF THE SITUATION, THE

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FACT THAT THIS PERSON IS AN INTEGRAL PART OF THE SOLICITOR'S OFFICE, WE FEEL THAT THAT FIRST COUSIN RELATIONSHIP IS ONE THAT THE COURT IN THIS SITUATION SHOULD DISQUALIFY THE JUROR.

THE COURT: NO, SIR. THE P.T.I. IS NOT ON THE TRIAL TEAM WITH THE SOLICITOR'S OFFICE. THIS WITNESS WAS VERY CANDID AND VERY OPEN, SAID SHE HAS NOT DISCUSSED THE CASE WITH THAT INDIVIDUAL. SHE SAYS SHE CAN GIVE A FAIR TRIAL.

SHE VERY CLEARLY SAID THAT EVEN IN THE FAMILY THEY DISCUSSED THE CASE, BUT THEY SAID THEY WOULDN'T MAKE A JUDGMENT ON GUILTY OR NOT GUILTY UNTIL SHE HEARD THE EVIDENCE. I WOULD CONCLUDE THAT SHE CAN BE A FAIR JUROR.

MR. SIMS: YES, SIR. IF YOU WILL NOTE OUR MOTION AND OUR OBJECTION.

THE COURT: I CERTAINLY WILL. THANK YOU.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MRS. GLOVER, WE ARE QUALIFYING 35 JURORS. YOU HAVE BEEN FOUND TO BE QUALIFIED BY BOTH THE ATTORNEYS FOR THE STATE AND THE SOLICITOR'S OFFICE. ON THURSDAY MORNING AT 9:30, WE ARE GOING TO SELECT 14 MEMBERS FROM THAT 35. YOU MAY OR MAY NOT BE SELECTED.

PLEASE REPORT AT 9:30 THURSDAY. BRING WITH

YOU SUCH PERSONAL CLOTHING AND EFFECTS AS YOU WOULD NEED FOR THE MOTEL IN THE EVENT YOU ARE SELECTED. DO YOU HAVE ANY QUESTIONS?

JUROR: NO, SIR.

THE COURT: SEE YOU AT 9:30 THURSDAY.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: BRING THE NEXT JUROR IN.

(THE JUROR ENTERS THE COURTROOM.)

MACK STILLINGER, (WHITE MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD AFTERNOON, SIR.

A GOOD AFTERNOON.

Q I NOTE THAT YOU FINISHED ORANGEBURG HIGH SCHOOL AND YOU WENT TO FLORENCE/DARLINGTON TECH; IS THAT CORRECT?

A THAT'S CORRECT.

Q THE BAILIFF INDICATED THAT YOU MAY HAVE HURT YOUR BACK. WHAT IS THAT ABOUT?

A I FELL LAST NIGHT ON A WRECKER CALL AND I AM TAKING PHYSICAL THERAPY ANYWAY. I MESSED MY BACK UP LAST NIGHT.

Q IS IT GIVING YOU SOME PROBLEMS NOW?

A YES, SIR, I TOOK TWO EQUIGESICS BEFORE I COME

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WHERE I COULD HARDLY WALK.

Q HAVE YOU BEEN TO THE DOCTOR?

A YES, SIR, I GOT A DOCTOR'S EXCUSE.

Q YOU HAVE A DOCTORS EXCUSE NOW?

A YES, SIR.

Q LET ME SEE IT, PLEASE.

A (WITNESS COMPLIES.)

THE COURT: GENTLEMEN, COME HERE, PLEASE.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD.)

THE COURT: I NOTE YOUR DOCTOR'S EXCUSE. I CERTAINLY ACCEPT IT. I MAKE IT A PART OF THE RECORD.

JUROR: THANK YOU, SIR.

THE COURT: I AM GOING TO EXCUSE YOU AND I DO HOPE YOUR BACK IS BETTER.

JUROR: THANK YOU, SIR.

THE COURT: WE WOULD LIKE TO HAVE HAD YOU PARTICIPATE. THANK YOU.

JUROR: THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

EMILY PINDAK, (WHITE FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD AFTERNOON.

A HI.

Q BE SEATED, PLEASE, MA'AM, AND MAKE YOURSELF COMFORTABLE. WE WOULD LIKE TO ASK YOU A FEW QUESTIONS IF WE CAN. AM I PRONOUNCING YOUR NAME CORRECT WHEN I SAY MRS. EMILY P. PINDAK?

A PINDAK, RIGHT.

Q MRS. PINDAK, YOU FINISHED ORANGEBURG HIGH SCHOOL; IS THAT CORRECT?

A YES, SIR.

Q BORN JANUARY 11, 1995?

A 1955.

Q 1955. YOU ARE A SHIPPING CLERK AT TEXTILE DISTRIBUTION?

A YES, SIR.

Q HAVE BEEN EMPLOYED THERE 11 YEARS; IS THAT CORRECT?

A YES, SIR.

Q HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE AT ALL?

A MAYBE ON THE RADIO. I DON'T READ THE PAPER AND I DON'T LOOK AT THE NEWS VERY MUCH.

Q SO WHAT I NEED TO KNOW IS IF YOU WERE SELECTED

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AS A JUROR, CAN YOU TELL ME UNDER YOUR OATH THAT WHATEVER YOUR VERDICT IS WILL BE BASED ON THE TESTIMONY AND LAW HEARD IN THIS COURTROOM UNDER OATH?

A YES, SIR.

Q I WANT TO MAKE SURE THAT YOU WOULD NOT BE BIASED OR PREJUDICED EITHER FOR OR AGAINST THE STATE BASED ON SOMETHING YOU MAY HAVE READ OR HEARD.

A NO, SIR.

Q I WANT TO MAKE SURE THAT YOUR VERDICT IS BASED ON THE EVIDENCE IN THIS COURTROOM.

A YES, SIR.

Q NOW, YOU UNDERSTAND THAT THIS IS CONCEIVABLY OR CAN BE A TWO-PART TRIAL?

A YES, SIR.

Q THE FIRST PART DEALS WITH THE GUILT OR INNOCENCE OF THE DEFENDANT. IF HE IS FOUND NOT GUILTY, WE STOP RIGHT THERE. YOU UNDERSTAND?

A YES, SIR.

Q NOW, I AM NOT SUGGESTING THAT YOU WOULD FIND HIM GUILTY AT ALL, BUT I AM SAYING TO YOU IF 12 JURORS UNANIMOUSLY FIND HIM GUILTY OF MURDER BEYOND A REASONABLE DOUBT, THEN WE HAVE A SECOND PHASE WHICH IS THE PUNISHMENT PHASE. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q IN THAT PHASE THE JURY HAS ONE QUESTION AND ONE

QUESTION ONLY AND THAT IS THIS. WE THE JURY HAVING FOUND THIS DEFENDANT GUILTY OF MURDER BEYOND A REASONABLE DOUBT WHAT SHALL THE PUNISHMENT BE?

SHALL WE IMPOSE A PUNISHMENT OF LIFE IMPRISONMENT OR SHALL WE IMPOSE A PUNISHMENT OF DEATH BY LETHAL INJECTION OR ELECTROCUTION? IT'S ONE OR THE OTHER. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q JURORS WHEN CONFRONTED WITH THIS PROBLEM FALL INTO THREE GROUPS, AND THERE'S NO RIGHT OR WRONG ANSWERS. YOU UNDERSTAND THAT?

A YES, SIR.

Q THAT LETTER DESCRIBES THREE GROUPS. THERE IS A GROUP WHO SAYS ONCE I HAVE FOUND SOMEONE GUILTY OF MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY. THERE IS A SECOND GROUP WHOSE VIEW IS EQUALLY GOOD, WHO SAY EVEN THOUGH WE FIND HIM GUILTY OF MURDER, I CAN NEVER IMPOSE A SENTENCE OF DEATH.

THERE IS A THIRD GROUP WHO SAY WE FOUND THIS DEFENDANT GUILTY OF MURDER WITH MALICE AFORETHOUGHT. I WILL NOW DECIDE FOR MYSELF BASED ON ALL THE OTHER FACTS IN THIS CASE WHETHER I SHOULD IMPOSE LIFE IMPRISONMENT OR DEATH.

THAT JUROR SAYS I CAN DO EITHER ONE DEPENDING ON THE FACTS IN THE CASE. WOULD YOU BE THE JUROR WHO

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SAYS I WILL ALWAYS, ONE WHO SAYS NEVER OR THE ONE WHO SAYS I WILL CONSIDER ALL THE FACTS AND THEN DECIDE? WHICH WOULD YOU BE, ONE, TWO OR THREE?

A THREE.

Q THREE. OKAY.

THE COURT: YOU MAY EXAMINE.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. PINDAK, I'M WALTER BAILEY. I WANT TO ASK JUST A COUPLE MORE QUESTIONS TO KIND OF FOLLOW UP ON WHAT JUDGE COTTINGHAM ASKED YOU. YOU UNDERSTAND THAT WE WOULDN'T EVEN BE GETTING INTO THIS DEATH PENALTY SITUATION UNLESS AND UNTIL THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST PART OF THE TRIAL.

SO ANY TIME A JURY IS IN THE PENALTY PHASE, THEY ARE DEALING WITH A CONVICTED MURDERER. YOU UNDERSTAND THAT IN SOUTH CAROLINA THE JUDGE DOESN'T DECIDE WHAT THE SENTENCE IS GOING TO BE. HE WOULD ORDER WHATEVER THE JURY SAYS.

A YES, SIR.

Q SO IF THE JURY SAYS AFTER HEARING ALL THE FACTS AND CIRCUMSTANCES, WE THINK THE DEATH PENALTY IS THE APPROPRIATE SENTENCE, THE JUDGE IS GOING TO ORDER IT AND THAT DEFENDANT IS GOING TO BE EXECUTED. ON THE

OTHER HAND, IF THE JURY SAYS WE THINK A LIFE SENTENCE IS APPROPRIATE, THE DEFENDANT WOULD GET A LIFE WITHOUT PAROLE SENTENCE.

NOW, I AM NOT GOING TO ASK WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS AND DON'T KNOW ANYTHING ABOUT IT. BUT MY QUESTION IS IF THE FACTS WERE BAD ENOUGH, CAN YOU REALLY VOTE FOR THE DEATH PENALTY KNOWING THAT THE SENTENCE WOULD ACTUALLY BE CARRIED OUT AT SOME POINT?

A YES.

Q IF THE OTHER 11 JURORS FELT THE SAME WAY AFTER HEARING THOSE FACTS AND ALL 12 JURORS VOTED FOR THE DEATH PENALTY, COULD YOU SIGN YOUR NAME ONTO A PAPER, A DEATH VERDICT FORM, THAT WOULD RESULT IN THAT EXECUTION TAKING PLACE?

A YES.

Q AND THE LAST THING THAT THE JURY WOULD NEED TO DO IN THAT SITUATION WOULD BE THAT YOU WOULD COME OUT INTO COURT HERE AND BE SEATED IN ONE OF THESE SEATS OUT HERE. THE CLERK WOULD CALL EACH JUROR'S NAME ONE AT A TIME AND ASK, "IS THAT YOUR VERDICT?" COULD YOU SAY OUT LOUD, "I ASSENT TO THAT VERDICT OR THAT'S MY VERDICT"?

A YES.

Q THE JURY WILL BE PUT IN A MOTEL EVERY DAY WHEN

COURT IS OVER. THEY WOULD BE TAKEN TO THE MOTEL, BE FED AND ALL THAT UNTIL THE TRIAL IS OVER STARTING THURSDAY EVENING, PROBABLY FOUR DAYS, SOMETHING LIKE THAT. THAT'S AN INCONVENIENCE FOR EVERYBODY. WOULD IT CAUSE YOU ANY KIND OF UNUSUAL PROBLEMS?

A NO, SIR.

Q MRS. PINDAK, I THINK THAT'S ALL I HAVE GOT. THANK YOU VERY MUCH.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q MRS. PINDAK, MY NAME IS DUFFIE STONE. I ALONG WITH MR. SIMS REPRESENT BAYAN ALEKSEY HERE. I MADE A NOTATION ON MY LIST THAT YOU HAD COME UP AND TALKED TO THE JUDGE EARLIER IN THIS TRIAL; IS THAT RIGHT?

A YES.

Q I COULD VERY WELL HAVE BEEN CONFUSED. DID YOU ASK TO BE EXCUSED?

A BECAUSE MY HUSBAND AND I ARE RAISING A GRANDCHILD AND I TAKE HER TO SCHOOL AND PICK HER UP, BUT WE WORKED IT OUT LAST NIGHT.

Q YOU HAVE GOT THAT TAKEN CARE OF NOW?

A YEAH.

Q I HATE TO ASK SOME RUDE QUESTIONS BUT WE KIND OF HAVE TO ASK THESE QUESTIONS. WHY ARE YOU RAISING YOUR GRANDCHILD?

A I HAVE A SON THAT IS IN PRISON AND THIS CHILD BELONGED TO HIM. I HAVE ONE CHILD AND HE IS IN PRISON. HE HAS BEEN IN, GOD, FIVE YEARS I GUESS, YOU KNOW, IN AND OUT, IN AND OUT. WE JUST HAD TO TAKE THIS CHILD AND RAISE HER.

Q I SEE. DO YOU HAVE CUSTODY, OFFICIAL CUSTODY OF HIM?

A YES.

Q IS IT A BOY?

A A GIRL.

Q DO YOU HAVE ANY BUMPER STICKERS ON YOUR CAR? DO YOU HAVE A CAR?

A I HAVE A CAR AND NO, I DON'T HAVE ANY BUMPER STICKERS.

Q WHERE DO YOU GET YOUR INFORMATION FROM? DO YOU WATCH TELEVISION, DO YOU READ THE NEWSPAPER OR WHAT?

A TELEVISION. I GUESS IT WOULD BE TELEVISION. I DON'T READ THE NEWSPAPER AND I HAVE FIVE SISTERS SO THEY TELL ME.

Q YOU GET YOUR INFORMATION FROM FIVE SISTERS. I UNDERSTAND THAT.

A RIGHT.

Q THEY DIDN'T TALK ABOUT -- THEY DIDN'T KNOW ANYTHING ABOUT THIS CASE? Y'ALL HAVEN'T TALKED ABOUT IT?

A NO.
Q DO YOU FEEL LIKE MEN AND WOMEN ARE EQUAL?
A RIGHT.
Q WOULD YOU HOLD WOMEN TO THE SAME STANDARD THAT YOU HOLD MEN?
A YES.
Q THANK YOU.

SOLICITOR BAILEY: JUDGE, COULD I ASK HER A COUPLE OF OTHER QUESTIONS TO FOLLOW UP.

THE COURT: SURE.

VOIR DIRE EXAMINATION
BY SOLICITOR BAILEY:

Q MRS. PINDAK, I HATE TO PRY INTO YOUR PRIVATE LIFE AND ALL, BUT SOMETHING THAT MR. STONE ASKED AND YOUR RESPONSE KIND OF PROMPTED ME TO ASK THIS. OF COURSE, THAT CONCERNS THE FACT THAT THIS SITUATION DEALS WITH A LAW ENFORCEMENT OFFICER. TROOPER LINGARD OF THE HIGHWAY PATROL IS THE VICTIM IN THIS HOMICIDE. YOU TESTIFIED THAT YOUR SON IS IN PRISON AT THIS TIME. IS HE IN PRISON IN SOUTH CAROLINA?
A HE IS IN ALLENDALE.
Q DO YOU MIND IF I ASK WHAT HE IS IN THERE FOR?
A ASSAULT AND BATTERY.
Q WOULD THE FACT THAT THIS CASE DEALS OR THAT THE VICTIM IN THIS CASE WAS A LAW ENFORCEMENT OFFICER AND

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THAT YOUR SON IS IN PRISON AND OBVIOUSLY HAS BEEN ARRESTED BY SOME LAW ENFORCEMENT OFFICER, WOULD THAT AFFECT YOUR ABILITY?

A OH, NO, NO.

Q I APOLOGIZE FOR HAVING TO ASK THAT QUESTION BUT I THOUGHT I NEEDED TO.

A I UNDERSTAND.

Q THANK YOU, MRS. PINDAK.

MR. STONE: JUST ONE OTHER QUESTION.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q WHERE WAS HE PROSECUTED, DO YOU KNOW?

A RIGHT HERE.

Q HERE IN ORANGEBURG?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q DO YOU KNOW WHO PROSECUTED HIM?

A I THOUGHT HIM.

Q MR. BAILEY?

A I THOUGHT HE DID IT BUT I DON'T KNOW.

Q WAS IT A TRIAL OR A GUILTY PLEA?

A GUILTY.

Q A GUILTY PLEA. THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: QUALIFIED, YOUR HONOR.

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THE COURT: WHAT SAYS THE DEFENDANT?

MR. STONE: YES, SIR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MADAME JUROR, WE ARE IN THE PROCESS OF QUALIFYING 35 JURORS. BOTH THE STATE AND THE DEFENDANT HAVE FOUND YOU QUALIFIED TO SERVE IF SELECTED ON THURSDAY MORNING AT 9:30.

I WANT YOU TO BE BACK HERE AND PLEASE BRING SUCH PERSONAL EFFECTS AS YOU WOULD NEED TO STAY IN THE MOTEL. YOU WELL MAY OR MAY NOT BE ONE OF THE 14. PLEASE COME PREPARED TO STAY. WOULD YOU DO THAT?

JUROR: YES, SIR.

THE COURT: DO YOU HAVE ANY QUESTIONS?

JUROR: NO, SIR.

THE COURT: I AM SO GLAD THAT YOU AND YOUR HUSBAND WORKED YOUR PROBLEM OUT. THANK YOU SO MUCH.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

MARY GRAMBLING, (WHITE FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q THIS IS MRS. MARY GRAMLING?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE

RESPONSE.)
Q MISS MARY, I WOULD ASK PLEASE THAT YOU SPEAK INTO THAT MICROPHONE --
A OKAY.
Q -- SO THAT WE CAN ALL HEAR YOUR RESPONSES. YOU GRADUATED FROM HOLLY HILL HIGH SCHOOL AND YOU HAVE SOME TECHNICAL EDUCATION?
A YES, SIR.
Q YOU ARE AN ELECTRONIC ASSEMBLER WORKING FOR -- IS THAT RAYCON?
A RATHION (PH.), YES, SIR.
Q YESTERDAY A NUMBER OF JURORS STOOD UP AND INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE. WERE YOU ONE OF THOSE THAT SO INDICATED?
A YES, SIR.
Q I AM NOT CONCERNED WITH WHETHER OR NOT SOMEBODY READ OR HEARD SOMETHING ABOUT IT. I WANT TO MAKE SURE THOUGH THAT IF THEY ARE ON THE JURY THAT THEY CAN PUT THAT ASIDE AND BASE THEIR VERDICT ON THE LAW AND TESTIMONY UNDER OATH IN THIS COURTROOM. CAN YOU DO THAT?
A YES, SIR.
Q CAN YOU TELL ME WHERE YOU MAY HAVE READ OR HEARD SOMETHING?

A WHEN IT FIRST HAPPENED.
Q YES, MA'AM.
A I GET THE PAPER EVERY DAY. SOMETIMES I GET TO READ IT; SOMETIMES I DON'T. THERE ARE A FEW OFFICERS OF THE LAW THAT ARE FRIENDS OF MINE. NATURALLY WHEN AN OFFICER IS DOWN, I TAKE INTEREST IN IT; BUT I DIDN'T KNOW LINGARD THAT WELL. I HAD MET HIM MAYBE ONE TIME.

SO I REALLY DIDN'T -- AND THEN WHEN IT STARTED COMING UP LAST WEEK WITH THE CASE COMING UP AND SOME OF THE PEOPLE THAT WORK WITH ME FOUND OUT I WAS CALLED IN FOR JURY DUTY, THEY WERE ASKING ME WAS I SUPPOSED TO BE ON THIS JURY. I TOLD THEM I DID NOT KNOW. ALL I KNEW WAS I WAS SUPPOSED TO REPORT YESTERDAY.

Q DID THEY TRY AND DISCUSS ANY FACTS WITH YOU?
A TODAY WHEN THEY STARTED, I WOULD TELL THEM THAT I WAS NOT ALLOWED TO LISTEN OR TO DISCUSS IT WITH THEM AND THAT I WAS UNDER COURT ORDERS NOT TO. SO THEY LEFT ME ALONE, YES, SIR.
Q THAT'S A VERY APPROPRIATE RESPONSE AND THAT'S JUST AN ABSOLUTE MARK OF GOOD CITIZENSHIP. I THANK YOU FOR THAT.
A THANK YOU.
Q YOU UNDERSTAND THIS DEFENDANT AND ALL DEFENDANTS

ARE PRESUMED INNOCENT. THE STATE HAS GOT TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT, AND THEY HAVE GOT TO PROVE IT NOT IN THE NEWSPAPER BUT THEY HAVE GOT TO PROVE IT IN THIS COURTROOM.

A YES, SIR.

Q ARE YOU WILLING TO DO THAT?

A YES, SIR.

Q LET ME ASK YOU THIS. DID YOU HAVE THE OPPORTUNITY TO READ ABOUT THE THREE TYPES OF JURORS?

A YES, SIR, I DID.

Q YOU WOULD UNDERSTAND THAT FIRST WE WOULD DETERMINE THE GUILT OR INNOCENCE OF THE DEFENDANT. IF THE JURY FOUND HIM NOT GUILTY, WE STOP THERE.

A YES, SIR.

Q NOW, IF -- AND THAT'S ADVISORY -- IF THEY FOUND HIM GUILTY, THEN YOU GO TO THE SENTENCING PHASE. IN THE SECOND PHASE IF WE GET THERE, THE STATE WILL INTRODUCE OR ATTEMPT TO INTRODUCE TESTIMONY WHICH CONVINCES YOU THAT DEATH IS THE APPROPRIATE SENTENCE. EQUALLY IMPORTANT THE DEFENDANT WILL TRY AND SHOW YOU MITIGATING CIRCUMSTANCES TO CONVINCE YOU THAT LIFE IMPRISONMENT IS THE APPROPRIATE SENTENCE.

A YES, SIR.

Q AND DID YOU READ THE LETTER THAT I PUT BACK THERE?

A YES, SIR.

Q THERE ARE THREE TYPES OF JURORS AND ALL OF THEIR POSITIONS ARE CORRECT. ONE GROUP SAYS IF I FIND SOMEBODY GUILTY OF MURDER BEYOND A REASONABLE DOUBT, I WILL ALWAYS BE FOR THE PENALTY OF DEATH. THERE IS A SECOND GROUP WHO SAYS EVEN THOUGH WE FOUND HIM GUILTY OF MURDER, I CAN NEVER TAKE THE LIFE OF ANOTHER HUMAN BEING.

THERE IS A THIRD GROUP WHO SAY WE HAVE FOUND HIM GUILTY OF MURDER WITH MALICE AFORETHOUGHT. I NOW AM GOING TO LISTEN TO ALL THE OTHER FACTS. I WILL CONSIDER EVERYTHING ABOUT THE CASE AND THEN I WILL DECIDE.

IF I THINK IT APPROPRIATE EVEN THOUGH HE IS CONVICTED OF MURDER, I CAN IMPOSE A SENTENCE OF LIFE. THAT JUROR SAYS EQUALLY IMPORTANT DEPENDING ON HOW I FEEL, I CAN IMPOSE A SENTENCE OF DEATH.

THE FIRST GROUP SAYS ALWAYS, THE SECOND SAYS NEVER AND THE THIRD GROUP WHO SAY I AM GOING TO CONSIDER ALL THE FACTS AND THEN DECIDE. WOULD YOU BE ONE, TWO OR THREE?

A THREE.

Q THREE.

THE COURT: YES, SIR.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. GRAMBLING, I'M WALTER BAILEY. I WANT TO ASK JUST A COUPLE OF QUESTIONS TO FOLLOW UP ON WHAT THE JUDGE HAS BEEN TALKING TO YOU ABOUT. FIRST OF ALL, I NOTICE FROM YOUR QUESTIONNAIRE THAT YOU HAVE GOT SONS THAT ARE 24 AND 32?

A YES, SIR.

Q THEY ARE ROUGHLY THE SAME AGE AS THE DEFENDANT IN THIS CASE. DO YOU THINK THAT WOULD CAUSE YOU ANY PROBLEMS IN SITTING AS A JUROR IN THIS CASE?

A NO, SIR.

Q AND YOU UNDERSTAND WE WOULDN'T EVEN BE GETTING INTO THE PENALTY PHASE UNLESS AND UNTIL THE DEFENDANT IS FOUND GUILTY OF MURDER IN THE FIRST PART OF THE TRIAL?

A YES, SIR.

Q SO ANY TIME A JURY IN A CAPITAL CASE IS CONSIDERING PUNISHMENT, THAT MEANS THEY ARE DEALING WITH A CONVICTED MURDERER.

A YES, SIR.

Q YOU HAVE INDICATED TO THE JUDGE THAT IF YOU WERE SITTING AS A JUROR IN A CASE OF THIS TYPE, YOU WOULD WANT TO HEAR BOTH SIDES -- I WITHDRAW THAT -- YOU WOULD WANT TO HEAR THE EVIDENCE THAT CAME OUT IN THAT

CASE BEFORE DECIDING ON LIFE IN PRISON WITHOUT PAROLE OR THE DEATH PENALTY?

A YES, SIR. I WOULD WANT TO HEAR IT ALL, YES, SIR.

Q I AM NOT ASKING YOU WHAT YOU WOULD DO IN THIS PARTICULAR CASE BECAUSE YOU HAVEN'T HEARD THE FACTS. BUT IF THE CASE WAS BAD ENOUGH, THE FACTS PRESENTED TO YOU WERE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE IS ACTUALLY GOING TO BE CARRIED OUT BECAUSE THE JURY VOTED FOR IT?

A IF I FELT LIKE IT WAS WARRANTED YES, SIR.

Q COULD YOU THEN SIGN YOUR NAME TO A VERDICT FORM WITH THE OTHER JURORS THAT WOULD RESULT IN THAT EXECUTION TAKING PLACE?

A YES, SIR.

Q COULD YOU COME OUT INTO COURT AND ANNOUNCE THAT DECISION IF THAT WAS YOUR DECISION?

A IF I BELIEVED IN MY DECISION, YES, SIR.

Q THE JURY, AS YOU KNOW, IS GOING TO BE PUT UP IN A MOTEL FOR A FEW DAYS STARTING THURSDAY.

A YES, SIR.

Q THAT IS AN INCONVENIENCE FOR ANYBODY, BUT WOULD IT CAUSE YOU ANY SERIOUS PROBLEMS, FAMILY PROBLEMS, WORK PROBLEMS, ANYTHING LIKE THAT --

A NO, SIR.

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Q -- IF YOU WERE PUT UP IN A MOTEL. CAN YOU THINK OF ANY REASON, MRS. GRAMBLING, WHY YOU COULDN'T BE FAIR TO BOTH SIDES, THE DEFENDANT AND THE STATE OF SOUTH CAROLINA?

A NO, SIR, I CAN'T THINK OF ANY.

Q THANK YOU. THAT'S ALL I HAVE.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q HI, MRS. GRAMBLING. MY NAME IS DUFFIE STONE. MRS. GRAMBLING, YOU MENTIONED THAT YOU HAD SOME FRIENDS THAT ARE POLICE OFFICERS. WHERE DO YOU LIVE?

A GRAMBLING ROAD RIGHT OUTSIDE OF ORANGEBURG, BETWEEN HERE AND CAMERON.

Q A ROAD NAMED AFTER YOU?

A THEY FIGURED THAT'S THE ONLY WAY I COULD FIGURE OUT HOW TO GET HOME. NO, I'M JUST KIDDING.

Q I WILL HAVE TO SEE IF I CAN GET MY STREET NAMED AFTER ME.

A NO, I MARRIED A MAN THAT'S A GRAMLING. I HAVE LIVED THERE FOR ABOUT TEN AND A HALF YEARS.

Q DO YOU KNOW -- THE OFFICERS THAT YOU KNOW, ARE THEY HERE IN ORANGEBURG?

A ONE OF THEM IS SITTING RIGHT OVER THERE, WHICH IS...

Q WHICH ONE?
A RODNEY GEDDINGS.
Q HE IS WAVING AT YOU.
A OFFICER CECIL CARSON, THERE'S A FEW.
Q DID YOU HEAR THE LIST OF THE OFFICERS -- I DIDN'T INTERRUPT YOU, DID I?
A NO, THAT'S OKAY. GO RIGHT AHEAD.
Q DID YOU HEAR THE LIST OF OFFICER THAT WERE CALLED OUT BY THE JUDGE AS POTENTIAL WITNESSES IN THIS?
A YES, SIR.
Q DID YOU RECOGNIZE ANY OF THOSE?
A ANDY MYERS IS THE ONLY ONE I KNOW, AND IT HAS BEEN ABOUT 16 YEARS SINCE I HAVE SEEN HIM.
Q YOU SAID YOU HAD MET TROOPER LINGARD BEFORE; IS THAT RIGHT?
A YES, SIR, COMING AND GOING, YOU KNOW, MAYBE BUMPING INTO HIM HERE AND THERE. EXCUSE ME. THERE IS ONE MORE OFFICER THAT I DID HAVE A SHORT THING WITH. THAT WAS ON A CAR WRECK. THAT WAS LEON -- I FORGOT HIS LAST NAME -- OFFICER LEON -- HELP ME, RODNEY.
Q IS HE WITH THE HIGHWAY PATROL?
A YES.
Q ROBINSON?

A YES, THAT'S IT.
Q IS HE WITH THE HIGHWAY PATROL?
A ALL I KNOW IS I REPORTED A CAR ACCIDENT AND HE WAS THE ONE THAT RESPONDED.
Q I UNDERSTAND. THAT'S FINE. NOW, I REPRESENT BAYAN ALEKSEY. YOU UNDERSTAND THAT, I'M SURE.
A YES, SIR.
Q HE IS CHARGED OBVIOUSLY WITH A SERIOUS OFFENSE BUT AN OFFENSE THAT THE SOLICITOR IS ASKING FOR THE DEATH PENALTY. YOU UNDERSTAND THAT AS WELL?
A YES, SIR.
Q DOES THE FACT THAT THE SOLICITOR IS ASKING FOR THE DEATH PENALTY, DOES THAT GIVE YOU ANY IMPRESSION ONE WAY OR THE OTHER ABOUT MR. ALEKSEY'S GUILT?
A NO, SIR.
Q NOW, WHEN THIS TRIAL STARTS, OBVIOUSLY YOU ARE GOING TO HEAR A LOT FROM VARIOUS POLICE OFFICERS. YOU ARE GOING TO HEAR ABOUT THE DEATH OF A POLICE OFFICER. THE FACT THAT YOU HAVE GOT SOME FRIENDS IN THE ORANGEBURG AREA AND FRIENDS WITH THE HIGHWAY PATROL, IS THAT GOING TO MAKE IT DIFFICULT FOR YOU AT ALL?
A NOT THAT I KNOW OF. NO, I DON'T SEE ANY REASON WHY IT WOULD.

Q THE SOLICITOR ASKED YOU IF THE CASE WAS APPROPRIATE AND IF IT WAS BAD ENOUGH, YOU COULD COME BACK WITH THE DEATH PENALTY. IF THE SOLICITOR DOESN'T PROVE THE CASE, COULD YOU EQUALLY COME BACK WITH A NOT GUILTY VERDICT?

A YES, SIR.

Q YOU DON'T HAVE ANY PROBLEM WITH THAT DESPITE THE FACT THIS IS OBVIOUSLY A SERIOUS SITUATION?

A NO, I HAVE NO PROBLEM WITH IT.

Q HOW DO YOU FEEL -- WELL, LET ME REPHRASE THAT. DO YOU THINK MEN AND WOMEN ARE EQUAL? SHOULD THEY BE HELD TO THE SAME STANDARDS?

A IN CERTAIN CIRCUMSTANCES, YES, SIR.

Q THAT'S FINE.

A IT'S DEPENDS ON WHAT THE CIRCUMSTANCE IS.

Q DO YOU THINK FEEL LIKE ONE IS STRONGER THAN THE OTHER?

A PHYSICALLY?

Q OR EMOTIONALLY, EITHER WAY.

A PHYSICALLY MAYBE, NOT REALLY EMOTIONALLY.

Q DO YOU HAVE ANY BUMPER STICKERS ON YOUR CAR?

A NO, SIR.

Q I ASKED YOU ABOUT YOUR STREET NAME. I HAD TO ASK.

A I HAVE ONE ON MY TRUCK BUT IT'S FOR A FISHING

PERMIT, I MEAN, PRIVATE FISHING CLUB, BUT THAT'S IT.

Q THANK YOU, MA'AM. I APPRECIATE IT.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: QUALIFIED.

THE COURT: WHAT SAYS THE DEFENSE?

MR. STONE: QUALIFIED.

(THE JUROR RETURNS TO THE COURTROOM)

THE COURT: MADAME JUROR, YOU HAVE BEEN QUALIFIED AS ONE OF THE 35 BY THE ATTORNEYS FOR THE STATE AND THE DEFENDANT. ON THURSDAY MORNING AT 9:30 FROM THAT 35, WE WILL BE SELECTING 12 JURORS AND TWO ALTERNATES. YOU MAY OR MAY NOT BE ONE OF THE 14.

PLEASE REPORT BACK PROMPTLY AT 9:30 THURSDAY MORNING, BRINGING WITH YOU SUCH PERSONAL EFFECTS AND CLOTHES AS YOU MAY REQUIRE IN THE EVENT YOU ARE SELECTED AND HAVE TO STAY IN THE MOTEL. DO YOU HAVE ANY QUESTIONS?

JUROR: NO, SIR.

THE COURT: THANK YOU FOR YOUR PATIENCE. I WILL SEE YOU AT 9:30 THURSDAY MORNING.

JUROR: THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

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THE COURT: GENTLEMEN, THIS COURT IS NOW IN RECESS UNTIL 9:30 IN THE MORNING.

MR. STONE: YES, SIR.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

(WHEREUPON THE PROCEEDINGS WERE CONCLUDED FOR AUGUST 25, 1998.)

* * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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REPETATIVE TRANSCRIPT COVER PAGE AND
INDEX PAGES
AND NOT REPRINTED

(THE FOLLOWING PROCEEDINGS WERE REPORTED ON APRIL 26, 1998.)

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. MADAME COURT REPORTER, LET THE RECORD REFLECT THAT ALL ARE PRESENT, INCLUDING THE DEFENDANT.

LADIES AND GENTLEMEN OF THE JURY PANEL, GOOD MORNING. WE ARE STILL IN THE PROCESS OF QUALIFYING 35 JURORS, FROM WHICH AT 9:30 TOMORROW MORNING, 12 JURORS AND TWO ALTERNATES WILL BE SELECTED.

WE HAVE THUS FAR QUALIFIED SOME 27. SO I FULLY ANTICIPATE THAT THE PROCESS WILL BE CONCLUDED THIS MORNING WITH REFERENCE TO QUALIFICATIONS. I CALLED YOU ALL OUT SO THAT I CAN TELL YOU AGAIN THE IMPORTANCE OF NOT DISCUSSING THIS CASE WITH ANYONE.

PERMIT NO ONE TO DISCUSS IT WITH YOU. UNDER NO CIRCUMSTANCES SHOULD YOU RESPOND TO THE QUESTIONS THAT ARE BEING ASKED OF YOU. DON'T TELL ANYBODY WHAT THE QUESTIONS WERE. DON'T TELL ANYBODY WHAT THE ANSWERS WERE.

IF SOMEBODY STARTS TO ASK YOU ABOUT SOME ASPECT OF THIS CASE OR TELL YOU SOME ASPECT OF THIS CASE, UNDER YOUR OATH NOW YOU MUST STOP THEM, TELL YOU ARE A JUROR. DO NOT CONTINUE THAT CONVERSATION.

IF THEY PERSIST PLEASE TAKE THEIR NAME AND REPORT THAT BACK TO ME.

YESTERDAY AS AN EXAMPLE ONE OF THE JURORS -- HE DIDN'T MEAN TO DO IT -- BUT HE KNEW SOMETHING ABOUT OR THOUGHT HE KNEW SOMETHING ABOUT SOME ASPECT OF THIS CASE, AND HE STARTED TO TELL THE JURORS BACK THERE. WELL, HE WAS VIOLATING MY COURT ORDER IN TALKING ABOUT IT, AND THEY WERE VIOLATING MY ORDER IN NOT STOPPING HIM.

THE REASON FOR THAT IS PRETTY OBVIOUS. WHATEVER IS DECIDED BY THE JURY WHO ARE THE FINDERS OF THE FACTS IN THIS CASE IT MUST DONE BY TESTIMONY AND EVIDENCE UNDER OATH FROM THIS WITNESS STAND, NOT WHAT YOU MAY HAVE READ OR HEARD OR WHAT SOMEBODY TOLD YOU.

IT'S GOT TO BE DONE IN THIS COURTROOM. I AM SURE THAT ALL OF YOU APPRECIATE THAT. I WILL ASK YOU TO GO TO THE JURY ROOM. WE WILL START WITH THE FIRST ONE. WHO IS THE FIRST ONE ON THIS PANEL?

CLERK: BONNIE ANTLEY. SHE IS IN THE BACK READING THE LETTER.

THE COURT: I WILL LET YOU GO TO THE JURY ROOM. WE WILL MOVE AROUND AS RAPIDLY AS POSSIBLE. THANK YOU SO MUCH. JUST REMEMBER THESE ADMONITIONS WHICH ARE CONTINUING.

(THE JURY PANEL LEAVES THE COURTROOM.)

THE COURT: THIS NEXT ONE MY RECORD REFLECTS WAS ONE OF TWO WHO SAID THEY HAD FORMED AN OPINION. YOU RECALL I DIDN'T ASK WHAT THAT OPINION WAS, BUT WE WILL NEED TO EXPLORE IT.

MR. STONE: YES, SIR.

(THE JUROR ENTERS THE COURTROOM.)

BONNIE ANTLEY, (WHITE FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MRS. ANTLEY, WE ARE IN THE PROCESS, AS I HAVE INDICATED, OF QUALIFYING 35 JURORS, FROM WHICH A JURY WILL BE DRAWN FOR THE PURPOSES OF TRYING THIS CASE. UNDER OUR SYSTEM OF JURISPRUDENCE, THE 12 JURORS WHO ARE SELECTED ARE THE SOLE AND ONLY FINDERS OF THE FACTS. I, AS TRIAL JUDGE, AM NOT ENTITLED TO A FACTUAL OPINION AND I HAVE NONE.

THE 12 JURORS WHO ARE SWORN WILL VIEW, LISTEN TO AND CONSIDER THE SWORN TESTIMONY OF THE VARIOUS WITNESSES WHO WILL BE CALLED TO TRIAL TO TESTIFY, AND THEY WILL CONSIDER SUCH OTHER EVIDENCE AS MAY BE INTRODUCED IN THE TRIAL OF THIS CASE BY THE STATE OR THE DEFENSE OR BOTH.

THE JURY, IN ADDITION TO BEING THE FINDERS OF THE FACT AND THE SOLE FINDERS, ARE ALSO THE SOLE JUDGES OF THE CREDIBILITY, MEANING THE BELIEVABILITY OF ALL THE WITNESSES WHO TESTIFY.

IT IS FOR THAT REASON THAT WE SAY A JUROR MUST SET ASIDE ANYTHING THEY MAY HAVE READ OR HEARD IN THE NEWSPAPER, IF THEY CAN, MUST SET ASIDE ANY CONVERSATIONS THAT THEY HAVE HAD BECAUSE THAT TESTIMONY WAS NOT UNDER OATH. IT WAS NOT SWORN TO.

THE TOTAL JURY WOULD NOT HAVE HAD THE OPPORTUNITY OF JUDGING THAT ACTOR'S DEMEANOR, THAT ACTOR'S TRUSTWORTHINESS, WOULD NOT HAVE HAD THE OPPORTUNITY TO OBSERVE AND GIVE SUCH WEIGHT TO THAT TESTIMONY AS THEY THINK IS APPROPRIATE.

THAT'S WHY WE SAY THAT IT IS IMPROPER TO CONSIDER WHAT YOU MAY HAVE READ OR HEARD ON THE OUTSIDE BECAUSE BASICALLY IT'S GOSSIP. DO YOU UNDERSTAND THAT?

A YES.

Q HAVING SAID THAT, THERE IS A THRESHOLD MATTER THAT WE NEED TO CONSIDER HERE. ON YESTERDAY IN THE BEGINNING OF THE QUALIFICATIONS, YOU INDICATED THAT YOU HAD AN OPINION ABOUT THIS MATTER.

A YES.

Q DO YOU UNDERSTAND THAT?

A YES.
Q NOW, CAN YOU TELL ME FROM WHICH SOURCE THAT OPINION IS DERIVED? CAN YOU TELL ME?
A THROUGH TALKING WITH MOSTLY WITH MY HUSBAND AND THROUGH READING THE NEWSPAPER.
Q AND YOUR HUSBAND, WHERE DOES HE WORK?
A HE ALSO WORKS AT ALBEMARLE CORPORATION.
Q CAN YOU TELL ME THE SOURCE OF HIS INFORMATION, UNLESS IT'S READING AND SO FORTH.
A JUST MOSTLY READING.
Q OTHER THAN TALKING TO YOUR HUSBAND AND READING, HAS ANYBODY SPECIFICALLY TALKED TO YOU ABOUT THIS CASE?
A OTHER PEOPLE OTHER THAN MY HUSBAND HAVE TALKED BUT IT'S ONLY BEEN ACQUAINTANCES AND THAT KIND OF THING.
Q WELL, I HAVE REVIEWED YOUR DOCUMENT THAT YOU RETURNED TO US. I NOTE THAT YOU ARE NOT ONLY A HIGH SCHOOL GRADUATE, THAT YOU ARE A GRADUATE OF CLEMSON COLLEGE, CLEMSON UNIVERSITY. WHEN I WAS IN SCHOOL, WE CALLED IT CLEMSON COLLEGE. I NOTE YOU HAVE A VERY RESPONSIBLE JOB AS A PROJECT ENGINEER.
A YES, SIR.
Q MY THRESHOLD QUESTION -- FIRST, LET ME SAY THIS. IN A COMMUNITY THE SIZE OF ORANGEBURG AND IN A

COMMUNITY THE SIZE OF THE TOWN FROM WHICH I COME, WHEN A SIGNIFICANT INCIDENT HAPPENS, WE ALL TEND TO TALK ABOUT IT AND DISCUSS IT, TALK ABOUT IN COFFEE SHOPS AND THAT SORT OF THING.

BUT I NEED TO KNOW FROM YOU IF YOU ARE SELECTED AS A JUROR, CAN YOU SET ASIDE THE CONVERSATIONS THAT YOU HAVE HAD WITH YOUR HUSBAND OR OTHER PEOPLE, LISTEN CAREFULLY TO THE TESTIMONY IN THIS TRIAL, JUDGE THE CREDIBILITY AND THE BELIEVABILITY OF THE WITNESSES AND MAKE A DETERMINATION NOW ON WHAT YOU HEAR IN THE COURTROOM AND NOT WHAT SOMEBODY MAY HAVE TOLD YOU OR YOU MAY HAVE READ? CAN YOU TELL ME TRUTHFULLY HOW YOU FEEL?

A YES, I THINK I COULD MAKE A FAIR DECISION.

Q YOU THINK SO. THE REASON I ASKED IS YESTERDAY YOU INDICATED THAT YOU HAD SOME PREVIOUS OPINION.

A RIGHT.

Q NOTHING WRONG WITH THAT. WE ALL FORM PRELIMINARY OPINIONS, BUT I JUST NEED FOR YOU TO TELL ME THAT YOU CAN SET THAT ASIDE AND AS A JUROR PROMISE ME AND THESE PEOPLE UNDER OATH THAT WHATEVER YOUR VERDICT IS WILL BE BASED ON WHAT YOU HEAR IN THIS COURTROOM.

A YES, SIR.

Q CAN YOU DO THAT?

A YES, SIR.

Q NOW, YOU UNDERSTAND THAT THIS IS POSSIBLY A TWO-PHASE TRIAL?

A YES.

Q THE FIRST PHASE DEALS SOLELY AND ONLY WITH THE GUILT OR INNOCENCE. IF HE IS FOUND NOT GUILTY, WE STOP RIGHT THERE. IF HE IS FOUND GUILTY -- AND I USE THAT WORD ADVISEDLY, IF -- AND I MAKE NO SUGGESTION TO YOU THAT WE WILL GET TO THE SECOND PHASE.

I TELL YOU IF THE JURY FINDS HIM GUILTY OF MURDER WITH MALICE AFORETHOUGHT BEYOND A REASONABLE DOUBT, WE THEN AND ONLY THEN GO TO WHAT IS KNOWN AS THE PENALTY PHASE.

IN THE PENALTY PHASE THERE IS ONLY ONE QUESTION FOR THE JURY AND THAT QUESTION IS THIS: HAVING FOUND THE DEFENDANT GUILTY OF MURDER WITH MALICE AFORETHOUGHT, WHAT SHALL THE PUNISHMENT BE?

SHALL IT BE IMPRISONMENT FOR LIFE OR SHALL IT BE THE SENTENCE OF DEATH BY ELECTROCUTION OR LETHAL INJECTION? IT'S ONE OR THE OTHER. MOST PEOPLE IN OUR SOCIETY ARE NEVER CONFRONTED WITH THIS AWESOME DECISION. YOU WOULD UNDERSTAND THAT.

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q HOWEVER, WHEN THEY ARE THEY FALL INTO ONE OF

THREE GROUPS AS THAT LETTER INDICATES. THERE IS A GROUP, OF COURSE, WHO SAY HAVING FOUND SOMEBODY GUILTY OF MURDER WITH MALICE AFORETHOUGHT, I WILL ALWAYS BE FOR THE DEATH PENALTY.

THERE IS AN EQUAL GROUP WITH A DIFFERENT PHILOSOPHY WHO SAY EVEN THOUGH WE FIND HIM GUILTY OF MURDER WITH MALICE AFORETHOUGHT, I CAN NEVER TAKE THE LIFE OF ANOTHER HUMAN BEING. I WOULD ALWAYS BE FOR LIFE IMPRISONMENT.

EQUALLY THERE IS A THIRD GROUP -- AND THERE'S NO RIGHT OR WRONG ANSWERS HERE. THERE IS A THIRD GROUP WHO SAY YES, WE FOUND HIM GUILTY OF MURDER WITH MALICE AFORETHOUGHT.

NOW I AM GOING TO CONSIDER THE ADDITIONAL TESTIMONY IN AGGRAVATION. I AM GOING TO CONSIDER THE ADDITIONAL TESTIMONY IN MITIGATION. THEN I AM GOING TO TAKE A LOOK AT ALL THE FACTS AND THEN I WILL DECIDE WHETHER OR NOT LIFE IMPRISONMENT OR DEATH IS APPROPRIATE. DO YOU UNDERSTAND?

A WHAT DO YOU MEAN BY IN AGGRAVATION AND MITIGATION?

Q IF WE GET TO THE SECOND PHASE, THE STATE OF SOUTH CAROLINA WILL ATTEMPT TO INTRODUCE FOR YOUR CONSIDERATION WHAT THEY PERCEIVE TO BE AGGRAVATING CIRCUMSTANCES, WHICH MAKES THE CRIME MORE HEINOUS.

A OKAY.

Q THE DEFENSE WILL ATTEMPT TO INTRODUCE FOR YOUR CONSIDERATION WHAT IS KNOWN AS MITIGATING CIRCUMSTANCES, EVIDENCE WHICH IN THEIR VIEW LESSENS THE ENORMITY OF THE CRIME.

A OKAY.

Q ALL OF THIS TESTIMONY IS TO GIVE THE JURY A BETTER UNDERSTANDING SO THAT THEY CAN MAKE FOR THEMSELVES AN APPROPRIATE DECISION AS TO WHETHER OR NOT LIFE IMPRISONMENT OR DEATH IS THE APPROPRIATE SENTENCE. DO YOU UNDERSTAND?

A YES, SIR.

Q KNOWING THAT THERE ARE THREE GROUPS, ONE OF WHICH SAYS I WILL ALWAYS BE FOR THE DEATH PENALTY. THE SECOND GROUP SAYS I CAN NEVER BE FOR THE DEATH PENALTY. THE THIRD GROUP SAYS IT WILL DEPEND ON SUCH FACTS AS I PERCEIVE THEM. WOULD YOU CONCLUDE THAT YOU ARE THE FIRST, SECOND OR THIRD?

A THIRD.

Q THE THIRD. WHAT IS YOUR VIEW OF THE THIRD, PLEASE, MA'AM?

A MY VIEW OF THE THIRD IS THAT YOU WOULD COME INTO THE SECOND PHASE OF THE TRIAL WITHOUT A PREFORMED OPINION AND LISTEN TO THE FACTS AND THEN THROUGH REVIEWING IT WITH YOUR OTHER JURORS, COME UP WITH A

JUDGMENT.

Q I THANK YOU FOR THAT EXPLANATION. LET ME EXPLAIN TO YOU THE FURTHER PROCEDURE IN A CASE OF THIS KIND. IF -- AND I USE THAT ADVISEDLY -- IF 12 JURORS IN THEIR DELIBERATION UNANIMOUSLY CONCLUDE THAT THE SENTENCE OF DEATH WAS APPROPRIATE, OUR PROCEDURE CALLS FOR EACH ONE OF THEM TO SAY SO IN OPEN COURT. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q COULD YOU DO THAT?

A YES, SIR.

Q ONE FURTHER THING. IF IT IS THE UNANIMOUS DECISION OF THE JURY THAT THE DEATH PENALTY IS APPROPRIATE, OUR PROCEDURE ALSO REQUIRES THAT EACH ONE OF THEM SIGN A DOCUMENT TO THAT EFFECT. IF THAT BE THE UNANIMOUS DECISION OF THE JURY, COULD YOU DO THAT?

A YES.

THE COURT: YOU MAY EXAMINE.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. ANTLEY, I WILL BE VERY BRIEF BECAUSE I THINK JUDGE COTTINGHAM ASKED MOST OF THE QUESTIONS THAT I NORMALLY WOULD HAVE ASKED AT THIS POINT. I JUST WANT TO MAKE SURE YOU UNDERSTOOD THAT UNDER THE

RULES WE OPERATE UNDER, THE JURY MAKES THE DECISION ON THE PENALTY IF WE GET TO THAT PHASE. ALL THE JUDGE DOES IS ORDERS WHATEVER THE JURY SAYS THE SENTENCE OUGHT TO BE. HE ORDERS THAT INTO EFFECT.

IF AFTER HEARING ALL THE EVIDENCE, THE JURY VOTES FOR A LIFE SENTENCE, THE JUDGE WOULD IMPOSE A SENTENCE OF LIFE WITHOUT PAROLE AND THAT DEFENDANT WOULD SERVE THAT SENTENCE OUT.

ON THE OTHER HAND, IF THE JURY AFTER HEARING ALL THE FACTS VOTE FOR THE IMPOSITION OF THE DEATH PENALTY, THAT WILL BE THE JUDGE'S ORDER AND THAT PERSON WILL ACTUALLY BE EXECUTED.

MY QUESTION IS IF YOU WERE ON A JURY IN THIS KIND OF CASE AND THE FACTS WERE BAD ENOUGH, CAN YOU HONESTLY VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE WILL ACTUALLY BE CARRIED OUT AND THAT PERSON WOULD BE EXECUTED?

A YES.

Q THE JUDGE HAS ALREADY ASKED YOU ABOUT SIGNING THE DEATH VERDICT FORM AND ANNOUNCING THAT DECISION. IF YOU VOTED FOR THE DEATH PENALTY, YOU COULD DO THOSE TWO THINGS?

A YES, SIR.

Q THE JURY WILL BE PUT IN A MOTEL STARTING TOMORROW FOR MAYBE THREE OR FOUR DAYS, WHICH IS AN

INCONVENIENCE ON ANYBODY. DO YOU HAVE ANY UNUSUAL SITUATION, BUSINESS, PERSONAL, THAT WOULD PRESENT ANY REAL PROBLEMS FOR YOU, OTHER THAN JUST NOT WANTING TO BE IN A MOTEL?

A NO, UNFORTUNATELY, NO.

Q THANK YOU. THAT'S ALL I HAVE, MRS. ANTLEY.

MR. STONE: A FEW QUESTIONS, YOUR HONOR.

THE COURT: YES, SIR.

VOIR DIRE EXAMINATION

BY BY MR. STONE:

Q MRS. ANTLEY, I'M DUFFIE STONE. I REPRESENT MR. ALEKSEY DOWN HERE, ALONG WITH MR. THOMAS SIMS. CAN I ASK YOU WHAT YOUR OPINION WAS? I KNOW YOU SAID, I GUESS IT WAS YESTERDAY OR THE DAY BEFORE YESTERDAY, THAT YOU HAD A PRECONCEIVED NOTION OR OPINION ABOUT THE CASE. CAN I ASK YOU WHAT THAT WAS?

A YES. BASED ON WHAT I HAD READ AND DISCUSSED, I FELT LIKE HE WAS GUILTY.

Q IS THIS INFORMATION THAT YOU HAD GOTTEN FROM JUST THE NEWSPAPER OR TELEVISION ALSO OR WHAT?

A NEWSPAPER AND DISCUSSION WITH ACQUAINTANCES.

Q THE OTHER ACQUAINTANCES THAT YOU TALKED TO, DID THEY ALSO FEEL LIKE MR. ALEKSEY WAS GUILTY?

A I'M NOT SURE. I'M NOT SURE.

Q THAT'S FINE. WHAT ABOUT YOUR HUSBAND?

A YES.

Q NO QUESTION ABOUT THAT?

A RIGHT.

Q AND THE JUDGE ASKED YOU VERY THOROUGHLY ABOUT WHAT YOUR DUTY AS A JUROR WAS. UNDERSTANDING THIS, THERE IS NO RIGHT OR WRONG ANSWER, UNLESS YOU ARE GIVING US AN ANSWER THAT YOU THINK WE WANT TO HEAR.

THE QUESTION THAT THE JUDGE ASKED YOU AND THE QUESTION THAT MR. BAILEY AND I ARE BOTH INTERESTED IN IS WHEN YOU SIT ON A JURY, YOU HAVE TO TAKE THE EVIDENCE ONLY FROM THE WITNESS STAND.

SOMETIMES IT MAY BE HUMAN NATURE TO ALREADY HAVE SOMETHING IN YOUR MIND; BUT WHEN YOU ARE IN TRIAL, THE ONLY THING YOU CAN PAY ATTENTION TO IS WHAT YOU HEAR FROM THE WITNESS BOX AND YOU CAN'T TAKE ANYTHING ELSE THAT YOU HAD IN YOUR MIND COMING IN. YOU CAN'T LISTEN TO ANY OF THAT. CAN YOU DO THAT?

A YES.

Q NO PROBLEM WITH THAT?

A NO.

Q THIS CASE OBVIOUSLY IS A VERY SERIOUS CASE AND IT'S ABOUT THE SHOOTING OF A HIGHWAY PATROLMAN. YOU KNOW THAT, RIGHT?

A YES.

Q THE JUDGE HAS ASKED YOU SOME QUESTIONS ABOUT THE

DEATH PENALTY AND MR. BAILEY HAS ASKED YOU QUESTIONS ABOUT THE DEATH PENALTY. DOES THAT GIVE YOU ANY FEELING AS TO THE GUILT OR INNOCENCE OF MR. ALEKSEY?

A NO.

Q THE FACT THAT IT IS A SERIOUS OFFENSE AND THE FACT THEY ARE ASKING FOR THE DEATH PENALTY, DOES THAT GIVE YOU ANY FEELING ONE WAY OR THE OTHER ABOUT HIS GUILT OR INNOCENCE?

A NO.

Q YOU REALIZE THAT WE MAY NEVER GET TO THE ISSUE OF WHETHER OR NOT THE DEATH PENALTY IS AN APPROPRIATE SENTENCE?

A YES.

Q AND YOU CAN STILL SIT THERE AND IF THE SOLICITOR DOESN'T PROVE HIS CASE, IF THE FACTS ARE NOT SUFFICIENT, CAN YOU STILL COME BACK WITH A VERDICT OF NOT GUILTY DESPITE YOUR PRIOR FEELINGS ABOUT THIS CASE?

A YES.

MR. STONE: NOTHING ELSE, JUDGE.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: QUALIFIED, YOUR HONOR.

THE COURT: WHAT SAYS THE DEFENSE?

MR. STONE: I THINK, YOUR HONOR, WE PUT HER

IN A POSITION OF HAVING TO CHANGE HER MIND. I THINK YOU DID A VERY NICE JOB OF EXPLAINING TO HER HER DUTIES.

I THINK SHE WOULD HAVE A HARD TIME THROWING OUT HER PRIOR CONCEPTIONS, ESPECIALLY CONSIDERING SHE STOOD UP MONDAY AND WANTED TO TELL YOU THAT SHE HAD AN OPINION. I WOULD ASK THAT SHE BE EXCUSED.

THE COURT: I WOULD RESPECTFULLY DENY THAT. BY YOUR QUESTIONING, TOO, SHE CLEARLY INDICATED THAT SHE IS A VERY INTELLIGENT PERSON, CONSCIENTIOUS IN MY VIEW. SHE INDICATED THAT SHE WOULD BASE HER VERDICT ON THE SWORN TESTIMONY IN THIS CASE. I AM GOING TO ACCEPT HER. THANK YOU.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MRS. ANTLEY, AS I HAVE INDICATED, WE ARE QUALIFYING 35 JURORS, FROM WHICH 14 WILL BE CHOSEN AT 9:30 IN THE MORNING. YOU HAVE BEEN FOUND BY THE ATTORNEYS FOR THE STATE AND THE DEFENDANT TO BE QUALIFIED TO SERVE IF SELECTED.

PLEASE REPORT BACK HERE AT 9:30 IN THE MORNING, BRINGING WITH YOU SUCH PERSONAL EFFECTS AND CLOTHING AS WOULD BE REQUIRED IN THE EVENT THAT YOU ARE SELECTED FOR SEQUESTRATION PURPOSES. ANY QUESTIONS?

JUROR: APPROXIMATELY HOW MANY DAYS?

THE COURT: IN MY VIEW WE WILL BE OUT BY TUESDAY OR WEDNESDAY. I AM PRETTY COMFORTABLE WITH THAT, OKAY?

JUROR: YES, SIR.

THE COURT: THANK YOU SO MUCH. SEE YOU AT 9:30 IN THE MORNING. WHILE YOU WERE READING THE LETTER, I AGAIN ADMONISHED ALL THE JURORS, AS I DO YOU. PLEASE DON'T DISCUSS THIS CASE WITH ANYONE. PERMIT NO ONE TO DISCUSS IT WITH YOU. DO NOT EVEN DISCUSS THE QUESTIONS AND ANSWERS THAT WERE GIVEN.

IF ANYBODY WANTS TO TALK TO YOU ABOUT THIS CASE, YOU STOP THEM AND TELL THEM YOU ARE A POTENTIAL JUROR AND YOU ARE UNDER MY ORDER NOT TO DISCUSS THE CASE. IF THEY PERSIST TAKE THEIR NAME AND REPORT THAT BACK TO ME.

GENERALLY ALL YOU HAVE TO SAY IS, "I'M SORRY. JUDGE COTTINGHAM HAS TOLD ME I CAN'T DO IT." I KNOW THAT YOU WILL OBEY THAT INSTRUCTION. THANK YOU, MA'AM. SEE YOU AT 9:30 IN THE MORNING.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: NEXT, PLEASE.

(THE JUROR ENTERS THE COURTROOM.)

LATOYA WHITE, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MRS. WHITE, GOOD MORNING. HOW ARE YOU DOING?

A NERVOUS.

Q MRS. WHITE, WHAT IS YOUR PROFESSION, PLEASE?

A I'M AN ASSISTANT MANAGER AT THE CRATE IN ORANGEBURG, PRINCE OF ORANGE MALL.

Q YOU FINISHED BRANCHVILLE HIGH SCHOOL AND THEN YOU WENT TO SOME PROFESSIONAL SCHOOL, COSMETOLOGY, I BELIEVE?

A YES, SIR.

Q WOULD YOU SPEAK IN THE MICROPHONE SO WE CAN ALL HEAR YOU.

A YES, SIR.

Q LET ME BEGIN BY SAYING THAT IN MOST SMALL TOWNS WHEN AN INCIDENT OCCURS, WE TALK ABOUT IT IN THE COFFEE SHOPS, WE TALK ABOUT IT AT OUR PLACE OF BUSINESS, WE READ ABOUT IT IN THE PAPER.

BUT UNDER OUR SYSTEM OF JURISPRUDENCE, A JUROR OR A JURY IS THE SOLE FINDERS OF THE FACT AND THE CREDIBILITY OF THE WITNESSES. OUR SYSTEM MANDATES THAT A JURY MAKE THEIR DECISION BASED ON THE LAW AND EVIDENCE IN THIS COURTROOM UNDER OATH AND NOT WHAT THEY MAY HAVE READ OR HEARD SOMEWHERE ELSE. DO YOU UNDERSTAND THAT?

A YES, SIR.
Q NOW, SOMETIMES JURORS SAY I HAVE MADE UP MY OPINION AND NOTHING IS GOING TO CHANGE MY MIND. OTHER JURORS SAY I CAN SET THAT ASIDE AND I WILL BASE MY VERDICT ON THE LAW AND THE EVIDENCE HEARD IN THIS COURTROOM. DO YOU UNDERSTAND THE DIFFERENCE?
A YES, SIR.
Q NOW, WE WANT YOUR HONEST ANSWERS AND I KNOW THAT YOU WILL GIVE THEM TO ME. YESTERDAY YOU WALKED UP AND VERY PROPERLY SAID TO US OR I THINK I HEARD YOU SAY, "I THINK HE IS GUILTY." IS THAT WHAT YOU SAID?
A YES, SIR.
Q CAN YOU TELL ME WHAT YOU BASE THAT OPINION ON? YOU WERE HONEST WITH YOU ME AND I THANK YOU FOR THAT. YOU UNDERSTAND THAT?
A YES, SIR.
Q THAT'S A SIGN OF GOOD CITIZENSHIP. CAN YOU TELL ME UPON WHAT BASES DID YOU MAKE THAT DECISION?
A OKAY.
Q TALK INTO THE MICROPHONE FOR US. I WANT EVERYBODY TO BE ABLE TO HEAR YOU. I KNOW THIS IS DIFFICULT FOR YOU BUT WE NEED TO INQUIRE, PLEASE.
A MY UNCLE, HE IS FRIENDS OF THE LATE MR. LINGARD, DEPUTY LINGARD. HIS NAME IS LANCE CORPORAL LESLIE WEST.

Q A LANCE CORPORAL. IS HE WITH THE HIGHWAY PATROL?

A YES, SIR, I ASSUME. YOU KNOW, WHEN IT FIRST HAPPENED, I WAS AT MY GRANDMOTHER'S HOUSE AND HE DISCUSSED IT. HE JUST WAS HURT. HE WAS VERY EMOTIONAL AND HE WAS REALLY EMOTIONAL. HE REALLY COULDN'T SPEAK ABOUT IT.

Q I CAN UNDERSTAND THAT.

A AT THE FUNERAL HE HAD TO SPEAK OVER HIM AT THE FUNERAL, WHICH HE COULDN'T COMPLETE SPEAKING OVER HIM BECAUSE HE WAS SO EMOTIONAL.

Q YOU ATTENDED THE FUNERAL?

A NO, SIR. I SAW IT ON TELEVISION AND TAPES OF IT. I MEAN, REALLY I TOOK IT UPON MYSELF TO SAY THAT HE WAS GUILTY BECAUSE AS EMOTIONAL AS HE WAS AND THINKING THAT THAT COULD HAVE BEEN BY UNCLE THAT GOT KILLED, YOU KNOW, I TOOK IT UPON MYSELF THAT THE LITTLE THAT I READ IN THE PAPER AND WHATNOT THAT IT WAS HIM -- IF I'M NOT MISTAKEN, IT WAS HIM AND ANOTHER FEMALE AND A BABY. I'M THINKING WHO ELSE COULD HAVE DONE IT, YOU KNOW. IF THE FEMALE GOT OFF -- THIS IS THE LITTLE THAT I DO KNOW ABOUT THIS AND I MAY BE WRONG, YOU KNOW.

Q I UNDERSTAND.

A BEING THAT I READ THE PAPER AND I AM HERE NOW, I

DO UNDERSTAND THAT NOW I SHOULD LISTEN TO WHAT HE HAS TO SAY AND LISTEN TO WHAT IS GOING ON BEFORE I MAKE MY DECISION OF WHETHER HE IS GUILTY OR NOT.

Q SO YOU ARE SAYING NOW THAT YOU ARE PREPARED TO SET THAT OPINION ASIDE?

A YES, SIR.

Q AND TO BASE YOUR VERDICT, WHATEVER IT IS --

A YES, SIR.

Q -- ON THE TESTIMONY YOU HEARD IN THIS COURTROOM?

A YES, SIR.

Q LET ME SAY THIS TO YOU. COUNSEL FOR THE STATE AND THE DEFENDANT DEEPLY APPRECIATE YOUR CANDID ANSWER HERE.

A THANK YOU.

Q DID YOU HAVE AN OPPORTUNITY TO READ THE TYPE OF JURORS BACK THERE A WHILE AGO?

A YES, SIR.

Q DO YOU UNDERSTAND THE THREE TYPES?

A YES, SIR.

Q WOULD YOU LIKE FOR ME TO EXPLAIN THEM TO YOU AGAIN?

A THAT'S OKAY.

Q WHICH GROUP WOULD YOU COME IN, THE ONE GROUP WHO SAYS I WILL ALWAYS BE FOR THE DEATH PENALTY, THE

SECOND GROUP WHO SAYS I CAN NEVER BE OR THE THIRD GROUP WHO SAYS I AM GOING TO CONSIDER ALL THE FACTS AND THEN I WILL DECIDE WHETHER OR NOT DEATH OF LIFE IMPRISONMENT IS APPROPRIATE? WOULD YOU BE ONE, TWO OR THREE?

A TWO.

Q TWO?

A YES, SIR.

Q WHAT IS YOUR VIEW OF TWO, PLEASE?

A I AM A BAPTIST. I DON'T BELIEVE IN THE DEATH PENALTY. I DON'T BELIEVE IN TAKING SOMEONE'S LIFE. ALTHOUGH I DO BELIEVE THAT IF YOU TAKE SOMEONE'S LIFE, YOU SHOULD BE PUNISHED.

I HAVE NEVER BEEN THERE BUT I DO KNOW THAT -- WELL, I AM ASSUMING THAT FROM WHAT I SEE HAPPENS IN PRISON AND WHATNOT, THAT'S A TERRIBLE PLACE TO BE. I MEAN, WHO WOULD WANT TO BE IN PRISON, YOU KNOW. ALSO I DO KNOW THAT, I MEAN, IF YOU DON'T PAY FOR IT NOW, YOU WILL PAY FOR IT WHEN DEATH COMES.

Q YOUR VIEW -- I DON'T WANT TO INTRUDE ON YOUR PRIVACY -- YOUR VIEW THAT YOU CAN NEVER IMPOSE THE DEATH SENTENCE, IS THAT JUST A PERSONAL VIEW OR A RELIGIOUS VIEW?

A THAT'S MY PERSONAL BELIEF.

Q AND YOU HAVE HELD THAT FOR SOME TIME?

A YES, SIR. I DON'T BELIEVE IN DEATH.

Q I THANK YOU.

A YOU'RE WELCOME.

SOLICITOR BAILEY: INDULGE US A SECOND.

(ATTORNEYS CONFER.)

THE COURT: I WILL LET YOU GO TO THE JURY ROOM JUST A MOMENT.

SOLICITOR BAILEY: NO QUESTIONS, YOUR HONOR.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: YES, SIR.

SOLICITOR BAILEY: NOT QUALIFIED.

THE COURT: WHAT IS YOUR POSITION?

MR. STONE: NOT QUALIFIED.

THE COURT: I WOULD DISQUALIFY ON TWO BASES. ONE, SHE COULD NEVER GIVE THE DEATH PENALTY. SECOND, SHE KNOWS TOO MUCH ABOUT THE CASE. I WAS PREPARED TO DISCHARGE HER ANYWAY.

MR. STONE: YES, SIR.

THE COURT: LET THE RECORD REFLECT THAT SHE IS EXCUSED BY VIRTUE OF THE CONSENT OF THE STATE AND THE DEFENSE COUNSEL.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MRS. WHITE, I WANT YOU TO KNOW THAT I PERSONALLY APPRECIATE YOUR CANDOR, YOUR

HONESTY AND YOUR RESPONSES. YOUR RESPONSE IS JUST ABSOLUTELY THE MARK OF A GOOD CITIZEN.

ORDINARILY I WOULD LOVE TO HAVE YOU ON ANY JURY I'VE GOT; BUT IN FAIRNESS TO YOU IN THIS CASE, BEING CLOSELY ASSOCIATED TO THE FACTS AS YOU WERE, I THINK IT FAIR THAT YOU NOT BE ASKED OR REQUIRED TO SERVE. SO I AM GOING TO EXCUSE YOU. THANK YOU SO MUCH.

JUROR: THANK YOU. CAN I ASK A QUESTION?

THE COURT: YES, MA'AM.

JUROR: CAN I TALK TO HER ABOUT AN EXCUSE FOR MY JOB?

THE COURT: SURE, YES.

(PAUSE.)

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

JUDY BRANTLEY, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MRS. BRANTLEY, GOOD MORNING.

A GOOD MORNING.

Q MRS. BRANTLEY, I NOTE THAT YOU ARE A GRADUATE OF HIGH SCHOOL AND HAD SOME TRAINING WITH ORANGEBURG

TECHNICAL COLLEGE; IS THAT CORRECT?

A YES, SIR.

Q YOU HAVE BEEN EMPLOYED AT THE STYLING SALON FOR THE LAST EIGHT MONTHS; IS THAT RIGHT?

A YES, SIR.

Q WHERE WERE YOU EMPLOYED PRIOR TO THAT, PLEASE?

A AT AMBERS ON WOOD VINE DRIVE.

Q WHAT DID YOU DO THERE?

A I WAS A SLIDE OPERATOR FOR 17 YEARS.

Q ON THE BACK OF THIS DOCUMENT WHEN ASKED TO GIVE YOUR HUSBAND'S NAME, YOU SAID GEORGE?

A YES, SIR.

Q GEORGE WHO?

A BRANTLEY.

Q OKAY. WHERE DOES GEORGE BRANTLEY WORK?

A HE IS DECEASED.

Q HE IS DECEASED. YOU ALONG WITH SOME OTHERS ON MONDAY INDICATED THAT YOU MAY HAVE HEARD, READ OR DISCUSSED SOME PORTION OR THIS CASE WITH SOMEBODY. CAN YOU TELL ME ABOUT THAT, PLEASE?

A THE LADY THAT WAS SITTING NEXT TO ME, I ASKED HER ABOUT IT; BUT I DIDN'T KNOW WHAT IT WAS. THAT'S ALL.

Q YOU MEAN OUT THERE IN THE JURY ROOM?

A YES.

Q YOU WERE SITTING NEXT TO A JUROR?
A YES, SIR.
Q AND WHAT DID SHE SAY TO YOU?
A I JUST ASKED HER WHAT WAS THE CASE THAT WE WERE WORKING ON.
Q I GOT YOU. SO HAVE YOU EVER READ ANYTHING ABOUT THIS CASE?
A I DON'T READ THE NEWSPAPER.
Q YOU DO NOT? YOU CAN READ AND WRITE, CAN'T YOU?
A YES, SIR. I DON'T HAVE TIME.
Q HOW ABOUT WATCHING TELEVISION?
A NO, I DON'T HAVE TIME.
Q YOU DON'T WATCH TELEVISION EITHER. SOMETIMES I THINK MAYBE THAT IS THE BEST WAY.
A WHEN YOU GOT SMALL KIDS, YOU CAN'T.
Q SO YOU ARE SAYING YOU DON'T KNOW ANYTHING ABOUT THE CASE?
A NO.
Q LET ME ASK YOU THIS. DO YOU UNDERSTAND THAT THIS INDIVIDUAL IS INDICTED FOR THE MURDER OF A HIGHWAY PATROLMAN? DO YOU UNDERSTAND THAT?
A YES, SIR.
Q DO YOU UNDERSTAND THAT TO THIS CHARGE HE HAS PLED NOT GUILTY? DO YOU UNDERSTAND THAT?
A YES, SIR.

Q HE IS PRESUMED INNOCENT AND THE STATE OF SOUTH CAROLINA MUST PROVE HIM GUILTY TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q NOW, DURING THE FIRST PART OF THIS TRIAL IF THE JURY CONCLUDES THAT HE IS NOT GUILTY OR THE STATE HAS NOT PROVEN HIM GUILTY, WE STOP RIGHT THERE. YOU UNDERSTAND?

A YES, SIR.

Q NOW, ONLY IF THE JURY HAS FOUND HIM GUILTY OF MURDER DO WE GO TO THE SECOND PART OF THIS TRIAL. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q NOW, IF WE GET TO THE SECOND PART, THE ONLY QUESTION FOR THE JURY IS THIS: WE THE JURY HAVING FOUND HIM GUILTY OF MURDER, WHAT SHALL THE PUNISHMENT BE, LIFE IMPRISONMENT OR DEATH? THAT IS THE ONLY QUESTION IF YOU GET TO THE SECOND PART. YOU MAY NOT GET THERE. DO YOU UNDERSTAND THAT?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q DID YOU HAVE AN OPPORTUNITY TO READ THE LETTER BACK THERE A MOMENT AGO?

A YES, SIR.

Q DO YOU UNDERSTAND THE THREE TYPES OF JURORS WHO

ARE CONFRONTED WITH THIS SENTENCING PROCEDURE?
A YES, SIR.
Q THERE IS ONE GROUP WHO SAYS HAVING CONVICTED HIM OF MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY. THERE IS A SECOND GROUP WHO SAY FOR EITHER PRIVATE OR RELIGIOUS REASONS, I CAN NEVER SENTENCE ANYBODY TO DEATH EVEN THOUGH HE HAS COMMITTED MURDER.
THERE IS A THIRD GROUP WHO SAY WE FOUND HIM GUILTY OF MURDER. I AM NOW GOING TO CONSIDER ALL THE TESTIMONY AND EVIDENCE. DEPENDING ON HOW I FEEL, I CAN IMPOSE A SENTENCE OF LIFE IMPRISONMENT OR I CAN IMPOSE A SENTENCE OF DEATH. WOULD YOU BE THE ONE -- WHICH WOULD YOU BE, ONE, TWO OR THREE?
A THREE.
Q THREE?
A YES, SIR.
Q CAN YOU TELL ME WHAT IS YOUR VIEW OF THREE?
A AFTER VIEWING ALL THE FACTS OF WHAT I THINK WHAT CAUSED HIM TO DO -- TO COME TO THAT CONCLUSION OF KILLING OR EVERYTHING THAT IS ADDED ALL TOGETHER.
Q YOU COULD IF YOU THOUGHT IT APPROPRIATE --
A YES.
Q -- BE FOR THE DEATH PENALTY?
A I THINK SO.
Q EQUALLY IMPORTANT YOU COULD BE FOR LIFE IN

PRISON?
A YES, SIR.
Q LET ME FURTHER TALK TO YOU ABOUT OUR PROCEDURE. IF YOU AND THE 11 OTHER JURORS IN THAT JURY ROOM AGREED, ALL OF YOU, THAT THE SENTENCE OF DEATH WAS APPROPRIATE, OUR RULES REQUIRE THAT EACH JUROR STAND IN THE JURY ROOM AND SAY SO, STAND IN OPEN COURT AND SAY SO. IF THAT WAS YOUR DECISION BACK THERE, COULD YOU COME OUT HERE AND SAY THAT?
A YES, SIR.
Q OUR RULES ALSO SAY THAT IF THAT WAS YOUR DECISION BACK THERE AND IF YOU SAY SO IN OPEN COURT, OUR RULES ALSO REQUIRE THAT YOU SIGN A PIECE OR PAPER ALONG WITH THE OTHER 11 JURORS. COULD YOU DO THAT?
A YES, SIR.
THE COURT: YES, SIR.
SOLICITOR BAILEY: THANK YOU, YOUR HONOR.
VOIR DIRE EXAMINATION
BY SOLICITOR BAILEY:
Q MRS. BRANTLEY, I'M WALTER BAILEY. I WILL BE PROSECUTING THIS CASE. I WILL NEED TO ASK YOU A FEW MORE QUESTIONS. I NOTICE FROM YOUR QUESTIONNAIRE THAT YOU HAVE BEEN A WITNESS IN A CRIMINAL CASE BEFORE?
A A WITNESS IN A CRIMINAL CASE?

Q YES, MA'AM. LET ME SEE. YES, THAT WHAT IT SAYS ON THE QUESTIONNAIRE. IT SAYS, "HAVE YOU EVER BEEN A WITNESS IN A CRIMINAL CASE?" AND THE ANSWER IS YES ON HERE.

A I MUST HAVE PUT IT WRONG. NO, SIR, I HAVE NEVER BEEN A WITNESS IN A CRIMINAL CASE.

Q OKAY. THERE IS ANOTHER QUESTION WHETHER YOU HAVE SERVED ON A JURY IN A CRIMINAL CASE. HAVE YOU BEEN ON A JURY IN A CRIMINAL CASE?

A NOT FOR A CRIMINAL CASE, TO THE OTHER ONE DOWN THERE.

Q THAT WOULD HAVE BEEN IN MAGISTRATE'S COURT OR SOMETHING?

A YES.

Q I ALSO NOTICE YOU ATTEND THE GOSPEL LIGHT HOLINESS CHURCH?

A YES, SIR.

Q DOES THAT CHURCH HAVE ANY PARTICULAR FEELINGS ON THE DEATH PENALTY THAT YOU ARE AWARE OF ONE WAY OR THE OTHER?

A NO, SIR.

Q DO YOU HAVE ANY RELIGIOUS BELIEFS ABOUT THE DEATH PENALTY THAT YOU THINK MIGHT HAVE ANY EFFECT ON YOUR ABILITY TO SIT IN THIS KIND OF CASE?

A OH, NO, SIR.

Q MRS. BRANTLEY, YOU UNDERSTAND THE WAY IT WORKS IN SOUTH CAROLINA IF WE GET TO THE SECOND PART OF THE TRIAL, THE PENALTY PHASE, THAT WOULD MEAN THE DEFENDANT HAD BEEN CONVICTED BEYOND A REASONABLE DOUBT OF MURDER IN THE FIRST PART OF THE TRIAL. SO ANY TIME YOU ARE TALKING ABOUT THE PENALTY, YOU ARE DEALING WITH A CONVICTED MURDERER.

A RIGHT.

Q YOU UNDERSTAND THAT IN SOUTH CAROLINA THE JUDGE DOESN'T DECIDE WHAT THE PENALTY IS GOING TO BE IN A CASE LIKE THIS. THE JURY DECIDES AND ALL THE JUDGE DOES IS JUST WHATEVER THE JURY SAYS THE SENTENCE OUGHT TO BE, HE WILL ORDER THAT.

IN OTHER WORDS, IF THE JURY AFTER HEARING ALL THOSE FACTS SAYS WE THINK THE APPROPRIATE SENTENCE IS LIFE, THE JUDGE WOULD SENTENCE THAT PERSON TO LIFE WITHOUT PAROLE AND HE WOULD SERVE THAT SENTENCE.

IF THE JURY AFTER HEARING ALL THE FACTS DECIDES THAT THE DEATH PENALTY IS THE MOST APPROPRIATE SENTENCE, THE JUDGE WOULD ORDER THAT SENTENCE TO BE CARRIED OUT AND THAT PERSON WOULD BE EXECUTED. NOBODY IS GOING TO ASK YOU TO PREDICT WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS.

BUT MY QUESTION IS -- AND THE JUDGE SORT OF

ASKED YOU THIS IN DIFFERENT WORDS. IF THE CASE IS BAD ENOUGH, COULD YOU SIGN THAT DEATH VERDICT FORM KNOWING THAT SENTENCE WOULD BE CARRIED OUT AND THAT THE PERSON ACTUALLY WOULD BE EXECUTED?

A YES, SIR.

Q AND YOU COULD STAND UP WHEN YOUR NAME IS CALLED OUT IF THAT WAS YOUR DECISION?

A YES.

Q AND ANNOUNCE THAT?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q THE JURY IS GOING TO BE PUT IN A MOTEL STARTING TOMORROW. THEY WILL BE HERE, OF COURSE, DURING THE DAYTIME WHEN COURT IS GOING ON. AT NIGHT THEY WOULD HAVE TO STAY IN A MOTEL FOR SEVERAL DAYS UNTIL THE TRIAL IS OVER. THAT IS AN INCONVENIENCE FOR EVERYBODY. DO YOU THINK THAT WOULD CAUSE YOU ANY UNUSUAL HARDSHIP AS FAR AS YOUR CHILDREN OR WHATSOEVER?

A NO, SIR.

Q MRS. BRANTLEY, THAT'S ALL I HAVE GOT. THANK YOU VERY MUCH.

VOIR DIRE EXAMINATION

BY MR. SIMS:

Q GOOD MORNING, MRS. BRANTLEY.

A GOOD MORNING.
Q I'M THOMAS SIMS AND I REPRESENT BAYAN. LET ME ASK YOU A QUESTION. I BELIEVE THAT YOU SAID YOU HAD TALKED TO SOMEONE. THAT WAS ONLY IN THE COURTROOM?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q IS THAT CORRECT?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q AND THAT WAS BASICALLY TRYING TO GET AN IDEA OF WHAT KIND OF CASE WE ARE DEALING WITH TODAY; IS THAT CORRECT?
A YES, SIR.
Q YOU NEVER READ THE PAPERS OR WATCHED T.V.?
A I DON'T HAVE TIME.
Q YOU DON'T HAVE TIME. I BELIEVE YOU SAID SOMETHING ABOUT SMALL CHILDREN?
A I HAVE A THREE YEAR OLD AND I WORK FROM LIKE 8:30 TO SIX, SOMETIMES SEVEN.
Q WHAT IS THE AGE OF YOUR OTHER CHILD?
A I HAVE ONE THREE, ONE 17 AND ONE 21.
Q TWENTY-ONE, SEVENTEEN AND THREE. THAT'S A SPREAD. LET ME ASK YOU. IN LOOKING AT YOUR QUESTIONNAIRE, THERE WAS PART OF THAT QUESTIONNAIRE THAT TALKED ABOUT WHETHER ANY OF YOUR RELATIVES OR FRIENDS OR SON WORKED WITH LAW ENFORCEMENT OR IN CORRECTIONAL. I SEE YOU PUT ORANGEBURG COUNTY

SHERIFF'S OFFICE?

A YES, I HAVE A COUSIN THAT WORKS THERE.

Q WHAT IS HER NAME?

A HIS NAME IS JERRY BROWN.

Q IS HE A DEPUTY OR WORKS IN THE OFFICE?

A I THINK HE WORKS FOR THE S.L.E.D. I'M NOT SURE. THEN I FOUND OUT THAT MY OTHER COUSIN, TROY BROWN, HE WORKS FOR THE HIGHWAY PATROL -- NOT THE HIGHWAY PATROL, THE CITY COP.

Q YOU HAVE ONE COUSIN WHO WORKS -- TROY BROWN -- WHO IS IN LAW ENFORCEMENT?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q AND THEN YOU HAVE ANOTHER COUSIN WHO IS ALSO IN LAW ENFORCEMENT?

A AND THIS MORNING I FIND OUT I HAD A COUSIN DOWNSTAIRS IN PROBATE.

Q A COUSIN DOWNSTAIRS IN PROBATE?

A YES, SIR.

Q YOU'VE GOT PEOPLE ALL OVER. HAVE YOU TALKED WITH EITHER ONE OF THEM ABOUT ANYTHING ABOUT THIS CASE?

A NO.

Q LET ME ASK YOU ANOTHER QUESTION. DO YOU THINK THAT WOMEN SHOULD BE HELD TO THE SAME STANDARD AS MEN?

A I FEEL I CAN DO JUST AS GOOD AS A MAN.

Q YOU FEEL THEY CAN DO JUST AS GOOD AS A MAN?

A IF I HAVE TO.

Q IF YOU HAVE TO, YOU CAN DO JUST AS GOOD AS A MAN.

THE COURT: YOU DON'T DISAGREE WITH THAT, DO YOU?

MR. SIMS: OH, NO. THAT'S ALL I HAVE OF THIS WITNESS.

THE COURT: ANY FURTHER QUESTIONS?

SOLICITOR BAILEY: NO, SIR.

THE COURT: STEP TO THE JURY ROOM, PLEASE.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: FOR THE STATE?

SOLICITOR BAILEY: QUALIFIED.

THE COURT: FOR THE DEFENSE?

MR. SIMS: QUALIFIED, YOUR HONOR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MRS. BRANTLEY.

JUROR: YES, SIR.

THE COURT: WE ARE QUALIFYING 35 JURORS, FROM WHICH IN THE MORNING AT 9:30 WE WILL BE SELECTING 14. BOTH THE ATTORNEYS FOR THE STATE AND THE DEFENDANT FIND YOU QUALIFIED TO SERVE IF SELECTED.

PLEASE BE BACK IN THIS COURTROOM AT 9:30 IN THE MORNING, BRINGING YOU WITH SUCH CLOTHING AND PERSONAL EFFECTS AS YOU WOULD REQUIRE IN THE EVENT THAT YOU ARE ONE OF THOSE SELECTED, OKAY?

JUROR: OKAY.

THE COURT: ANY QUESTIONS?

JUROR: NO, SIR.

THE COURT: I LOOK FORWARD TO SEEING YOU AT 9:30 IN THE MORNING. WHO IS GOING TO TAKE CARE OF THAT THREE-YEAR-OLD BABY WHILE YOU ARE GONE?

JUROR: MY MOM.

THE COURT: OKAY. THAT'S GOOD.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

HARRIETTE SEABROOKS, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD MORNING. THIS IS MRS. SEABROOKS?

A YES, SIR.

Q MRS. SEABROOKS, MAY I RESPECTFULLY ASK THAT YOU TALK INTO THE MICROPHONE SO EVERYBODY CAN HEAR YOU, PLEASE. MRS. SEABROOKS, I NOTE THAT YOU ARE EMPLOYED WITH FRIGIDARE HOME PRODUCTS?

A YES, SIR.
Q YOU ARE A TEAM LEADER THERE?
A YES, SIR.
Q AND HAVE BEEN SO EMPLOYED FOR 15 YEARS?
A YES, SIR.
Q YESTERDAY OR MONDAY UPON INQUIRY SEVERAL JURORS, POTENTIAL JURORS, STOOD UP WHEN I ASKED THEM HAD THEY READ OR HEARD ANYTHING ABOUT THE CASE WE ARE GETTING READY TO TRY. WOULD YOU HAVE BEEN ONE OF THOSE WHO HAPPENED TO STAND?
A NO, SIR.
Q HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE?
A A LITTLE ON THE RADIO.
Q A LITTLE ON THE RADIO?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q WHEN DID YOU HEAR THAT, PLEASE?
A MONDAY AFTERNOON.
Q LET ME ASK YOU THIS. I WANT TO MAKE SURE IF YOU ARE A JUROR THAT YOU CAN BASE YOUR VERDICT, WHATEVER IT IS, ON THE LAW AND THE EVIDENCE HEARD IN THIS COURTROOM AND CAN PUT ASIDE WHAT YOU HEARD ON THE RADIO. CAN YOU DO THAT FOR ME?
A YES, SIR.
Q YOU UNDERSTAND THAT THIS INDIVIDUAL IS PRESUMED

INNOCENT. HE HAS PLED NOT GUILTY. THE STATE MUST PROVE HIM GUILTY BEYOND A REASONABLE DOUBT. I WANT TO MAKE SURE THAT ALL JURORS, REGARDLESS OF WHAT THEY MAY HAVE READ OR HEARD, WILL BASE THEIR VERDICT ON THE TESTIMONY HEARD IN THIS COURTROOM UNDER OATH. CAN YOU PROMISE ME THAT?

A YES, SIR.

Q AND I THANK YOU. DID YOU HAVE AN OPPORTUNITY TO READ THE DOCUMENT ABOUT THE THREE TYPES OF JURORS?

A YES, SIR.

Q FIRST LET ME SAY TO YOU. WE MAY NEVER EVEN GET TO THAT PART OF THE CASE. THE FIRST CASE IS THE GUILT OR INNOCENCE. IF HE IS FOUND NOT GUILTY, WE STOP THERE. YOU UNDERSTAND?

A YES, SIR.

Q NOW, IF THE JURY, ALL 12 OF THEM, FINDS HIM GUILTY OF MURDER WITH MALICE AFORETHOUGHT, WE THEN AND ONLY THEN GO TO THE SECOND PHASE OF THE TRIAL. AT THAT TRIAL ADDITIONAL TESTIMONY WILL BE TAKEN ON THE ISSUE AS TO THE APPROPRIATE PUNISHMENT.

AT THAT TIME THE JURY HAS ONLY ONE DECISION TO MAKE: WHAT SHALL BE THE POSSIBLE PUNISHMENT? SHALL IT BE LIFE IMPRISONMENT OR SHALL IT BE DEATH BY LETHAL INJECTION OR ELECTROCUTION?

JURORS WHEN CONFRONTED WITH THAT SITUATION FALL

INTO THREE GROUPS AS THAT LETTER BACK THERE INDICATES. ONE GROUP SAYS HAVING CONVICTED HIM OF MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY. THERE IS ANOTHER GROUP EQUALLY IMPORTANT WHO SAYS FOR RELIGIOUS OR PERSONAL REASONS, WHATEVER, I CAN NEVER BE FOR THE DEATH PENALTY.

THERE IS A THIRD GROUP WHO SAY I AM GOING TO LISTEN TO ALL OF THE FACTS IN THIS CASE, CONSIDER ALL THE CIRCUMSTANCES; AND BASED ON HOW I FEEL, I CAN IMPOSE A SENTENCE OF DEATH. EQUALLY IMPORTANT I CAN IMPOSE LIFE IMPRISONMENT. WOULD YOU BE THE FIRST, SECOND OR THIRD GROUP?

A THIRD.

Q THIRD. THANK YOU SO MUCH.

THE COURT: YOU MAY EXAMINE.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. SEABROOKS, I'M WALTER BAILEY. I WANT TO ASK YOU A FEW MORE QUESTIONS, KIND OF ALONG THE LINES OF WHAT THE JUDGE ASKED YOU. AS THE JUDGE SAID, WE WOULDN'T EVEN BE GETTING INTO THE SECOND PART OF THAT TRIAL UNLESS THE JURY HAD FOUND THE DEFENDANT GUILTY OF MURDER IN THE FIRST PART OF THE TRIAL.

IF WE GET TO THAT POINT, WHATEVER THE JURY

DECIDES THE PUNISHMENT OUGHT TO BE, WHATEVER THE MOST APPROPRIATE PUNISHMENT IS, WILL BE THE ORDER OF THE COURT AND THAT SENTENCE WILL BE CARRIED OUT.

IN OTHER WORDS, IF THE JURY AFTER HEARING ALL THOSE FACTS SAYS WE THINK THE APPROPRIATE PUNISHMENT IS LIFE, THE JUDGE WOULD SENTENCE THAT DEFENDANT TO LIFE WITHOUT PAROLE. HE WOULD SERVE THAT SENTENCE.

ON THE OTHER HAND, IF THEY THINK THE MOST APPROPRIATE PUNISHMENT IS THE DEATH PENALTY, THAT IS WHAT THE JUDGE WILL ORDER; AND THAT PERSON WILL BE EXECUTED BASED ON THAT JURY VOTE.

I AM NOT GOING TO ASK YOU WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS. MY QUESTION IS IF THE FACTS WERE BAD ENOUGH, CAN YOU VOTE FOR THE DEATH PENALTY KNOWING THAT PERSON IS ACTUALLY GOING TO GET EXECUTED BASED ON THAT VOTE?

A IF I REALLY KNOW THE FACTS.

Q ALL RIGHT. THE NEXT THING THAT WOULD HAPPEN IF ALL 12 JURORS FEEL THE SAME WAY, HEARING ALL THOSE FACTS AND THINKS THIS CASE IS BAD ENOUGH FOR THE DEATH PENALTY, THEN EACH JUROR WOULD HAVE TO SIGN THEIR NAME TO A PIECE OF PAPER, A DEATH VERDICT FORM, THAT WOULD RESULT IN THE EXECUTION TAKING PLACE. COULD YOU SIGN YOUR NAME TO A PAPER LIKE THAT IF YOU HAD ALREADY VOTED FOR THE DEATH PENALTY?

A IF I REALLY KNOW THE FACTS, BUT IF I DON'T I'M NOT.

Q WE ARE ASSUMING JUST FOR THIS QUESTION THAT YOU HAVE HEARD THE FACTS.

A OH, OKAY.

Q AND BASED ON THOSE FACTS YOU THINK THAT EITHER LIFE WITHOUT PAROLE OR THE DEATH PENALTY, THE DEATH PENALTY IS THE MOST APPROPRIATE SENTENCE AND YOU VOTED FOR IT. COULD YOU THEN SIGN YOUR NAME TO THAT PAPER KNOWING THAT PERSON IS GOING TO GET EXECUTED BECAUSE OF THAT?

A YEAH.

Q THE LAST THING THE JURY WOULD BE INVOLVED IN IF YOU VOTE FOR THE DEATH PENALTY AND SIGN THE DEATH VERDICT FORM, THE JURY WOULD COME OUT OF THE ROOM BACK HERE WHERE Y'ALL WOULD BE AND WOULD SIT IN THESE CHAIRS HERE AND SOMEBODY FROM THE CLERK'S OFFICE WOULD CALL EVERYBODY'S NAME ONE AT A TIME AND ASK YOU TO AFFIRM THAT THAT IS YOUR VERDICT. WHEN YOUR NAME IS CALLED, COULD YOU STAND UP AND SAY, "THAT IS MY VERDICT," OUT LOUD?

A YES, SIR.

Q THE JURY WILL BE PUT IN A -- AT NIGHT KEPT IN A MOTEL ROOM WHILE THE TRIAL GOES ON, STARTING THURSDAY EVENING AFTER COURT IS OVER FOR SEVERAL DAYS. THAT

WILL BE AN INCONVENIENCE FOR EVERYBODY. I NOTICE YOU HAVE GOT SOME CHILDREN AT HOME. IS THAT GOING TO BE ANY KIND OF REAL SERIOUS PROBLEM WITH YOU TO BE IN THAT MOTEL FOR A FEW DAYS OR DO YOU THINK YOU CAN MAKE ARRANGEMENTS?

A I CAN MAKE ARRANGEMENTS.

Q MR. SEABROOKS, THAT'S ALL I HAVE GOT. THANK YOU VERY MUCH.

VOIR DIRE EXAMINATION

BY MR. SIMS:

Q MRS. GOOD MORNING, MRS. SEABROOKS.

A GOOD MORNING.

Q I REPRESENT BAYAN. LET ME ASK YOU JUST A COUPLE OF QUESTIONS. YOU INDICATED THAT YOU HAD NOT HEARD ANYTHING ABOUT THIS CASE?

A (WITNESS SHAKES HEAD.) (INDICATING NEGATIVE RESPONSE.)

Q NO TELEVISION, NO NEWSPAPER OR ANYTHING LIKE THAT?

A (WITNESS SHAKES HEAD.) (INDICATING NEGATIVE RESPONSE.)

Q LET ME ASK YOU A QUESTION. DO YOU BELIEVE THAT WOMEN SHOULD BE HELD TO THE SAME STANDARD AS MEN?

A IN A CASE LIKE THIS?

Q IN ANY CASE.

A IF THEY COMMITTED THE CRIME, YEAH, IF THEY HAVE PROVEN IT.

Q YOU INDICATED THAT YOU COULD, IN FACT, IF YOU HEARD THE FACTS VOTE FOR THE DEATH PENALTY. WOULD YOU ALSO AT THAT TIME HAVE TO BE SATISFIED WITH THE WEIGHT OF THOSE FACTS IN TERMS OF WHAT YOU HEAR?

A I WOULD HAVE TO BE SATISFIED, RIGHT, HEAR IT AND CONSIDER IT.

Q YOU KNOW BY NOW THAT WE ARE IN COURT BASED UPON -- BASICALLY IN COURT BECAUSE MY CLIENT HAS BEEN CHARGED WITH SHOOTING A TROOPER?

A RIGHT.

Q NOW, IF WHEN YOU ARE SITTING IN THAT JURY BOX YOU ARE NOT SATISFIED WITH THE EVIDENCE PRESENTED BY THE STATE, COULD YOU ALSO RETURN A VERDICT OF NOT GUILTY?

A I COULD AND THEN DECIDE WITH THE OTHER JURORS, TOO.

Q I NEED SOME CLARITY ON THAT. YOU SAID SOMETHING ABOUT THE OTHER JURORS. I DIDN'T UNDERSTAND WHAT YOU MEANT.

A WHEN EVERYBODY COME BACK THEY HAVE TO BE ONLY ONE, RIGHT?

Q RIGHT.

A I COULD SAY NOT GUILTY BUT THEY COULD SAY GUILTY

AGAINST MY ONE, SO THEY WOULD GO WITH THE MAJORITY.

Q I DON'T THINK THEY WOULD GO WITH THE MAJORITY.

THE COURT: WHAT WAS THAT COMMENT?

MR. SIMS: THEY WOULD GO WITH THE MAJORITY.

THE COURT: STOP RIGHT THERE.

VOIR DIRE EXAMINATION

BY THE COURT:

Q LET ME EXPLAIN TO YOU THAT WHILE A UNANIMOUS DECISION IS REQUIRED IN THE JURY ROOM, NO JUROR MUST EVER GIVE UP HIS OR HER HEARTFELT OPINIONS ABOUT THE CASE. DO YOU UNDERSTAND THAT?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q IF 11 JURORS THINK ONE WAY AND YOU ARE CONVINCED THAT THE OPPOSITE IS TRUE, UNDER YOUR OATH YOU SHOULD STAND BY AND MUST STAND BY YOUR CONVICTION. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q OBVIOUSLY IN THE CONSIDERATION OF A VERDICT, YOU WOULD HAVE AN INTERCHANGE OF IDEAS WITH THE OTHER JURORS; BUT YOU MUST NEVER CAST YOUR VOTE SIMPLY BECAUSE A MAJORITY, ALL THE REST OF THEM, WANT TO GO ANOTHER WAY. CAN YOU DO THAT?

A YES, SIR.

Q I WANT TO KNOW IF 11 OTHER PEOPLE THINK DIFFERENT FROM YOU AND YOU ARE CONVINCED OF THE TRUTH

OF YOUR POSITION, WILL YOU STAND FIRM WITH YOUR POSITION?

A YES, SIR.

THE COURT: YOU MAY PROCEED.

MR. SIMS: THAT'S ALL, YOUR HONOR. THANK YOU VERY MUCH.

SOLICITOR BAILEY: NO QUESTIONS, NO FURTHER QUESTIONS.

THE COURT: LET HER GO TO THE JURY ROOM.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: YES, SIR.

SOLICITOR BAILEY: QUALIFIED, YOUR HONOR.

THE COURT: YES, SIR.

MR. SIMS: YES, SIR, QUALIFIED.

THE COURT: SHE IS QUALIFIED.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MADAME JUROR, AS I TOLD YOU BEFORE, WE ARE IN THE PROCESS OF QUALIFYING 35 JURORS. BOTH THE STATE AND THE DEFENDANT HAVE FOUND YOU IMMINENTLY QUALIFIED TO SERVE IF SELECTED.

IN THE MORNING AT 9:30 WE ARE GOING TO SELECT FROM YOUR GROUP OF 35, 14 JURORS. YOU MAY OR MAY NOT BE SELECTED. COME PREPARED TO STAY HOWEVER AND THEREFORE COME HERE AT 9:30 IN THE MORNING. BRING WITH YOU SUCH CLOTHES AND PERSONAL EFFECTS AS

YOU WOULD REQUIRE FOR A STAY IN THE MOTEL IN THE EVENT YOU ARE SELECTED. ANY QUESTIONS?

JUROR: NO, SIR.

THE COURT: I LOOK FORWARD TO SEEING YOU IN THE MORNING.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

CHAS ENGLISH, (BLACK MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MR. ENGLISH, YOUR RETURN INDICATES THAT YOU FINISHED GRADE SCHOOL, JUNIOR HIGH AND HOW FAR DID YOU GO IN HIGH SCHOOL?

A NINTH.

Q NINTH GRADE. YOU CAN CERTAINLY READ OR WRITE?

A YES, SIR.

Q I NOTE THAT YOU ARE EMPLOYED AT THE GOODMAN GLASS COMPANY?

A THAT'S CORRECT, SIR.

Q IS THAT HERE IN ORANGEBURG?

A YES, SIR.

Q WHAT DO YOU DO, INSTALL FOR AUTOMOBILES?

A YES, SIR.

Q AND YOU WORK FULL-TIME?

A YES, SIR.
Q I BET YOU WISH YOU WERE WORKING TODAY.
A YES, SIR.
Q I HAVE A STATEMENT HERE THAT INDICATES THAT YOU MAY HAVE A LITTLE PHLEBITIS PROBLEM. IS THAT BOTHERING YOU TODAY IN ANY WAY?
A A LITTLE.
Q A LITTLE?
A A LITTLE, YES, SIR.
Q THIS LETTER INDICATES THAT AS HOW LONG AS YOU DON'T STAND FOR TOO LONG A PERIOD OF TIME NOR SIT FOR TOO LONG A PERIOD OF TIME, YOU ARE ALL RIGHT.
A YES, SIR.
Q I WANT YOU TO KNOW IF YOU ARE SELECTED NOW AND YOU NEED TO STAND UP, WE WILL BE TAKING A BREAK EVERY HOUR, HOUR AND A HALF. THAT WOULDN'T UNDULY BURDEN YOU, WOULD IT?
A NO, SIR.
Q IF YOU ARE SELECTED THOUGH AND YOUR LEG FEELS UNCOMFORTABLE, YOU RAISE YOUR HAND AND WE WILL TAKE A BREAK AND GIVE YOU AN OPPORTUNITY TO STAND UP.
A OKAY.
Q I WOULD NEVER WANT ANY JUROR TO BE UNCOMFORTABLE.
A ALL RIGHT, SIR.

Q YOU UNDERSTAND THAT?

A YES, SIR.

Q YOU ARE SAYING TO ME THAT IN SPITE OF THIS STATEMENT I HAVE THAT YOU HAVE SOME PHLEBITIS, THAT PHYSICALLY YOU ARE ALL RIGHT TO SERVE IF SELECTED?

A YES, SIR.

THE COURT: DID YOU GENTLEMEN GET A COPY OF THAT DOCUMENT?

MR. SIMS: YES, SIR.

SOLICITOR BAILEY: YES, SIR.

Q MONDAY MORNING SOME OF THE JURORS STOOD UP WHEN I ASKED THEM IF THEY HAD READ OR HEARD SOMETHING ABOUT THIS CASE. WERE YOU ONE OF THOSE WHO HAPPENED TO STAND UP?

A NO, SIR.

Q HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE?

A NO, SIR. THE ONLY THING I HEARD ABOUT IT WAS WHEN IT FIRST HAPPENED.

Q WHEN IT FIRST HAPPENED?

A YES, SIR.

Q LET ME ASK YOU THIS AND I WOULD RESPECTFULLY ASK THAT YOU SPEAK IN THE MICROPHONE SO EVERYBODY CAN HEAR. I WANT TO MAKE SURE THAT IF YOU ARE SELECTED, YOUR VERDICT WILL BE BASED ON THE LAW AND THE EVIDENCE HEARD IN THIS COURTROOM AND NOT WHAT YOU MAY

HAVE READ OR HEARD ON THE RADIO. CAN YOU PROMISE ME THAT?

A I CAN PROMISE YOU THAT, SIR.

Q I JUST WANT TO MAKE SURE. YOU SEE, THE JURY ARE THE FINDERS OF THE FACTS. YOU ARE JUDGE OF THE CREDIBILITY AND BELIEVABILITY OF THE WITNESSES. UNDER OUR SYSTEM YOU MUST MAKE YOUR VERDICT BASED ON WHAT YOU HEAR IN THIS COURTROOM AND NOT WHAT YOU READ OR HEARD. I THINK YOU CAN DO THAT. YOU HAVE TOLD ME THAT YOU CAN.

A YES, SIR.

Q NOW, DO YOU UNDERSTAND THAT THIS IS A POSSIBLE TWO-PART TRIAL?

A I DO, SIR.

Q THIS DEFENDANT STANDS INDICTED FOR THE MURDER OF A HIGHWAY PATROLMAN, TO WHICH CHARGE HE HAS PLED NOT GUILTY. THE STATE MUST PROVE HIM GUILTY, IF THEY CAN, BY EVIDENCE TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT.

IF THEY FAIL TO DO THAT, THE DEFENDANT IS ENTITLED TO A VERDICT OF NOT GUILTY. IF THEY DO THAT TO YOUR SATISFACTION, THE STATE OF SOUTH CAROLINA IS ENTITLED TO A VERDICT OF GUILTY. NOW, IF THAT VERDICT IS GUILTY, ONLY THEN DO WE GO TO THE SECOND PHASE. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q IN THE SECOND PHASE, THE ONLY QUESTION FOR THE JURY WHO HAVE ALREADY FOUND HIM GUILTY OF MURDER IS TO DETERMINE THE SENTENCE. THERE ARE TWO POSSIBLE SENTENCES. ONE IS LIFE IMPRISONMENT AND THE OTHER IS DEATH BY LETHAL INJECTION OR ELECTROCUTION. JURORS WHEN CONFRONTED WITH THIS PROBLEM OR THIS ISSUE FALL INTO THREE GROUPS. YOU READ THE LETTER?

A YES, SIR.

Q THE FIRST GROUP SAYS HAVING CONVICTED SOMEONE OF MURDER WITH MALICE AFORETHOUGHT, I WILL ALWAYS BE FOR THE DEATH PENALTY. THE SECOND GROUP SAYS EVEN THOUGH WE HAVE FOUND HIM GUILTY OF MURDER WITH MALICE AFORETHOUGHT, FOR EITHER RELIGIOUS OR PERSONAL REASONS I CAN NEVER BE THE DEATH PENALTY.

THERE IS A THIRD GROUP WHO SAY WE HAVE NOW FIND HIM GUILTY OF MURDER. I AM NOW GOING TO CONSIDER ALL THE OTHER FACTS IN THIS CASE, ALONG WITH SUCH FACTS AS HAS BEEN PRESENTED TO ME. THEN I WILL DECIDE. THAT JUROR SAYS I CAN IMPOSE A SENTENCE OF DEATH, AND EQUALLY I CAN GIVE HIM LIFE IMPRISONMENT. WOULD YOU BE ONE, TWO OR THREE?

A TWO.

Q TWO?

A YES, SIR.

Q TELL ME YOUR VIEW OF TWO, PLEASE.

A TWO?

Q YES, SIR.

A WELL, I AM NOT AUTHORIZED TO TAKE A PERSON'S LIFE.

Q THAT'S FINE. YOU UNDERSTAND THERE'S NO RIGHT OR WRONG ANSWER.

A YES, SIR.

Q THAT'S ENTIRELY APPROPRIATE. MAY I ASK YOU THIS AND I DON'T WANT TO INTRUDE ON YOUR PRIVACY. IS THAT JUST A PERSONAL BELIEF OF RELIGIOUS BELIEF OR BOTH?

A THAT'S A RELIGIOUS BELIEF AND A PERSONAL BELIEF.

Q AND CAN YOU TELL ME HOW LONG YOU HAVE HELD THIS BELIEF?

A AS LONG AS I HAVE BEEN OLD ENOUGH TO KNOW MYSELF.

Q IT IS A FIRM BELIEF?

A YES, SIR.

Q UNSHAKABLE?

A NO, SIR.

Q THANK YOU, SIR.

SOLICITOR BAILEY: NO QUESTIONS, YOUR HONOR.

MR. STONE: NO QUESTIONS, YOUR HONOR.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: NOT QUALIFIED.

MR. STONE: HE IS NOT QUALIFIED, YOUR HONOR. WE AGREE.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. ENGLISH, THE ATTORNEYS FOR THE STATE AND THE DEFENDANT DEEPLY APPRECIATE YOUR ATTENDANCE HERE IN COURT. WE KNOW WE HAVE INCONVENIENCED YOU. WE ARE IN A POSITION TO EXCUSE YOU FOR THE REST OF THE DAY AND FOR THE TRIAL. DO YOU NEED AN EXCUSE FOR YOUR BOSS FROM WORK OR ARE YOU ALL RIGHT?

JUROR: I'M ALL RIGHT.

THE COURT: IF YOU HAVE ANY PROBLEM, TELL HIM TO CALL ME. I'LL TELL HIM. WE ENJOYED HAVING YOU.

JUROR: THANK YOU, SIR.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

STEPHEN FOGLE, (WHITE MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD MORNING, MR. FOGLE.

A GOOD MORNING.

Q MR. FOGLE, ON YESTERDAY YOU INDICATED THAT YOU MIGHT HAVE SOME HEARING IMPEDIMENT THAT WOULD CONCERN YOU.

A YES, SIR.

Q I DID NOT WISH TO DISCUSS IT PUBLICLY AT THAT TIME. THEREFORE I ASKED THAT YOU COME BACK THIS MORNING SO THAT WE COULD INQUIRE. I AM FAMILIAR WITH HEARING DIFFICULTIES. I UNDERSTAND YOUR PROBLEM. I HAVE ONE MYSELF. THAT'S WHY I HAVE A HEARING AID WHICH HAS CORRECTED IT. I NOTE THAT YOU DO NOT. DO YOU FEEL THAT YOU WOULD HAVE SOME INABILITY TO HEAR THE TESTIMONY OF THE WITNESSES AND THE ATTORNEYS IF SELECTED?

A IT'S POSSIBLE.

Q WELL, CAN YOU HEAR ME?

A YES, SIR.

Q WHAT KIND OF WORK DO YOU DO?

A I'M A MAINTENANCE MECHANIC.

Q MAINTENANCE MECHANIC. WHERE PLEASE?

A OKANIGHT (PH.) CABLE.

Q YOU COMMUNICATE WITH YOUR FELLOW WORKERS OKAY?

A WHEN IT'S QUIET.

Q WHEN IT'S QUIET. WELL, IT'S GOING TO BE QUIET IN THIS COURTROOM. I CAN TELL YOU THAT. ARE YOU CURRENTLY BEING TREATED BY A MEDICAL DOCTOR FOR YOUR

PROBLEM?

A WE HAVE A HEARING TEST EVERY YEAR.

Q ARE YOU JUST HAVING DIFFICULTY -- AND I HATE TO INVADE YOUR PRIVACY -- BUT ONE OR BOTH EARS?

A I WAS BORN WITH A NERVE -- I THINK IT'S CALLED A NERVE DEFICIT. I DON'T HEAR ANYTHING OUT OF ONE EAR AND I HAVE LOST A GOOD BIT OF HEARING OUT OF MY OTHER ONE.

Q LET ME ASK YOU THIS. YOU ARE A RESPONSIBLE CITIZEN OF THIS COUNTY. YOU ARE UNDER YOUR OATH. I WOULD ACCEPT IT IF YOU TELL ME THAT YOU THINK THAT YOUR HEARING MAY IMPAIR YOUR ABILITY TO BE AN EFFECTIVE JUROR AND I WILL EXCUSE YOU. WHAT IS YOUR OPINION?

A I THINK IT MIGHT, YOUR HONOR. I WOULDN'T WANT TO RISK IT.

THE COURT: I AM GOING TO EXCUSE THIS JUROR FOR MEDICAL CAUSE.

MR. STONE: YES, SIR.

THE COURT: BY AGREEMENT OF COUNSEL. THANK YOU SO MUCH. HE INDICATED THAT QUITE CANDIDLY YESTERDAY. YOU UNDERSTAND I DIDN'T WANT TO INQUIRE BEFORE THE WHOLE PANEL?

JUROR: THAT'S FINE.

THE COURT: THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

COURT REPORTER: JUDGE, I THINK I NEED A BREAK.

THE COURT: ALL RIGHT. LET'S TAKE A SHORT BREAK.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: BRING THE NEXT JUROR IN, PLEASE.

(THE JUROR ENTERS THE COURTROOM.)

CAROLINE FORD, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MRS. CAROLINE FORD?

A YES, SIR.

Q GOOD MORNING. MAY I ASK YOU, PLEASE, TO SIT UP SO THAT YOU CAN TALK INTO THE MICROPHONE. WE ALL NEED TO HEAR WHAT YOU SAY, PLEASE.

A OKAY.

Q MRS. FORD, I NOTE THAT YOU COMPLETED HIGH SCHOOL?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q AND THEN WENT TO DENMARK TECH?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q AND YOU HAVE BEEN EMPLOYED FOR SOME 12 YEARS NOW AT THE SAME PLACE, AMERICAN YARD PRODUCTS; IS THAT CORRECT?

A YES, RIGHT.

Q MRS. FORD, ON MONDAY MORNING SEVERAL OF THE JURORS STOOD UP AND INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE WE ARE GETTING READY TO TRY. WERE YOU ONE OF THOSE WHO SAID THEY MAY HAVE HEARD OR KNEW SOMETHING ABOUT THIS?

A NOT UNTIL I GOT HERE MONDAY TO KNOW WHAT THE TRIAL WAS. I DID NOT KNOW ANYTHING ABOUT IT.

Q SO YOU HAVEN'T READ ANYTHING IN THE NEWSPAPER ABOUT IT?

A NOT REALLY, NOT REALLY.

Q WHEN YOU GOT HERE MONDAY, YOU LEARNED ABOUT IT BY WHAT I SAID?

A YES.

Q NOBODY TALKED TO YOU ABOUT ANY SPECIFIC FACTS OF THE CASE?

A NO.

Q THE REASON I ASK THAT IS SO THAT WHATEVER YOUR VERDICT WOULD BE, IT WOULD BE BASED ON THE TESTIMONY HEARD IN THIS COURTROOM AND NOT FROM OUT ON THE STREET. YOU WOULD UNDERSTAND THAT?

A RIGHT.

Q DO YOU UNDERSTAND THAT THIS IS POSSIBLY A TWO-PART TRIAL? DO YOU UNDERSTAND THAT?
A NOW, NOW THAT YOU SAID IT.
Q THIS IS DIFFERENT FROM MOST TRIALS.
A OKAY.
Q LET ME GO THROUGH THAT PROCESS WITH YOU SO YOU WILL UNDERSTAND IT.
A OKAY.
Q THIS DEFENDANT IS CHARGED WITH THE MURDER OF A HIGHWAY PATROLMAN, TO WHICH CHARGE HE HAS PLED NOT GUILTY. THE STATE OF SOUTH CAROLINA REPRESENTED BY SOLICITOR BAILEY HAS THE BURDEN OF PROVING HIM GUILTY, IF THEY CAN, TO YOUR SATISFACTION BY EVIDENCE BEYOND A REASONABLE DOUBT. YOU UNDERSTAND THAT?
A RIGHT.
Q IF THE STATE DOES NOT MEET THAT BURDEN, THIS DEFENDANT IS ENTITLED TO A VERDICT OF NOT GUILTY. DO YOU UNDERSTAND THAT?
A RIGHT.
Q IF THE VERDICT IN THE FIRST PART OF THIS CASE IS NOT GUILTY, WE STOP RIGHT THERE.
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q THAT'S IT. NOW, IF -- AND I USE THAT WORD ADVISEDLY -- IF THE JURY FINDS HIM GUILTY OF MURDER BEYOND A REASONABLE DOUBT, WE THEN AND ONLY THEN GO

TO THE SECOND PHASE.

A OH, OKAY.

Q IT IS IN THAT, THE SECOND PHASE, THAT THE JURY IS CONFRONTED WITH THIS QUESTION: NOW THAT WE HAVE FOUND HIM GUILTY OF MURDER, WHAT SHALL THE PUNISHMENT BE? THAT'S THE ONLY QUESTION IF YOU ARE IN THE SECOND PHASE.

A OKAY.

Q THERE ARE TWO POSSIBLE VERDICTS AND ONLY TWO. ONE IS LIFE IMPRISONMENT AND THE OTHER IS MURDER BY LETHAL INJECTION OR ELECTROCUTION. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q WHEN CONFRONTED WITH THIS DECISION, JURORS FALL INTO THREE GROUPS; AND THEY WERE EXPLAINED TO YOU IN THAT LETTER THAT YOU READ A MOMENT AGO.

A RIGHT.

Q YOU UNDERSTAND THAT?

A YES.

Q THAT LETTER -- AND THERE'S NO RIGHT OR WRONG ANSWERS. I WANT YOU TO KNOW THAT. WE JUST ALL FALL INTO THREE GROUPS. THERE IS ONE GROUP WHO SAY WE, HAVING FOUND HIM GUILTY OF MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY.

THE SECOND GROUP SAYS EITHER FOR PERSONAL OR

RELIGIOUS REASONS, I CAN NEVER TAKE THE LIKE OF ANOTHER HUMAN BEING. THERE IS A THIRD GROUP WHO SAY WE FIND HIM GUILTY OF MURDER. I NOW AM GOING TO LISTEN TO ALL THE ADDITIONAL FACTS. I AM GOING TO CONSIDER EVERYTHING. THEN I CAN DECIDE.

THAT JUROR IN THE THIRD GROUP SAYS I CAN IMPOSE LIFE IMPRISONMENT THOUGH WE HAVE CONVICTED OF MURDER. EQUALLY IMPORTANT THAT JUROR SAYS IF I THINK IT'S APPROPRIATE, I CAN IMPOSE A SENTENCE OF DEATH.

WOULD YOU BE IN THE FIRST GROUP THAT SAYS ALWAYS, THE SECOND THAT SAYS NEVER OR THE THIRD GROUP WHO SAYS I AM WILLING TO LISTEN AND I COULD GO EITHER WAY? WHICH WOULD YOU BE?

A THE THIRD GROUP.

Q THE THIRD GROUP?

A YES.

Q WHAT IS YOUR OPINION OF THE THIRD GROUP, PLEASE, MA'AM?

A MY OPINION OF THE THIRD GROUP IS I WOULD LISTEN TO EVERYTHING, TAKE EVERYTHING UNDER CONSIDERATION BECAUSE I WOULD WANT SOMEBODY TO TAKE IT UNDER CONSIDERATION FOR ME IF IT WAS ME, TO LISTEN TO ALL THE EVIDENCE, EVERYTHING.

I WOULDN'T JUST PLAY AROUND WITH IT BECAUSE YOU ARE PLAYING AROUND WITH A PERSON'S LIFE. IF THEY

WERE GUILTY, GIVE THEM LIFE OR EITHER THE DEATH PENALTY.

Q YES, MA'AM. THANK YOU SO MUCH.

THE COURT: YOU MAY EXAMINE.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. FORD, I WANT TO ASK YOU A COUPLE MORE QUESTIONS. THIS RELATES TO THE DEATH PENALTY PROCEDURE IN SOUTH CAROLINA. YOU UNDERSTAND FROM WHAT JUDGE COTTINGHAM JUST TOLD YOU THAT IN SOUTH CAROLINA IF WE GET TO THAT SECOND PART OF THE TRIAL AND THE JURY AFTER HEARING ALL THE FACTS DECIDES ON THE DEATH PENALTY, THEN THE JURY -- THAT'S THE JURY'S DECISION. THE JUDGE WILL DO WHATEVER THE JURY SAYS. DO YOU UNDERSTAND THAT?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q AND THAT SENTENCE WOULD BE CARRIED OUT. ON THE OTHER HAND, IF THE JURY AFTER HEARING ALL THE FACTS VOTED FOR LIFE, THE JUDGE WOULD SENTENCE THAT PERSON TO LIFE WITHOUT PAROLE. NOBODY IS GOING TO ASK YOU WHAT YOU WOULD DO IN THIS CASE. WE ARE NOT ASKING YOU TO PREDICT WHAT YOU WOULD DO BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS.

A NO.

Q AND YOU WOULD WANT TO WAIT AND LISTEN FOR THOSE FACTS.
A RIGHT, RIGHT.
Q BUT MY QUESTION IS IF THE FACTS WERE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT BASED ON THAT VOTE THAT PERSON IS ACTUALLY GOING TO BE EXECUTED?
A IF IT WERE BAD ENOUGH, YES.
Q IF ALL 12 JURORS AFTER HEARING THOSE FACTS FELT THE SAME WAY, THEN EACH JUROR WOULD BE ASKED TO SIGN THEIR NAME TO A PIECE OF PAPER, A DEATH VERDICT FORM, THAT WOULD RESULT IN THAT PERSON BEING EXECUTED. COULD YOU SIGN YOUR NAME TO A PAPER LIKE THAT IF YOU VOTED FOR THE DEATH PENALTY KNOWING THAT SENTENCE IS ACTUALLY GOING TO BE CARRIED OUT?
A IF, IF -- YES.
Q THE LAST THING THE JURY WOULD BE INVOLVED IN IF THEY VOTE FOR THE DEATH PENALTY, THEY WOULD COME OUT HERE IN COURT AND THE CLERK OR SOMEBODY FROM THE CLERK'S OFFICE WOULD CALL EACH JUROR'S NAME OUT ONE AT A TIME AND ASK THEM TO SAY OUT LOUD IF THAT WAS THEIR VERDICT. COULD YOU DO THAT?
A YES, I COULD.
Q NOW, THE JURY IS GOING TO BE PUT UP IN A MOTEL, AS YOU KNOW, FOR SEVERAL NIGHTS UNTIL THIS TRIAL IS

OVER, STARTING TOMORROW AFTER THEY ARE IN COURT. THAT'S AN INCONVENIENCE FOR ANYBODY. BUT IS THERE ANYTHING IN PARTICULAR THAT WOULD CAUSE YOU ANY REAL SERIOUS PROBLEMS IF YOU OUT OF COMMISSION FOR A FEW DAYS?

A NO.

Q THAT'S ALL I HAVE GOT. THANK YOU VERY MUCH.

THE COURT: GENTLEMEN FOR THE DEFENSE.

VOIR DIRE EXAMINATION

BY MR. SIMS:

Q GOOD MORNING, MRS. FORD. HOW ARE YOU DOING?

A ALL RIGHT.

Q I'M THOMAS SIMS. ALONG WITH MR. STONE, I REPRESENT BAYAN WHO IS SEATED OVER THERE AT THE TABLE. LET ME ASK YOU. THE SOLICITOR HAS TALKED TO YOU AND THE JUDGE HAS TALKED, AND EVERYONE HAS TALKED TO YOU ABOUT BEING ABLE TO MAKE A DECISION AS IT RELATES TO LIFE OR DEATH.

LET ME ASK YOU. IF YOU HAD THE OPPORTUNITY AND YOU ARE SITTING IN THAT JURY BOX IF THE STATE DID NOT PRESENT SUFFICIENT INFORMATION OR NOT INFORMATION RATHER BUT SUFFICIENT EVIDENCE, WOULD YOU BE ABLE TO GO BACK IN THE JURY BOX AND RETURN A VERDICT OF NOT GUILTY?

A AFTER HEARING ALL THE EVIDENCE, YES, I COULD.

Q I BELIEVE YOU SAID THAT YOUR FIRST KNOWLEDGE OF THIS MATTER WAS WHEN YOU CAME TO COURT THIS WEEK?
A YES.
Q WAS THAT SOLELY BASED UPON WHAT THE JUDGE SAID OR DID YOU HEAR OTHER PEOPLE IN THE COURTROOM TALKING ABOUT THE CASE?
A BASED ON WHAT THE JUDGE SAID.
Q YOU HAVE NO KNOWLEDGE AS IT RELATES TO ANY NEWSPAPER ARTICLES OR TELEVISION?
A NO.
Q NOW --
A THIS IS THE FIRST -- I THOUGHT IT WAS JUST BASED ON ANOTHER TYPE OF TRIAL THAT I WAS TO BE A JUROR. I DIDN'T KNOW.
Q YOU HAD NO KNOWLEDGE THAT THIS WAS THE KIND OF CASE YOU WOULD BE ON?
A NO, NO.
Q LET ME ASK YOU. WOULD YOU OR DO YOU BELIEVE THAT WOMEN SHOULD BE HELD TO THE SAME STANDARD AS MEN?
A IN A MURDER CASE?
Q IN ANY CASE?
A ANY CASE, YES.
MR. SIMS: ONE MOMENT, YOUR HONOR.
(PAUSE.)

MR. SIMS: THAT'S ALL I HAVE, YOUR HONOR. THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: QUALIFIED, YOUR HONOR.

THE COURT: WHAT SAYS THE DEFENSE?

MR. SIMS: QUALIFIED, YOUR HONOR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MADAME JUROR, YOU HAVE BEEN FOUND QUALIFIED BY THE ATTORNEYS FOR THE STATE AND THE DEFENDANT. FROM THE 35 THAT WE ARE QUALIFYING IN THE MORNING AT 9:30, WE ARE GOING TO SELECT 12 JURORS AND TWO ALTERNATES.

YOU MAY OR MAY NOT BE ONE OF THE 14 SELECTED. PLEASE REPORT TO THIS COURTROOM AT 9:30 IN THE MORNING, BRINGING WITH YOU SUCH CLOTHING AND PERSONAL EFFECTS AS YOU WOULD REQUIRE IN THE EVENT YOU ARE SELECTED TO STAY IN THE MOTEL.

JUROR: OKAY.

THE COURT: ANY QUESTIONS?

JUROR: NO.

THE COURT: I WILL SEE YOU AT 9:30 TOMORROW.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

GEORGE STACK, (BLACK MALE),
BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:
VOIR DIRE EXAMINATION
BY THE COURT:
Q MR. STACK, GOOD MORNING, SIR.
A GOOD MORNING.
Q I WOULD ASK, PLEASE, THAT YOU SIT FORWARD AND TALK INTO THE MICROPHONE SO THAT WE CAN ALL HEAR YOU. MR. STACK, I NOTICE THAT YOU WENT THROUGH THE TENTH GRADE AT NORTH HIGH SCHOOL, THAT YOU HAVE BEEN EMPLOYED AT THE SAME PLACE OF BUSINESS FOR 20 YEARS AND TEN MONTHS.
A RIGHT.
Q THERE YOU ARE A SUPERVISOR; IS THAT CORRECT?
A TRUE.
Q SEVERAL JURORS ON MONDAY MORNING INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE. WERE YOU ONE OF THOSE WHO INDICATED -- HAVE YOU READ OR HEARD ANYTHING ABOUT THE CASE?
A NO.
Q HAS ANYBODY DISCUSSED IT WITH YOU?
A NO.
Q YOU HAVE NEVER SEEN IT ON TELEVISION?
A I SEEN SOMETHING ON TELEVISION.
Q SOMETHING ON TELEVISION. HOW LONG AGO WAS THAT?

A AROUND JANUARY.

Q JANUARY. I NEED TO KNOW THIS THOUGH. IF YOU ARE SELECTED AS A JUROR, CAN YOU PROMISE ME THAT YOUR VERDICT, WHATEVER IT IS, WILL BE BASED ON THE TESTIMONY IN THIS COURTROOM AND NOT WHAT YOU HEARD BACK IN JANUARY?

A YES, IT WOULD BE.

Q I WANT TO BE SURE YOU CAN PUT THAT ASIDE. A MOMENT AGO I LEFT IN THE ROOM BACK THERE A DOCUMENT THAT DESCRIBES THREE TYPES OF JURORS. DO YOU UNDERSTAND THAT? DO YOU UNDERSTAND THE THREE TYPES?

A SOME OF IT I REMEMBER.

Q LET ME DISCUSS IT WITH YOU. THIS DEFENDANT IS CHARGED WITH THE MURDER OF A HIGHWAY PATROLMAN, TO WHICH CHARGE HE HAS PLED NOT GUILTY. DO YOU UNDERSTAND THAT?

A RIGHT, SURE.

Q WE WILL FIRST HAVE A TRIAL TO DETERMINE HIS GUILT OR INNOCENCE. IF HE IS FOUND INNOCENT, WE STOP RIGHT THERE AND THAT'S THE END OF IT. DO YOU UNDERSTAND THAT?

A RIGHT.

Q AS WE GO ALONG IF YOU HAVE ANY QUESTIONS, PLEASE ASK ME. NOW, IF -- AND I USE THAT WORD ADVISEDLY -- IF ALL 12 JURORS UNANIMOUSLY CONCLUDE THAT HE IS

GUILTY OF MURDER, WE THEN GO TO THE SECOND PART WHICH DECIDES WHAT HIS PUNISHMENT SHALL BE. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q YOU WOULD ONLY GET TO THE SECOND PART IF AND ONLY IF THE JURY HAS FOUND HIM GUILTY OF MURDER. NOW, IN THE SECOND PHASE, IT'S CALLED THE PUNISHMENT PHASE.

YOUR QUESTION WOULD BE THIS. WE THE JURY HAVE FOUND HIM GUILTY OF MURDER. WHAT SHALL THE PUNISHMENT BE? THERE IS ONE OF TWO THINGS. EITHER WE SHALL SENTENCE HIM TO LIFE IMPRISONMENT OR WE SHALL SENTENCE HIM TO DEATH BY ELECTROCUTION OR LETHAL INJECTION, ONE OR THE OTHER.

THAT LETTER DESCRIBES THREE TYPES OF JURORS WHEN FACED WITH THIS SITUATION, AND I TELL YOU THAT THERE ARE NO RIGHT OR WRONG ANSWERS. THERE IS ONE GROUP OF PEOPLE WHO SAY SINCE WE FOUND HIM GUILTY OF MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY. THERE IS A SECOND GROUP THAT SAYS EVEN THOUGH WE FOUND HIM GUILTY OF MURDER, I CAN NEVER TAKE THE LIFE OF ANOTHER HUMAN BEING.

THEN THERE IS A THIRD GROUP WHO SAY I AM GOING TO CONSIDER ALL OF THE EVIDENCE. I AM GOING TO LISTEN TO SOME ADDITIONAL FACTS. THEN I WILL DECIDE.

THAT JUROR SAYS I CAN IMPOSE A DEATH PENALTY, BUT EQUALLY IMPORTANT DEPENDING ON HOW I FEEL I CAN IMPOSE LIFE IMPRISONMENT.

WOULD YOU BE THAT GROUP THAT SAYS ALWAYS OR THE SECOND THAT SAYS NEVER OR THE THIRD THAT SAYS IT WILL DEPEND ON THE OTHER FACTS IN THE CASE? WHICH ONE WOULD YOU BE?

A THE SECOND ONE.

Q THE SECOND ONE. WHAT IS YOUR VIEW OF THE SECOND ONE, PLEASE?

A I DON'T BELIEVE IN THE DEATH PENALTY.

Q YOU DO NOT BELIEVE IN THE DEATH PENALTY. THAT IS YOUR VIEW AND YOU ARE CERTAINLY ENTITLED TO IT. MAY I ASK YOU THIS. IS THAT A PERSONAL BELIEF OR RELIGIOUS BELIEF OR JUST ONE THAT YOU HAVE HELD FOR A LONG PERIOD OF TIME?

A IT'S A RELIGIOUS BELIEF.

Q IT'S A RELIGIOUS BELIEF.

A I DON'T BELIEVE ANY MAN SHOULD TAKE THE LIFE OF ANOTHER MAN.

Q I UNDERSTAND. I APPRECIATE THE CANDOR OF YOUR ANSWER.

THE COURT: YES, SIR.

SOLICITOR BAILEY: NO QUESTIONS, YOUR HONOR.

MR. STONE: NO, SIR.

THE COURT: I WILL LET YOU GO TO THE JURY ROOM JUST A MOMENT.

(THE JUROR LEAVES THE COURTROOM.)

SOLICITOR BAILEY: NOT QUALIFIED, YOUR HONOR.

MR. STONE: WE AGREE.

THE COURT: MADAME BAILIFF, I AM EXPECTING, I THINK, IT'S EITHER THREE -- WAIT JUST A MOMENT. AS NUMBER SEVEN ARRIVES, YOU MAY PUT THEM IN THE ROOM WITH THE OTHER JURORS. THERE IS SUFFICIENT ROOM THERE.

HOLD ON A MINUTE. DON'T DO THAT. ARE ALL OF THAT PANEL HERE YET? WHEN ALL OF PANEL SEVEN ARRIVES OUT THERE, LET ME KNOW BECAUSE I WILL BRING THEM DOWN THEM AND TALK TO THEM JUST A MOMENT. BRING THAT OTHER JUROR BACK IN.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. JUROR, WE APPRECIATE YOUR PRESENCE HERE. WE APPRECIATE YOUR ATTENDANCE HERE. I AM IN A POSITION TO EXCUSE YOU FOR THE REST OF THE DAY AND FOR THE TRIAL. THANK YOU SO MUCH.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: MADAME COURT REPORTER, THAT WAS BY AGREEMENT OF ALL COUNSEL.

COURT REPORTER: YES, SIR.

(THE JUROR ENTERS THE COURTROOM.)

MARY JAMISON, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MRS. MARY JAMISON, MAY I ASK PLEASE THAT YOU SIT UP AND TALK INTO THE MICROPHONE SO THAT WE CAN ALL HEAR YOUR RESPONSES IF I MAY. I WANT TO THANK YOU FOR YOUR PRESENCE HERE TODAY, PARTICULARLY YOU AND THE JURORS' PATIENCE. THIS IS A TIME-CONSUMING PROCESS. I NOTE THAT YOU WENT THROUGH THE 12TH GRADE OF ROBERTS HIGH SCHOOL; IS THAT CORRECT?

A YES, SIR.

Q AND WHERE DO YOU WORK?

A THE DUBOSE MIDDLE SCHOOL IN SUMMERVILLE.

Q WHAT IS YOUR JOB THERE, PLEASE?

A FOOD SERVICE.

Q SCHOOL SERVICE?

A FOOD SERVICE.

Q FOOD SERVICE. ON MONDAY MORNING WHEN I INQUIRED AS TO THE PANEL WHO MAY HAVE HEARD OR READ SOMETHING ABOUT THIS CASE, A LOT OF THEM STOOD UP. WERE YOU ONE OF THOSE WHO MAY HAVE STOOD UP?

A YES, SIR.
Q YOU HAVE READ SOMETHING ABOUT THE CASE?
A JUST A LITTLE, NOT VERY MUCH, SIR.
Q LET ME ASK YOU THIS. IF YOU ARE SELECTED AS A JUROR, CAN YOU SET THAT ASIDE AND BASE YOUR VERDICT ON WHAT YOU HEAR IN THIS COURTROOM?
A YES, SIR.
Q YOU HAVE NOT PREVIOUSLY FORMED ANY OPINION THAT WOULD NOT CHANGE FROM THE TESTIMONY?
A NO, SIR.
Q YOU ARE SAYING TO ALL OF US THAT YOU WOULD HAVE AN OPEN MIND. THIS DEFENDANT IS CHARGED WITH MURDER. HE HAS PLED NOT GUILTY. THE STATE HAS THE BURDEN OF PROVING HIM GUILTY BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?
A NOT QUITE, SIR.
Q WHAT IS IT YOU DON'T UNDERSTAND?
A I DIDN'T HEAR WHAT YOU SAID.
Q EVERY DEFENDANT WHO IS CHARGED WITH A CRIME, NO MATTER HOW SERIOUS MAY BE THAT CRIME, IS ALWAYS PRESUMED TO BE INNOCENT. YOU UNDERSTAND THAT?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q DO YOU UNDERSTAND THAT?
A YES, SIR.

MARY JAMISON -VOIR DIRE- BY THE COURT

Q THIS DEFENDANT IS CHARGED WITH THE MURDER OF A HIGHWAY PATROLMAN. DO YOU UNDERSTAND THAT?
A YES, SIR.
Q TO THIS CHARGE HE HAS PLED NOT GUILTY. DO YOU UNDERSTAND THAT?
A YES, SIR.
Q HE DOESN'T HAVE TO PROVE A THING. THE STATE OF SOUTH CAROLINA MUST PROVE HIM GUILTY TO YOUR SATISFACTION IF THEY CAN. DO YOU UNDERSTAND THAT?
A YES, SIR.
Q IN THE TRIAL OF THE CASE, THEY WILL INTRODUCE BY TESTIMONY CERTAIN WITNESSES WHICH IN THEIR VIEW TEND TO INDICATE HIS GUILT. EQUALLY IMPORTANT THE DEFENSE WILL BE INDICATING TO YOU THAT HE IS NOT GUILTY. DO YOU UNDERSTAND THAT?
A YES, SIR.
Q IT IS FOR 12 JURORS SUCH AS YOU TO LISTEN TO THE TESTIMONY, TO CONSIDER THE TRUTHFULNESS OF IT AND TO THEN DECIDE WHETHER THE APPROPRIATE VERDICT IS GUILTY OR NOT GUILTY. DO YOU UNDERSTAND THAT?
A YES, SIR.
Q NOW, IF IN THAT FIRST TRIAL HE IS FOUND NOT GUILTY, WE STOP RIGHT THERE. DO YOU UNDERSTAND THAT?
A YES, SIR.
Q NOW, IF -- AND I USE THAT WORD ADVISEDLY -- IF

THE 12 JURORS FIND HIM GUILTY OF MURDER, WE THEN GO TO THE NEXT PHASE OR THE NEXT TRIAL, SOMETIMES CALLED A SECOND TRIAL. THAT IS TO DECIDE WHAT THE PUNISHMENT SHALL BE. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q NOW, AT THE SECOND TRIAL THE JURY WOULD HAVE ALREADY FOUND HIM GUILTY BEYOND A REASONABLE DOUBT. SO THE ONLY QUESTION IS: WE THE JURY HAVE FOUND HIM GUILTY OF MURDER. WHAT NOW SHALL THE PUNISHMENT BE? SHALL IT BE LIFE IMPRISONMENT OR DEATH BY LETHAL INJECTION OR ELECTROCUTION? DO YOU UNDERSTAND THAT?

A YES, SIR.

Q YOU ARE THEN CONFRONTED WITH THE QUESTION OF LIFE IMPRISONMENT OR DEATH. NOW, I LEFT A LETTER BACK THERE A MOMENT AGO FOR YOU TO READ, ALONG WITH THE OTHER JURORS. DID YOU HAVE A CHANCE TO READ THAT LETTER?

A YES, SIR.

Q THAT LETTER DESCRIBES THREE TYPES OF JURORS WHEN CONFRONTED WITH THIS PROBLEM. THERE'S NO RIGHT OR WRONG ANSWERS. WE JUST FALL INTO THREE GROUPS. THERE IS A FIRST GROUP WHO SAY WE HAVE CONVICTED HIM OF MURDER. I WILL ALWAYS BE FOR THE DEATH PENALTY.

THERE IS A SECOND GROUP EQUALLY IMPORTANT WHO SAY EVEN THOUGH WE HAVE FOUND HIM GUILTY OF MURDER,

FOR RELIGIOUS OR PERSONAL REASONS, I CAN NEVER BE FOR THE DEATH PENALTY.

THERE THERE IS A THIRD GROUP WHO SAY I AM GOING TO CONSIDER ALL OF THE FACTS IN THIS CASE, AND I CAN GIVE A SENTENCE OF DEATH IF I THINK IT'S APPROPRIATE. I ALSO CAN GIVE LIFE IMPRISONMENT. I WILL DECIDE.

WOULD YOU BE THE FIRST THAT SAYS ALWAYS, THE SECOND THAT SAYS NEVER OR THE THIRD THAT SAYS IT WILL DEPEND ON ALL THE FACTS IN THE CASE? WHICH WOULD YOU BE?

A THE THIRD.

Q THE THIRD?

A YES, SIR.

Q WHAT IS YOUR VIEW OF THE THIRD, PLEASE?

A THAT I WILL HAVE TO LISTEN TO ALL THE FACTS AND CIRCUMSTANCES.

Q LET ME GO FURTHER TO TELL YOU ABOUT OUR PROCEDURE IF I MAY. UNDER OUR PROCEDURE IF THE JURY IN THAT JURY ROOM, ALL 12, DECIDE THAT THE DEATH PENALTY IS APPROPRIATE, OUR RULES REQUIRE THAT THEY COME OUT HERE IN OPEN COURT, STAND UP AND SAY THAT THAT IS THEIR VERDICT. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q OUR RULES FURTHER REQUIRE THAT IF THE JURY, ALL OF THEM TOGETHER, AGREE THAT DEATH IS THE APPROPRIATE

SENTENCE, THEY MUST SIGN A STATEMENT SAYING SO. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q NOW, DO YOU HAVE ANY QUESTIONS ABOUT WHAT I HAVE SAID TO YOU?

A NO, SIR.

Q THANK YOU SO MUCH.

THE COURT: YOU MAY EXAMINE.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. JAMISON, I'M WALTER BAILEY. I WANT TO ASK YOU A FEW MORE QUESTIONS. I WILL TRY TO KEEP THIS SHORT BECAUSE YOU HAVE BEEN HERE FOR A LITTLE WHILE NOW. I NOTE FROM YOUR QUESTIONNAIRE THAT YOU FILLED OUT THAT YOU HAVE BEEN A WITNESS IN SOME TYPE OF CRIMINAL CASE?

A EXCUSE ME, SIR?

Q I NOTICE FROM YOUR QUESTIONNAIRE YOU SAID YOU HAD BEEN A WITNESS IN A CRIMINAL CASE. DO YOU RECALL THAT QUESTION?

A NO, SIR.

Q DID YOU FILL THE QUESTIONNAIRE OUT YOURSELF, THE TWO-PAGE QUESTIONNAIRE THAT WAS SENT TO YOU?

A YES, SIR.

Q HAVE YOU BEEN ON A CRIMINAL JURY BEFORE?
A NO, SIR.
Q HAVE YOU BEEN ON SOME OTHER KIND OF A JURY?
A YES, SIR.
Q WHAT KIND OF CASE WERE YOU A JUROR IN?
A AS OF RIGHT NOW, I DON'T REMEMBER BUT IT WAS SOMETHING IN THE SCHOOL SYSTEM, I THINK, SIR.
Q IT WASN'T IN THIS COURTROOM HERE?
A YES, SIR.
Q IT WAS?
A YES, SIR.
Q DO YOU RECALL HOW LONG AGO THAT WAS?
A NO, SIR, NOT RIGHT OFFHAND.
Q YOU DON'T KNOW WHETHER IT WAS A CRIMINAL CASE OR A CIVIL CASE?
A IT WASN'T CRIMINAL.
Q I WANT TO ASK YOU A LITTLE BIT MORE ABOUT SOME OF THE THINGS THE JUDGE ASKED YOU ABOUT THE KIND OF CASE THIS IS. YOU KNOW IT'S A CASE WHERE THE STATE IS SEEKING THE DEATH PENALTY. WE ARE ALLEGING THE DEFENDANT IN THIS CASE, MR. ALEKSEY, MURDERED A HIGHWAY PATROLMAN BACK ON NEW YEAR'S EVE.

IF WE GET TO THE SECOND PART OF THE TRIAL, YOU UNDERSTAND THAT THE JUDGE DOESN'T DECIDE WHAT THE SENTENCE IS GOING TO BE. IN THIS KIND OF CASE THE

JURY MAKES THAT DECISION. WHATEVER THE JURY DECIDES THE SENTENCE OUGHT TO BE WILL BE THE SENTENCE.

SO IF THE JURY AFTER HEARING ALL OF THE FACTS AND CIRCUMSTANCES SAYS WE THINK THIS IS A CASE WHERE THE PERSON OUGHT TO GET A LIFE SENTENCE, THE JUDGE WILL GIVE HIM A SENTENCE OF LIFE WITHOUT PAROLE AND HE WILL SERVE THAT SENTENCE.

BUT IF THE JURY DECIDES ON THE DEATH PENALTY, THAT'S WHAT THE JUDGE WILL ORDER AND THAT SENTENCE WILL BE CARRIED OUT. I AM NOT GOING TO ASK YOU WHAT YOU WOULD DO IN THIS CASE IF YOU WERE ON THE JURY BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS. YOU TOLD THE JUDGE YOU WOULD WANT TO WAIT AND HEAR ALL THOSE FACTS.

MY QUESTION IS IF THE FACTS ARE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY KNOWING THAT BASED ON THAT VOTE THAT PERSON IS ACTUALLY GOING TO BE EXECUTED?

A WHAT WAS THE QUESTION, SIR? I DIDN'T UNDERSTAND IT.

Q LET ME BACK UP A LITTLE BIT. I WILL TRY TO TELL YOU WHAT I AM NOT ASKING YOU. I AM NOT ASKING YOU TO TELL US WHAT YOU WOULD DO IN THIS CASE BECAUSE I KNOW YOU HAVEN'T HEARD ANY OF THE FACTS YET. IF THE FACTS WERE BAD ENOUGH, COULD YOU VOTE FOR THE DEATH PENALTY

KNOWING THAT PERSON IS ACTUALLY GOING TO BE EXECUTED BASED ON THAT VOTE?

A I DON'T KNOW, SIR.

THE COURT: LET ME ASK SOMETHING. I'M AFRAID YOU GOT HER CONFUSED.

SOLICITOR BAILEY: SHE GOT ME CONFUSED, TOO.

THE COURT: I UNDERSTAND.

VOIR DIRE EXAMINATION

BY THE COURT:

Q LISTEN TO ME VERY CAREFULLY. UNDER OUR PROCEDURE IF AND ONLY IF ALL OF THE JURY FIND HIM GUILTY OF MURDER AND BACK THERE THEY DECIDE THAT THE DEATH PENALTY IS APPROPRIATE.

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q IF YOU ALREADY DECIDE, TWO THINGS HAVE TO OCCUR. THIS IS AFTER YOU HAVE ALREADY MADE THE DECISION THAT DEATH IS APPROPRIATE. TWO THINGS HAVE TO HAPPEN. ONE, EACH JUROR HAS TO STAND IN OPEN COURT AND SAY, "THAT'S MY VERDICT AND IT IS STILL MY VERDICT." IF YOU MADE THAT DECISION BACK THERE, CAN YOU SAY SO IN OPEN COURT?

A YES, SIR.

Q AND IF YOU MADE THAT DECISION BACK THERE, CAN YOU ALSO SIGN YOUR NAME TO A FORM THAT SAYS SO?

A YES, SIR.

THE COURT: ALL RIGHT, SIR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. JAMISON, I GUESS WHAT I WAS REALLY TRYING TO ASK AND MAYBE I WAS NOT ASKING IT IN THE RIGHT WAY, I AM TRYING TO FIND OUT IN MY MIND WHETHER OR NOT YOU COULD REALLY VOTE FOR THE DEATH PENALTY KNOWING THAT BASED ON THAT VOTE THAT PERSON IS ACTUALLY GOING TO BE EXECUTED.

A YES, SIR.

Q THAT'S ALL I HAVE. THANK YOU VERY MUCH.

VOIR DIRE EXAMINATION

BY MR. STONE.

Q MRS. JAMISON -- IS IT JAMISON?

A JAMISON.

Q MY NAME IS DUFFIE STONE. I ALONG WITH MR. SIMS HERE REPRESENT BAYAN ALEKSEY, THIS FELLOW RIGHT HERE. YOU SAID EARLIER THAT YOU HAD SERVED IN A CIVIL TRIAL; IS THAT RIGHT? IT WAS SOME KIND OF TRIAL THAT THEY WERE TRYING TO GET MONEY, IS THAT RIGHT, OR DO YOU REMEMBER?

A NO, SIR. AT THE TIME IT WAS SOMETHING CONCERNING THE SCHOOLS.

Q CONCERNING THE SCHOOLS?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q WAS IT SOMEBODY SUING THE SCHOOLS?
A RIGHT AT THE TIME I'M AFRAID THAT I CAN'T TELL YOU. I REALLY DON'T KNOW.
Q THAT'S FINE. NOW, THE JUDGE HAS ASKED YOU A LOT OF QUESTIONS ABOUT THE DEATH PENALTY, AND MR. BAILEY HERE ASKED YOU A LOT OF QUESTIONS ABOUT THE DEATH PENALTY.

DO YOU UNDERSTAND THAT YOU MAY NEVER, IF YOU SIT ON THIS JURY, YOU MAY NEVER GET TO THE ISSUE OF WHETHER OR NOT THE DEATH PENALTY IS APPROPRIATE. IT MAY BE THAT YOU AS A JUROR FIND MR. ALEKSEY NOT GUILTY. DO YOU UNDERSTAND THAT?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q AND YOU UNDERSTAND THAT JUST BECAUSE WE ARE TALKING ABOUT THE DEATH PENALTY AND MR. ALEKSEY HERE, THE SOLICITOR'S OFFICE STILL HAS TO PROVE MR. ALEKSEY GUILTY. DO YOU UNDERSTAND THAT?
A YES.
Q SO YOU HAVE NO PROBLEM, DESPITE THE FACT EVERYBODY IS TALKING ABOUT THE DEATH PENALTY, THAT DOESN'T CAUSE YOU ANY CONCERN ABOUT HIS GUILT OR INNOCENCE; DOES IT?
A NO.
Q DO YOU HOLD WOMEN TO THE SAME STANDARD YOU HOLD

MEN? DO YOU THINK THEY ARE EQUAL, MEN AND WOMEN?
A I DON'T UNDERSTAND THE QUESTION, SIR.
Q DO YOU THINK MEN AND WOMEN ARE CAPABLE OF THE SAME THINGS OR IS ONE STRONGER?
A NO, NO.
Q TELL ME WHAT YOU THINK ABOUT THAT.
A REPEAT THE QUESTION AGAIN, SIR.
Q YOU SAID WHEN I ASKED YOU IF YOU THOUGHT MEN AND WOMEN, ONE OF THEM WAS STRONGER THAN THE OTHER ONE, DO YOU THINK EITHER OF THAT? DO YOU THINK EITHER THE MAN OR THE WOMAN IS THE STRONGER PERSON? AND THERE'S NO RIGHT OR WRONG ANSWER. IT'S JUST I AM WONDERING ABOUT YOUR FEELINGS ABOUT THAT.
A I DON'T KNOW.
Q DO YOU THINK MEN ARE CAPABLE OF THE SAME THING AS WOMEN AND WOMEN ARE CAPABLE OF DOING THE SAME THING AS A MAN?
A NO.
Q YOU DON'T?
A NO.
Q WHY NOT?
A WELL, BECAUSE...
Q IT'S OKAY. IT'S NOT A RIGHT OR WRONG ANSWER. JUST WHAT DO YOU THINK ABOUT THAT?
A SOME MENS IS STRONG AND SOME WOMEN ARE STRONG,

YOU KNOW.

Q ALL RIGHT, THANK YOU, MA'AM. I APPRECIATE YOUR ANSWER AND YOUR HONESTY.

MR. STONE: THANK YOU, YOUR HONOR.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: YES, SIR, FOR THE STATE?

SOLICITOR BAILEY: YOUR HONOR, I THINK SHE IS MINIMALLY QUALIFIED.

MR. STONE: SHE IS QUALIFIED, YOUR HONOR.

THE COURT: I AGREE WITH HER THOUGH, I DON'T UNDERSTAND YOUR QUESTION.

MR. STONE: SIR?

THE COURT: I AGREE WITH HER. I DON'T UNDERSTAND YOUR QUESTION ABOUT WOMEN AND MEN.

MR. STONE: BECAUSE NOBODY WILL LET ME ASK IT LIKE I WANT TO ASK IT, JUDGE.

THE COURT: I UNDERSTAND. STATE V. SMART DOESN'T LET YOU DO IT.

MR. STONE: YES, SIR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MADAME JUROR, WE ARE QUALIFYING 35 INDIVIDUALS. YOU ARE ONE OF THOSE THAT ARE QUALIFIED TO SERVE IF SELECTED. IN THE MORNING AT 9:30 WE ARE GOING TO SELECT 14.

YOU MAY OR MAY NOT BE SELECTED. I WANT YOU

TO RETURN HERE AT 9:30 IN THE MORNING. BRING WITH YOU YOUR CLOTHES AND PERSONAL EFFECTS THAT YOU WOULD REQUIRE IN THE EVENT THAT YOU ARE SELECTED TO STAY IN THE MOTEL. ANY QUESTIONS?

JUROR: NO, SIR.

THE COURT: SEE YOU AT 9:30 IN THE MORNING.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

MARY MOORE, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MRS. MARY MOORE, GOOD MORNING.

A GOOD MORNING.

Q MAY I ASK, PLEASE, THAT YOU SIT FORWARD AND TALK INTO THE MICROPHONE SO THAT WE CAN ALL HEAR YOU. MRS. MOORE, I NOTE HERE THAT YOU FINISHED HOLLY HILL HIGH SCHOOL AND YOU ATTENDED SOUTH CAROLINA STATE FOR SOME FOUR YEARS. YOU ARE A STORE MANAGER IN YOUR PRESENT EMPLOYMENT?

A YES, SIR.

Q AND HAVE BEEN THERE FOR 15 YEARS -- 15 MONTHS?

A YES, SIR.

Q SEVERAL JURORS ON MONDAY MORNING INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THE CASE

WE ARE GETTING READY TO TRY. WERE YOU ONE OF THOSE WHO STOOD UP OR DO YOU RECALL?

A I DON'T RECALL WHETHER I STOOD UP FOR THAT OR NOT. I REMEMBER STANDING WHEN YOU ASKED ABOUT SOMETHING HAD WE DISCUSSED ANYTHING ABOUT IT OR ANYTHING LIKE THAT.

Q LET ME ASK YOU THIS. HAVE YOU DISCUSSED THIS CASE?

A YES, SIR.

Q WHO DID YOU DISCUSS IT WITH, PLEASE?

A PROBABLY DIFFERENT PEOPLE.

Q THAT WOULD NOT BE UNUSUAL IN A SMALL TOWN.

A RIGHT.

Q I ASSUME YOU MAY HAVE READ OR HEARD SOMETHING ON T.V. ABOUT IT.

A RIGHT.

Q LET ME ASK YOU THIS, MRS. MOORE. THE JURY WHO IS SELECTED IN THE TRIAL OF THIS CASE WILL BE THE SOLE AND ONLY FINDERS OF THE FACTS. THEY WILL BE THE JUDGES OF THE CREDIBILITY AND THE BELIEVABILITY OF THE WITNESSES. THEY WILL MAKE THIS DETERMINATION AFTER OBSERVING THE JURY (SIC) ON THEIR DEMEANOR AND CONSIDERING THE TESTIMONY.

MY QUESTION IS THIS. WHATEVER YOUR VERDICT IS, BE IT IN THE FIRST OR SECOND PHASE, INNOCENCE OR

GUILT, CAN YOU PROMISE ME YOU CAN BASE YOUR VERDICT ON THE TESTIMONY HEARD IN THIS COURTROOM AND SET ASIDE THE DISCUSSIONS THAT YOU HAVE HAD OR DO YOU FEEL THAT YOU HAVE ALREADY MADE A DECISION ABOUT THIS CASE WHICH CANNOT BE CHANGED BY OTHER TESTIMONY? HOW DO YOU FEEL ABOUT THAT?

A I CAN'T HONESTLY 100 PERCENT SAY.

Q WHY? YOU ARE GOING TO CONVICT SOMEBODY BY SOMETHING YOU READ IN THE NEWSPAPER WITHOUT HEARING THEIR SIDE OF IT?

A I WOULD TRY NOT TO.

Q WOULD YOU DO THAT? I AM AMAZED THAT YOU WOULD TELL ME THAT YOU WOULD DO THAT.

A I WOULD TRY NOT TO CONVICT SOMEBODY BY SOMETHING THAT I HAD HEARD, YOU KNOW.

Q I UNDERSTAND IN A SMALL TOWN. YOU HAVE PRETTY WELL MADE UP YOUR MIND ABOUT THIS CASE, HAVEN'T YOU? TELL ME THE TRUTH.

A I WOULDN'T SAY 100 PERCENT THAT I HAVE.

THE COURT: I WILL LET YOU GO TO THE JURY ROOM JUST A MOMENT.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: JUDGE, I THINK SHE IS WAIVERING A LITTLE BIT, BUT I THINK SHE HONESTLY SAYS

SHE CAN TRY TO SET THAT ASIDE. SHE IS NOT SAYING --

MR. STONE: I THINK SHE HAS MADE UP HER MIND ABOUT 90 PERCENT. SHE HASN'T GOTTEN TO THAT 100 PERCENT, BUT SHE IS CLOSE.

THE COURT: WELL, SHE IS CLOSE TO IT. IF THE DEFENSE ASKS ME TO EXCUSE HER, I WILL DO SO.

MR. STONE: PLEASE.

THE COURT: SHE IS ABOUT 99.

MR. STONE: YES, SIR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MADAME JUROR, LET ME SAY THIS TO YOU. WE APPRECIATE YOUR ATTENDANCE HERE. WE APPRECIATE YOUR PRESENCE HERE. UNDER OUR SYSTEM OF JURISPRUDENCE, YOU AND ME AND EVERY DEFENDANT WHO WALKS THROUGH THAT COURTROOM, NO MATTER HOW SERIOUS MAY BE THE CHARGE, IS ALWAYS PRESUMED INNOCENT. THE STATE OF SOUTH CAROLINA HAS TO PROVE HIM GUILTY BEYOND A REASONABLE DOUBT.

THAT CONCEPT PROTECTS YOUR LIBERTY AND IT PROTECTS MINE. I AM GOING TO EXCUSE YOU ON THE BASIS THAT YOU ARE NOT WILLING TO GIVE HIM HIS PRESUMPTION OF INNOCENCE AND WANT TO CONVICT HIM 90 PERCENT BASED ON SOMETHING YOU MAY HAVE READ OR HEARD. THAT'S NOT FAIR. I AM GOING TO EXCUSE YOU. THANK YOU. YOU DO NOT HAVE TO RETURN.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM)

MICHELLE JENKINS, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MRS. JENKINS, GOOD MORNING.

A GOOD MORNING.

Q I HAVE SEVERAL QUESTIONS FOR YOU, PLEASE. I WOULD REQUEST THAT YOU SIT FORWARD AND SPEAK INTO THIS MICROPHONE. WILL YOU DO THAT FOR ME?

A YES.

Q MRS. JENKINS, I NOTE THAT YOU GRADUATED HIGH SCHOOL. YOU HAVE A FULL-TIME JOB?

A YES.

Q YOU HAVE KEPT THAT JOB FOR -- HOW LONG HAVE YOU BEEN WORKING THERE?

A AT WHERE I AM WORKING NOW, I HAVE ONLY BEEN THERE ABOUT TWO MONTHS.

Q TWO MONTHS. CAN YOU TELL ME WHERE YOU WORKED BEFORE, PLEASE?

A I WORK AT LINKS INDUSTRIAL FABRICS.

Q WHAT DID YOU DO THERE?

A I WAS A FABRIC CUTTER.

Q LET ME ASK YOU THIS. HAVE YOU READ OR HEARD ANYTHING ABOUT THIS CASE WE ARE GETTING READY TO TRY?

A NO, I HAVEN'T.

Q HAVE YOU HEARD ANYTHING ON T.V. ABOUT IT?

A A LITTLE ON T.V. BUT I NEVER READ ABOUT IT.

Q YOU NEVER READ ABOUT IT. HAS ANYBODY DISCUSSED IT WITH YOU?

A BASICALLY NO.

Q NO. THE REASON I ASK YOU THAT IS WHATEVER YOUR VERDICT IS, I WANT IT TO BE BASED ON WHAT YOU HEAR IN THIS COURTROOM. CAN YOU PROMISE ME YOU CAN DO THAT?

A YES.

Q DO YOU UNDERSTAND THAT THE DEFENDANT IS CHARGED WITH THE MURDER OF A HIGHWAY PATROLMAN? DO YOU KNOW THAT?

A YES.

Q HE IS CHARGED WITH IT. HE HAS PLED NOT GUILTY. DO YOU UNDERSTAND THAT?

A YES.

Q AND DO YOU UNDERSTAND THAT WE ARE GOING TO HAVE A TRIAL TO DETERMINE WHETHER OR NOT HE IS GUILTY OR INNOCENT? DO YOU UNDERSTAND THAT?

A YES.

Q NOW, IF HE IS FOUND NOT GUILTY, WE STOP THERE. DO YOU UNDERSTAND THAT?

A YES.

Q AND DURING THIS CONVERSATION IF YOU HAVE ANY QUESTIONS, PLEASE LET ME KNOW. IN THE EVENT HE IS FOUND GUILTY, WE THEN GO TO THE SECOND PART OF THE TRIAL, THE SECOND PHASE. DO YOU UNDERSTAND THAT?

A YES.

Q AT THAT TIME IT IS THE ONLY THING FOR THE JURY TO DO IS TO DECIDE WHAT THE PUNISHMENT IS. YOU HAVE EITHER GOT TO DECIDE, SINCE YOU FOUND HIM GUILTY OF MURDER IF THAT BE YOUR VERDICT, YOU HAVE GOT TO DECIDE: SHALL WE GIVE HIM LIFE IMPRISONMENT OR PUNISHMENT BY DEATH? DO YOU UNDERSTAND THAT?

A YES.

Q DID YOU READ THE LETTER BACK THERE A MOMENT AGO?

A YES.

Q JURORS FALL INTO THREE GROUPS. THERE'S NO RIGHT OR WRONG ANSWERS. ONE GROUP SAYS THAT SINCE WE HAVE FOUND HIM GUILTY OF MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY. THERE IS ANOTHER GROUP THAT SAY YES, WE HAVE FOUND HIM GUILTY OF MURDER; BUT I CAN NEVER SENTENCE AN INDIVIDUAL TO DEATH.

THERE IS A THIRD GROUP WHO SAY WE FIND HIM GUILTY OF MURDER. I AM NOW GOING TO LISTEN TO ALL THE OTHER TESTIMONY AND CONSIDER EVERYTHING. I CAN GIVE HIM THE DEATH PENALTY OR I CAN GIVE HIM LIFE IN

PRISON. LISTEN VERY CAREFULLY NOW.

WOULD YOU BE THE GROUP THAT SAYS I WILL ALWAYS GIVE THE DEATH PENALTY OR THE SECOND GROUP WHO SAYS I CAN NEVER PUT A MAN TO DEATH OR THE THIRD GROUP WHO SAYS I CAN DEPENDING ON THE FACTS OR I MAY GIVE HIM LIFE IN PRISON? WOULD YOU BE ONE, TWO OR THREE?

A THE THIRD ONE.

Q THE THIRD ONE. WHAT IS YOUR VIEW OF THE THIRD ONE, PLEASE?

A WELL, MY VIEW OF THE THIRD ONE IS --

Q TALK IN THE MICROPHONE FOR ME.

A MY VIEW OF THE THIRD ONE IS I WOULDN'T GIVE A PERSON THE DEATH PENALTY UNLESS I FOUND THAT HE WAS ABSOLUTELY GUILTY.

Q YOU ARE WILLING TO CONSIDER THAT?

A YES.

Q BUT YOU CAN GIVE HIM LIFE IMPRISONMENT OR YOU CAN IMPOSE THE PENALTY OF DEATH DEPENDING ON HOW YOU FEEL?

A YES.

THE COURT: YES, SIR.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. JENKINS, I'M WALTER BAILEY. I WANT TO ASK

YOU A COUPLE OF OTHER QUESTIONS.

A OKAY.

Q YOU UNDERSTAND WHEN WE ARE TALKING ABOUT GUILT, WHETHER OR NOT WE CAN PROVE HIM GUILTY, WE ARE TALKING ABOUT THE FIRST PART OF THAT TRIAL?

A OKAY.

Q IF HE IS FOUND NOT GUILTY, THAT'S THE END OF IT LIKE THE JUDGE SAID. BUT ON THE OTHER HAND, IF THE JURY FINDS THE DEFENDANT GUILTY OF MURDER, THEN WE GO INTO THE SECOND PART OF THE TRIAL.

A OKAY.

Q SO ANY TIME A JURY IN THIS KIND OF CASE IS IN THE SECOND PART OF THE TRIAL, THEY ARE DEALING WITH A PERSON WHO HAS ALREADY BEEN CONVICTED OF A MURDER. THE JURY HAS TO DECIDE THEN WHETHER OR NOT THEY OUGHT TO GIVE HIM LIFE IN PRISON OR THE DEATH PENALTY. DO YOU UNDERSTAND THAT?

A YES.

Q DO YOU UNDERSTAND THAT THE WAY IT WORKS IS THE JUDGE DOESN'T MAKE THAT DECISION. THE JURY MAKES THAT DECISION. THE JUDGE JUST PUTS THAT IN HIS ORDER WHATEVER THE JURY SAYS.

A YES, I UNDERSTAND THAT.

Q IF THE JURY HEARS ALL THE EVIDENCE AND THEY VOTE FOR LIFE IN PRISON, THE JUDGE WILL GIVE THAT PERSON

LIFE WITHOUT PAROLE AND HE WILL SERVE THAT SENTENCE.

A I UNDERSTAND THAT.

Q IF THE JURY SAYS THE DEATH PENALTY, THAT PERSON IS ACTUALLY GOING TO BE EXECUTED.

A I UNDERSTAND.

Q AND NOBODY IS GOING TO ASK YOU WHAT YOU WOULD DO IN THIS CASE BECAUSE YOU HAVEN'T HEARD ANY OF THE FACTS. BUT MY QUESTION IS IF THE FACTS ARE BAD ENOUGH, COULD YOU AS A JUROR VOTE FOR THE DEATH PENALTY KNOWING THAT SENTENCE IS ACTUALLY GOING TO BE CARRIED OUT AND THAT PERSON IS ACTUALLY GOING TO GET EXECUTED?

A YES.

Q IF YOU DID THAT, IF YOU FELT THAT WAY AFTER HEARING ALL THE FACTS AND THE OTHER 11 JURORS FELT THE SAME WAY YOU DID, THEN EACH JUROR WOULD BE ASKED TO SIGN THEIR NAMES TO A PAPER, A DEATH VERDICT FORM, THAT WOULD RESULT IN THAT EXECUTION TAKING PLACE AT SOME POINT. COULD YOU DO THAT?

A YES.

Q THE LAST THING THE JURY WOULD HAVE TO DO IS THEY WOULD COME OUT AND ANNOUNCE THAT VERDICT. SOMEBODY WOULD CALL OUT EACH JUROR'S NAME ONE AT TIME, AND THEY WOULD BE ASKED TO STAND UP AND SAY OUT LOUD IF THAT WAS THEIR VERDICT. COULD YOU DO THAT IF THAT

WAS YOUR VERDICT?

A YES.

Q THE LAST THING IS THE JURY WILL BE PUT A MOTEL FOR A FEW DAYS UNTIL THIS CASE IS OVER, STARTING TOMORROW, WHICH IS AN INCONVENIENCE FOR EVERYBODY. IS IT GOING TO BE ANY KIND OF AN UNUSUAL PROBLEM FOR YOU AS FAR AS YOUR FAMILY OR YOUR JOB OR ANYTHING IF YOU WERE IN A MOTEL FOR A FEW DAYS?

A NO.

Q MRS. JENKINS, THAT'S ALL I HAVE GOT. THANK YOU VERY MUCH.

A OKAY. THANK YOU.

Q DON'T LEAVE YET. MR. SIMS HAS SOME QUESTIONS.

A OKAY.

VOIR DIRE EXAMINATION

BY MR. SIMS:

Q GOOD MORNING, MRS. JENKINS. HOW ARE YOU?

A ALL RIGHT.

Q I'M THOMAS SIMS AND MR. STONE AND I REPRESENT BAYAN.

A OKAY.

Q DID I HEAR YOU RIGHT WHEN THE JUDGE WAS ASKING YOU THAT YOU HAD HEARD SOMETHING OR READ SOMETHING OR SEEN SOMETHING ABOUT THIS CASE?

A YES.

Q AND WHAT WAS THAT?
A WELL, I HEARD IT FROM A GIRLFRIEND OF MINE.
Q WHO IS THIS GIRLFRIEND?
A SHE IS A CO-WORKER AT MY JOB.
Q DOES SHE HAVE ANY RELATIVES IN LAW ENFORCEMENT OR ANYTHING LIKE THAT?
A NO. SHE WAS JUST ASKING ME SOMETHING ABOUT THE CASE AND I TOLD HER I DON'T KNOW ANYTHING ABOUT THE CASE.
Q WHEN DID THIS OCCUR?
A THIS WAS WAY BACK, ABOUT A MONTH AGO.
Q THIS IS WHEN YOU FOUND OUT THAT YOU WERE GOING TO BE A JUROR?
A YES.
Q YOU TOLD HER YOU WERE GOING TO BE A JUROR AND SHE ASKED YOU ABOUT THIS CASE?
A YES.
Q I BELIEVE IN RESPONSE TO A QUESTION YOU STATED THAT IF YOU WERE ABSOLUTELY SURE THAT A PERSON WAS GUILTY, YOU WOULD VOTE FOR THE DEATH PENALTY?
A YES.
Q IS THAT IN EVERY CASE?
A WELL, I HAVE TO SEE WHAT THE CIRCUMSTANCES IS.
Q YOU WOULD HAVE TO SEE WHAT THE CIRCUMSTANCES ARE?

A YES.
Q BEFORE YOU WOULD MAKE THAT DECISION?
A YES.
Q LET ME ASK YOU. IF YOU WERE ON THE JURY AND YOU HAD THE OPPORTUNITY TO SIT HERE AND LISTEN TO ALL OF THE EVIDENCE, IF YOU FELT THAT THE STATE DID NOT PRESENT SUFFICIENT EVIDENCE TO WARRANT A VERDICT OF GUILTY, COULD YOU ALSO GO BACK IN THE JURY ROOM AND FIND THE DEFENDANT NOT GUILTY?
A YES.
Q AND IN REGARDS TO MEN AND WOMEN, DO YOU BELIEVE OR DO YOU HOLD WOMEN TO THE SAME STANDARD THAT YOU WOULD HOLD A MAN TO?
A YES.
Q AND SAINT MICHAEL, WHICH CHURCH IS THAT?
A IT'S A BAPTIST CHURCH IN JERSEY CITY, NEW JERSEY.
Q AND YOU NOW LIVE IN?
A HOLLY HILL.
Q DO YOU GO TO CHURCH DOWN THERE?
A YES, IT'S LOVELY HILL.
Q LOVELY HILL BAPTIST?
A YES.

MR. SIMS: THAT'S ALL I HAVE.

THE COURT: HAVE HER STEP TO THE ROOM.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: ARE ALL THE JURORS OUT THERE NOW? HAVE THEM COME IN, PLEASE. BRING HER IN.

SOLICITOR BAILEY: QUALIFIED, YOUR HONOR.

MR. SIMS: YES, QUALIFIED, YOUR HONOR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: YOU HAVE BEEN FOUND QUALIFIED AS ONE OF THE 35 JURORS. PLEASE REPORT BACK TO THIS COURTROOM AT 9:30 IN THE MORNING, BRINGING WITH YOU SUCH CLOTHES AND PERSONAL EFFECTS AS YOU WILL REQUIRE IN THE EVENT THAT YOU ARE ONE OF THE 14 SELECTED.

JUROR: OKAY.

THE COURT: I WILL SEE YOU AT 9:30 IN THE MORNING.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: BRING THAT PANEL IN.

(THE JURY PANEL ENTERS THE COURTROOM.)

THE COURT: GOOD MORNING, LADIES AND GENTLEMEN. WE ARE CONTINUING THE QUALIFICATION PROCESS WHICH WE THINK WILL BE CONCLUDED BY ONE O'CLOCK TODAY. SO WE WON'T IMPOSE ON YOUR TIME ANYMORE THAN THAT.

DURING THIS PROCESS DON'T DISCUSS THIS CASE WITH ANYONE. LET NO ONE DISCUSS IT WITH YOU. UNDER NO CIRCUMSTANCES DISCUSS IT AMONG YOURSELVES. WHEN

YOU LEAVE AFTER THIS INDIVIDUAL QUESTIONING, DO NOT DISCUSS WITH ANYBODY YOUR ANSWERS OR THE QUESTIONS THAT WERE ASKED TO YOU. DON'T LET ANYBODY TALK TO YOU ABOUT IT.

YESTERDAY ONE JUROR NOT UNDERSTANDING THOUGHT HE MAY HAVE SEEN OR HEARD SOMETHING ABOUT THE CASE AND STARTED TALKING TO THE JURY ABOUT IT. THAT WAS TOTALLY IMPROPER. HE DIDN'T REALIZE THAT.

IT'S NO BIG PROBLEM BUT I JUST WANT TO EMPHASIZE TO YOU THE REASON FOR THIS IS WHATEVER YOUR VERDICT, EITHER GUILTY OR NOT GUILTY, WHATEVER IT IS, IT HAS GOT TO COME FROM THIS WITNESS STAND UNDER OATH AND NOT WHAT YOU MAY HAVE READ OR HEARD ON THE STREETS OR IN THE NEWSPAPER.

IT'S GOT TO BE UNDER OATH. THE JURY HAS GOT TO JUDGE THE CREDIBILITY AND THE BELIEVABILITY OF THE WITNESSES. THAT'S JUST OUR SYSTEM. NOW, BRING THE LAST JUROR OUT FOR VOIR DIRE AND LET THIS PANEL GO IN. THANK YOU. WE WILL MOVE WITH YOU JUST AS QUICKLY AS WE CAN.

(THE JURY PANEL LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

FRANK JOHNSON, (BLACK MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD MORNING, MR. JOHNSON.

A RIGHT.

Q YOU ARE THE LAST OF YOUR GROUP HERE AS I UNDERSTAND IT. WE APOLOGIZE FOR KEEPING YOU WAITING. THIS IS JUST A SLOW PROCESS. I NOTE FROM YOUR RETURN THAT YOU FINISHED THE 12TH GRADE OF HOLLY HILL, THAT YOU HAVE BEEN EMPLOYED -- IS THAT MAYER INDUSTRIES?

A MEYERS.

Q WHERE IS THAT, PLEASE?

A IT'S OUT THERE BY 26 AND INDUSTRIAL BOULEVARD.

Q YOU HAVE BEEN THERE 11 MONTHS?

A YES, SIR.

Q WHAT IS YOUR JOB THERE?

A I AM A MACHINIST.

Q CAN YOU TELL ME WHERE YOU WORKED BEFORE THEN.

A I WORKED FOR FOOD LION DISTRIBUTION.

Q AND YOU ARE A BLUE PRINT READER AND SET UP AND THAT SORT OR THING?

A YES, SIR.

Q LET ME ASK YOU THIS. WOULD YOU HAVE READ, HEARD OR DISCUSSED ANYTHING ABOUT THIS CASE WE ARE GETTING READY TO TRY?

A NO, SIR.

Q HAVE YOU NOT HEARD IT ON THE RADIO?
A YES, I HEARD IT ON THE RADIO.
Q HAVE YOU SEEN IT ON T.V.?
A YES, SIR.
Q HAS ANYBODY SPECIFICALLY DISCUSSED WITH YOU ANYTHING ABOUT THIS CASE?
A NO, SIR.
Q HAVE YOU SPECIFICALLY DISCUSSED IT WITH ANYBODY?
A NO, SIR.
Q LET ME ASK YOU THIS. WE WILL HAVE A TRIAL TO DETERMINE FIRST THE GUILT OR INNOCENCE OF THIS DEFENDANT. CAN YOU PROMISE ME THAT YOUR VERDICT, WHATEVER IT IS, WILL BE BASED ON WHAT YOU HEAR IN THIS COURTROOM AND NOT WHAT YOU MAY HAVE HEARD OR SEEN ON THE RADIO OR T.V.?
A YES, SIR.
Q IT IS IMPORTANT THAT YOU KEEP AN OPEN MIND, SET THAT ASIDE AND BASE YOUR VERDICT ON THE TESTIMONY IN THIS COURTROOM.
A YES, SIR.
Q DID YOU HAVE AN OPPORTUNITY TO READ THE THREE TYPES OF JURORS THAT WE HAVE?
A YES, SIR.
Q YOU UNDERSTAND THAT THIS MAY BE A TWO-PART TRIAL. THE FIRST PART IS FOR THE GUILT OR INNOCENCE.

IF HE IS FOUND NOT GUILTY, WE STOP RIGHT THERE. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q NOW, IF -- AND I USE THAT WORD ADVISEDLY BECAUSE THAT IS THE JURY'S DECISION -- IF THE DEFENDANT IS FOUND GUILTY OF MURDER WITH MALICE AFORETHOUGHT, WE THEN GO TO THE SECOND PART WHICH IS THE SENTENCING PART.

THE ONLY QUESTION THERE FOR THE JURY IS THIS: WE THE JURY HAVE FOUND HIM GUILTY OF MURDER. WHAT NOW SHALL THE SENTENCE BE? SHALL THE PUNISHMENT BE LIFE IMPRISONMENT OR DEATH BY ELECTROCUTION OR LETHAL INJECTION? ONE OR THE OTHER.

JURORS WHEN CONFRONTED WITH THE RESPONSIBILITY OF MAKING THIS DECISION FALL INTO THREE GROUPS, AS THAT LETTER INDICATES. THERE IS A GROUP WHO SAY HAVING CONVICTED SOMEONE OF MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY. EQUALLY IMPORTANT THERE IS A SECOND GROUP WHO SAY, REGARDLESS OF THAT I CAN NEVER TAKE THE LIFE OF ANOTHER HUMAN BEING.

THERE IS A THIRD GROUP WHO SAY WE FIND HIM GUILTY OF MURDER. I AM NOW GOING TO CONSIDER ALL THE FACTS THAT I HAVE HEARD. I WILL CONSIDER ANY ADDITIONAL FACTS. THEN I WILL DECIDE. THAT JUROR SAYS I CAN BE FOR THE DEATH PENALTY, BUT I ALSO CAN

BE FOR LIFE IMPRISONMENT.

WOULD YOU BE THE FIRST GROUP THAT SAYS ALWAYS, THE SECOND WHO SAYS NEVER OR THE THIRD WHO SAY IT WILL DEPEND ON THE FACTS IN THE CASE? WHICH WOULD YOU BE?

A NUMBER TWO.

Q SIR?

A NUMBER TWO.

Q WHAT IS YOUR VIEW OF NUMBER TWO, PLEASE?

A IT'S MY RELIGIOUS BELIEF NOT TO TAKE ANOTHER PERSON'S LIFE.

Q YOU ARE ENTITLED TO THAT. WE UNDERSTAND THAT. MAY I ASK YOU THIS AND I DON'T WANT BE TO TOO PERSONAL. IS THAT A PERSONAL VIEW OR RELIGIOUS VIEW OR BOTH?

A RELIGIOUS, STRICTLY RELIGIOUS.

Q IT IS ONE YOU HAVE HELD FOR A NUMBER OF YEARS?

A YES, SIR.

Q I THANK YOU FOR THAT.

SOLICITOR BAILEY: NO QUESTIONS, YOUR HONOR.

MR. STONE: NO, SIR.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: NOT QUALIFIED.

MR. STONE: WE AGREE.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. JUROR, I EXPRESS TO YOU MY APPRECIATION FOR YOUR ATTENDANCE HERE, THE CANDOR OF YOUR ANSWERS. I AM NOW IN A POSITION TO EXCUSE YOU FOR THE DAY AND FOR THE REST OF THE TRIAL. THANK YOU SO MUCH. I DO APPRECIATE IT.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

FANNIE JOHNSON, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q HAVE A SEAT, PLEASE, MA'AM, AND TALK INTO THAT MICROPHONE FOR US. IS THIS MRS. FANNIE JOHNSON?

A YES.

Q MRS. FANNIE, WILL YOU PLEASE TALK INTO THE MICROPHONE SO EVERYBODY CAN HEAR YOU. SIT UP A LITTLE CLOSER, PLEASE. MRS. JOHNSON, WE WOULD UNDERSTAND THAT THIS IS AN UNUSUAL SETTING FOR YOU AND ALL THE OTHER JURORS.

YOU MIGHT TEND TO BE A LITTLE NERVOUS, WHICH I WOULD UNDERSTAND IF I WERE SITTING OVER THERE. I WANT YOU TO KNOW THAT NOBODY WOULD ASK YOU ANY

QUESTIONS THAT WOULD INVADE YOUR PRIVACY IN ANY WAY WHATSOEVER. DO YOU UNDERSTAND THAT?

A YES.

Q TO THE EXTENT IT'S POSSIBLE, I WANT YOU TO RELAX. I KNOW THAT MIGHT BE A LITTLE DIFFICULT BECAUSE THIS IS A STRANGE PROCEEDING. IF I HAD TO LOOK AT THIS CROWD, I WOULD BE NERVOUS, TOO. SO WE UNDERSTAND. LET ME ASK YOU THIS PLEASE. YOU ARE A HIGH SCHOOL GRADUATE?

A NO, SIR.

Q HOW FAR DID YOU GO IN SCHOOL?

A TENTH.

Q MA'AM?

A TENTH.

Q TENTH GRADE. YOU WORK FOR SCHOOL DISTRICT NUMBER FIVE?

A YES.

Q WHERE IS SCHOOL DISTRICT NUMBER FIVE, PLEASE?

A SCHOOL DISTRICT FIVE?

Q YES, MA'AM.

A THAT'S O. W. HIGH SCHOOL.

Q AND YOU ARE IN FOOD SERVICE THERE?

A YES.

Q CAN YOU DESCRIBE FOR ME WHAT YOUR DUTIES ARE, PLEASE.

A FOOD SERVICE OPERATOR.

Q FOOD SERVICE OPERATOR. THIS DEFENDANT IS CHARGED WITH THE MURDER OF A HIGHWAY PATROLMAN, TO WHICH CHARGE HE HAS PLED NOT GUILTY. DO YOU UNDERSTAND THAT?

A YES.

Q WOULD YOU HAVE READ OR HEARD ANYTHING ABOUT THIS CASE?

A I READ SOME IN THE PAPER ABOUT IT AND ON THE NEWS, YOU KNOW.

Q HAS ANYBODY DISCUSSED WITH IT?

A NO, NOBODY HAVE DISCUSSED IT WITH ME.

Q I WANT TO MAKE SURE BECAUSE WE ARE GOING TO HAVE A TRIAL HERE. I WANT TO MAKE SURE THAT YOUR VERDICT, WHATEVER IT IS, EITHER GUILTY OR NOT GUILTY, WOULD BE BASED ON THE EVIDENCE IN THIS COURTROOM. I AM ASKING YOU TO SET ASIDE WHAT YOU HAVE HEARD OR READ AND BASE YOUR VERDICT ON WHAT YOU HEAR IN THIS COURTROOM. CAN YOU PROMISE ME YOU CAN DO THAT?

A YES.

Q MA'AM?

A YES.

Q NO QUESTION IN YOUR MIND ABOUT IT? IF THERE IS ANY QUESTION NOW, PLEASE TELL ME. HAVE YOU FORMED OR HAVE SOME IDEA AS TO THE GUILT OR INNOCENCE OF

ANYBODY ALREADY?
A NO, NO, NO. I HAVEN'T, NO.
Q DO YOU UNDERSTAND WHAT I AM SAYING TO YOU?
A YES.
Q DO YOU UNDERSTAND THAT IF HE IS FOUND GUILTY OF MURDER, THEN THE JURY HAS TO DECIDE WHAT THE PUNISHMENT IS? DO YOU UNDERSTAND THAT?
A I UNDERSTAND THAT.
Q PARDON ME?
A I UNDERSTAND THAT.
Q IF HE IS FOUND GUILTY OF MURDER, THE ONLY QUESTION THEN FOR THE JURY IN THE SECOND PHASE IS WHAT THE PUNISHMENT IS.
A YES.
Q THERE IS ONE OF TWO PUNISHMENTS. ONE IS LIFE IMPRISONMENT. THE OTHER IS THE PUNISHMENT OF DEATH BY ELECTROCUTION OR LETHAL INJECTION. DO YOU UNDERSTAND THAT?
A YES.
Q DID YOU READ THE LETTER A MOMENT AGO, THE THREE TYPES OF JURORS?
A YES, I READ IT.
Q ONE GROUP OF JURORS SAYS I WILL ALWAYS BE FOR THE DEATH PENALTY IF WE HAVE FOUND HIM GUILTY OF MURDER. THE SECOND GROUP SAYS I CAN NEVER SENTENCE

ANOTHER HUMAN BEING TO DEATH.

THE THIRD GROUP SAYS I AM WILLING TO LISTEN TO ALL THE FACTS IN THE CASE. I CAN GIVE HIM THE DEATH PENALTY. I ALSO CAN GIVE HIM LIFE IMPRISONMENT.

WOULD YOU BE THE FIRST GROUP THAT SAYS ALWAYS, THE SECOND THAT SAYS NEVER OR THE THIRD SAYS THAT I WILL LISTEN AND THEN I CAN DECIDE? WHICH WOULD YOU BE?

A THE PUNISHMENT?

Q PARDON ME?

A WHICH ONE WILL I DECIDE?

Q WHICH GROUP WOULD YOU BE IN?

A READ THAT TO ME AGAIN. I DIDN'T QUITE UNDERSTAND IT.

Q DO YOU UNDERSTAND -- NOW LISTEN TO ME VERY CAREFULLY. THIS IS NEW TO YOU AND I UNDERSTAND.

A IT'S NEW BECAUSE I HAVE NEVER BEEN ON JURY DUTY BEFORE.

Q I UNDERSTAND THAT. FOR PURPOSES OF THIS TRIAL, LET'S ASSUME THAT ALL 12 JURORS, INCLUDING YOURSELF, HAVE FOUND HIM GUILTY OF MURDER. YOU UNDERSTAND IF YOU FIND HIM NOT GUILTY, WE STOP RIGHT THERE.

A I UNDERSTAND GUILTY OR NOT GUILTY.

Q LET'S ASSUME YOU HAVE FOUND HIM GUILTY. YOU

UNDERSTAND THAT?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q THEN THE 12 JURORS HAVE TO DECIDE WHAT THE PUNISHMENT IS. I DON'T DECIDE. THE JURY DECIDES. DO YOU UNDERSTAND THAT SO FAR?

A I UNDERSTAND THAT.

Q THERE IS TWO PUNISHMENTS. YOU CAN GIVE HIM LIFE IMPRISONMENT FOR THAT MURDER OR YOU CAN SENTENCE HIM TO DEATH. DO YOU UNDERSTAND THAT?

A YEAH, I UNDERSTAND THAT.

Q PARDON ME?

A YEAH.

Q IT KIND OF SCARES YOU?

A IT SCARES ME. IT DO. IT SCARE ME.

Q SOME PEOPLE SAY -- LISTEN TO ME AND IF YOU DON'T UNDERSTAND, YOU ARE VERY CORRECT, JUST ASK ME. SOME PEOPLE SAY IF WE HAVE FOUND HIM GUILTY OF MURDER, I WILL BE FOR THE DEATH PENALTY. I WILL SENTENCE HIM TO DEATH.

SOME PEOPLE SAY I CAN NEVER SENTENCE ANYBODY TO DEATH. SOME PEOPLE SAY IT WILL DEPEND ON THE FACTS. I CAN SENTENCE HIM TO DEATH OR I CAN GIVE HIM LIFE IN PRISON. WHICH WOULD YOU BE?

A I WOULD SAY DEATH.

Q PARDON ME?

A DEATH.
Q DEATH?
A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)
Q ARE YOU NOT WILLING TO LISTEN TO THE FACTS IN THE CASE AND MAYBE GIVE HIM LIFE IMPRISONMENT?
A YEAH.
Q YOU COULD DO THAT?
A I COULD DO THAT.
Q BUT YOU COULD ALSO SENTENCE HIM TO DEATH?
A I COULD DO THAT, TOO.
Q NOW LET ME TELL YOU THE REST OF THE PROCEEDING. IF THE JURY HAS FIRST FOUND HIM GUILTY OF MURDER AND IF ALL 12 OF THEM IN THAT JURY ROOM THINK THAT THE DEATH PENALTY IS APPROPRIATE, ALL OF YOU HAVE TO COME OUT AND EACH ONE OF THEM HAS TO STAND IN OPEN COURT AND SAY, "THAT IS MY VERDICT, THE DEATH SENTENCE." COULD YOU DO THAT IF YOU DECIDED THAT WAS THE RIGHT SENTENCE?
A YES.
Q IN ADDITION TO THAT, EVERY JUROR WHO STANDS AND SAYS, "IT IS MY SENTENCE OF DEATH," THEY HAVE TO SIGN A PAPER THAT SAYS SO. DO YOU UNDERSTAND THAT?
A HAVE TO SIGN A PAPER SAYING THAT?
Q IF THAT BE YOUR DECISION.
A THE DECISION.

Q YOU WOULDN'T SIGN IT UNLESS YOU --

A NO, I WOULDN'T SIGN IT UNLESS IT WAS MY DECISION.

Q BUT IF IT WAS YOUR DECISION, COULD YOU SIGN THE PAPER?

A I COULD SIGN IT IF IT WAS MY DECISION.

Q I WANT YOU TO UNDERSTAND THAT IN A CASE OF THIS KIND, THE JUDGE DOES NOT MAKE THE SENTENCE. IF THAT JURY SAYS LIFE IMPRISONMENT, THAT'S WHAT I WILL DO.

A OKAY.

Q IF THE JURY SIGNS A PAPER THAT SAYS THE DEATH SENTENCE, THAT'S WHAT I'M GOING TO DO. DO YOU UNDERSTAND THAT?

A I UNDERSTAND THAT.

THE COURT: YOU MAY EXAMINE.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MRS. JOHNSON, I'M WALTER BAILEY. I'M THE PROSECUTOR IN THIS CASE. I'VE GOT JUST A FEW QUESTIONS I NEED TO ASK YOU. THIS IS THE KIND OF CASE THAT THE JURY WILL BE PUT UP IN A MOTEL FOR A FEW DAYS STARTING TOMORROW.

THAT IS AN INCONVENIENCE FOR EVERYBODY. BUT WOULD IT CAUSE YOU ANY KIND OF UNUSUAL PROBLEMS AS

FAR AS YOUR FAMILY OR YOUR JOB IF YOU ARE IN A MOTEL, SAY, FOR THIS COMING WEEKEND AND A COUPLE OF DAYS NEXT WEEK?

A WELL, I DON'T KNOW. IT WILL PROBABLY INTERFERE. I TAKE A LOT OF MEDICATION AND STUFF LIKE THAT. I TAKE MEDICATION IN THE MORNINGS AND IN THE AFTERNOONS.

Q WHAT KIND OF MEDICATION?

A I'M ON LASIX AND I TAKE CENTRUM. I HAVE TO TAKE IT AND WAIT ONE HOUR -- TAKE IT ONE HOUR BEFORE I EAT.

Q DOES ANY OF THAT KIND OF MEDICINE MAKE YOU DROWSY OR SLEEPY OR ANYTHING?

A YEAH. I TAKE DOXEPIN AT NIGHT FOR SLEEP.

Q BUT DURING THE DAYTIME DO YOU TAKE ANY KIND OF MEDICINE THAT WOULD MAKE YOU KIND OF GROGGY OR ANYTHING LIKE THAT?

A NO, NOT REALLY. THE ONLY THING IS THE BATHROOM. I USUALLY TAKE THAT IN THE AFTERNOON WHEN I GET OFF WORK BECAUSE I CAN'T HARDLY TAKE IT AND WORK WITH IT BECAUSE I HAVE GO TO THE BATHROOM SO MUCH.

Q DO YOU THINK ANY OF THE MEDICATIONS YOU ARE TAKING OR ANY OF THE PHYSICAL PROBLEMS YOU MIGHT HAVE THAT CAUSE YOU TO TAKE THOSE MEDICATIONS WOULD PREVENT YOU FROM BEING ABLE TO SIT HERE AS A JUROR?

A YES, SIR. IT DEPENDS ON HOW LONG I HAVE TO SIT. I GOT TO GO TO THE BATHROOM REGULAR.

Q WELL, THE JURY GENERALLY SITS ABOUT MAYBE AN HOUR AND A HALF AT THE LONGEST. WOULD THAT BE A PROBLEM?

A IT DEPEND WHEN I TAKE THAT MEDICINE.

THE COURT: WAIT AND TAKE IT UNTIL AFTER WE GET THROUGH WORKING IN THE AFTERNOONS.

THE WITNESS: I USUALLY TAKE IT AFTER I GET OUT OF SCHOOL ABOUT 2:30.

THE COURT: WE WILL GET YOU TO TAKE IT ABOUT FIVE. WOULD THAT BE ALL RIGHT?

THE WITNESS: YEAH. EARLY IN THE MORNING, I TAKE IT ABOUT SEVEN O'CLOCK IN THE MORNING. WHENEVER I TAKE IT, I GOT TO EAT AN HOUR AFTER I TAKE IT.

Q DID YOU UNDERSTAND ALL THE STUFF THE JUDGE TOLD YOU ABOUT THE KIND OF TRIAL THIS IS, A TWO-PART TRIAL?

A YES.

Q IF THE JURY FINDS THE PERSON GUILTY OF MURDER IN THE FIRST PART, WE GO INTO THE SECOND PART. YOU UNDERSTAND THE JUDGE DOESN'T DECIDE WHAT THE SENTENCE IS GOING TO BE IN THIS KIND OF CASE. THE JURY MAKES THAT DECISION.

A YES, I UNDERSTAND THAT.
Q THE JUDGE IS GOING TO PUT INTO EFFECT WHATEVER THAT JURY SAYS.
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q SO IF THE JURY HEARS ALL THE FACTS AND THEY SAY DEATH PENALTY, HE IS GOING TO SENTENCE THAT PERSON TO DEATH AND HE WILL BE EXECUTED. IF THE JURY SAYS LIFE IN PRISON, THE JUDGE WILL GIVE HIM LIFE WITHOUT PAROLE. DO YOU UNDERSTAND THAT?
A I UNDERSTAND THAT.
Q YOU TOLD THE JUDGE IF THE CASE IS BAD ENOUGH, YOU COULD VOTE FOR THE DEATH PENALTY; IS THAT CORRECT?
A YES.
Q ON THE OTHER HAND, AFTER HEARING ALL THE FACTS, YOU MIGHT VOTE FOR A LIFE SENTENCE?
A YES.
Q YOU COULD SIGN, WHATEVER YOUR VERDICT IS, IF YOU HAD TO SIGN YOUR NAME TO A PIECE OF PAPER SAYING, "THAT IS MY VERDICT," YOU COULD DO THAT; IS THAT RIGHT?
A YES.
Q AND IF SOMEBODY ASKS YOU TO STAND UP IN COURT HERE AND ANNOUNCE THAT VERDICT OUT LOUD, YOU COULD DO

THAT, TOO?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q YOU HAVE GOT TO SAY IT OUT LOUD SO SHE CAN TAKE IT DOWN.

A YEAH, I RECKON. THAT'S A TOUGH DECISION.

Q THAT'S ALL I HAVE GOT. THANK YOU VERY MUCH.

THE COURT: ANY QUESTIONS?

VOIR DIRE EXAMINATION

BY MR. SIMS:

Q GOOD AFTERNOON, MRS. JOHNSON. HOW ARE YOU?

A I'M ALL RIGHT.

Q I'M THOMAS SIMS. I WITH MR. STONE REPRESENT BAYAN OVER THERE. LET ME ASK YOU. YOU HAVE BEEN GIVEN A LOT OF INFORMATION ABOUT THE DEATH PENALTY AND THEY HAVE ASKED YOU A LOT OF QUESTIONS ABOUT THAT.

LET ME ASK YOU THIS. IF YOU SAT IN THAT JURY BOX AND YOU DETERMINED THAT THE STATE OF SOUTH CAROLINA HAS NOT PRESENTED SUFFICIENT EVIDENCE TO PROVE TO YOU BEYOND A REASONABLE DOUBT THAT HE IS GUILTY, COULD YOU GO BACK IN THAT JURY ROOM AND COME BACK WITH A VERDICT OF NOT GUILTY?

A YEAH, BUT...

Q I'M SORRY?

A RUN THROUGH IT AGAIN.
Q IF YOU WERE IN THIS TRIAL AND YOU HEARD THE EVIDENCE AND YOU DIDN'T THINK IT WAS ENOUGH EVIDENCE -- OR THE STANDARD IS PROOF BEYOND A REASONABLE DOUBT. IF YOU DIDN'T THINK THAT THE STATE MET THAT BURDEN, COULD YOU GO BACK IN THE JURY ROOM AND FIND HIM NOT GUILTY?
A I WOULD THINK SO.
Q AND DO YOU UNDERSTAND THAT IN ANY CASE THAT IT IS NOT A MAJORITY NUMBER, BUT A UNANIMOUS DECISION BY ALL THE JURORS?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q DO YOU KNOW WHAT I MEAN? IN THIS KIND OF CASE, YOU CAN HAVE A SITUATION WHERE YOU ARE TALKING ABOUT MAYBE TEN PEOPLE BELIEVING ONE WAY AND ONE OR TWO PEOPLE BELIEVING ANOTHER WAY AND THAT TEN WOULD WIN. ALL 12 WOULD HAVE TO AGREE.
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q DO YOU UNDERSTAND THAT?
A I UNDERSTAND THAT PART.
Q IN A SITUATION LIKE THIS, DO YOU FURTHER UNDERSTAND THAT IF YOU WERE OF THAT OTHER TWO, THAT YOU WOULD HAVE YOUR RIGHT TO YOUR OPINION?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q AND WOULD NOT HAVE TO BE SWAYED BY THE OTHER TEN. WHATEVER YOU DECIDE IS YOUR OPINION AND WHATEVER THEY DECIDE IS THEIR OPINION.

A YES.

Q LET ME ASK YOU. DO YOU THINK OR DO YOU BELIEVE THAT WOMEN SHOULD BE HELD TO THE SAME STANDARD AS A MAN IN A CASE OR ANY KIND OF CASE?

A I WOULD THINK SO.

Q MOUNT ZION BAPTIST CHURCH, IS THAT IN ORANGEBURG?

A THAT'S IN COPE, BETWEEN COPE AND BOLERTOWN (PH.)

THE COURT: ANY FURTHER QUESTIONS?

MR. SIMS: NOTHING FURTHER, YOUR HONOR.

THE COURT: ANYTHING IN REPLY?

SOLICITOR BAILEY: NO, SIR, YOUR HONOR.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: QUALIFIED.

THE COURT: WHAT SAYS THE DEFENSE?

MR. SIMS: QUALIFIED, YOUR HONOR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MRS. JOHNSON.

JUROR: YES.

THE COURT: THE ATTORNEYS FOR THE STATE AND THE DEFENDANT HAVE FOUND YOU QUALIFIED TO SERVE IF SELECTED. WE HAVE QUALIFIED 35 PEOPLE. FROM THAT NUMBER IN THE MORNING AT 9:30 WE ARE GOING TO SELECT 14 TO SIT ON THIS CASE. DO YOU UNDERSTAND THAT?

JUROR: YES.

THE COURT: YOU MAY OR MAY NOT BE SELECTED. I DON'T KNOW YET. I WANT YOU TO BE BACK IN HERE PROMPTLY AT 9:30 IN THE MORNING AND BRING WITH YOU SUCH PERSONAL EFFECTS AND LUGGAGE THAT YOU MIGHT REQUIRE FOR A STAY IN THE MOTEL IF YOU ARE SELECTED. DO YOU UNDERSTAND THAT?

JUROR: I UNDERSTAND.

THE COURT: DO YOU HAVE ANY QUESTIONS?

JUROR: I GUESS NOT. YOU SAY BRING CLOTHES?

THE COURT: BRING WHAT YOU WILL NEED IN THE MOTEL IN CASE YOU ARE SELECTED.

JUROR: ALL RIGHT.

THE COURT: I WILL SEE YOU IN THE MORNING.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

JEROME ASBERRY, (BLACK MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MR. ASBERRY, GOOD MORNING. LET ME ASK, PLEASE, THAT YOU SIT UP SO THAT YOU MIGHT TALK INTO THAT MICROPHONE. YOU ARE PRESENTLY EMPLOYED AT WHITMAN?

A YES, SIR.

Q AND YOU HAVE BEEN THERE SOME FIVE MONTHS. WHAT DO YOU DO THERE?

A I RUN A SCREW MACHINE, SIR.

Q CAN YOU TELL ME WHERE YOU WORKED BEFORE YOU WENT TO WHITMAN, PLEASE?

A SANTEE STATE PARK.

Q SIR?

A SANTEE STATE PARK.

Q WAS THAT FOR SOUTH CAROLINA?

A YES, SIR.

Q WHAT DID YOU DO THERE?

A PARK TECHNICIAN.

Q SIR?

A PARK TECHNICIAN.

Q YOU UNDERSTAND THAT THIS DEFENDANT IS CHARGED WITH THE MURDER OF A HIGHWAY PATROLMAN, TO WHICH CHARGE HE HAS PLED NOT GUILTY. WE THUS ARE HAVING A TRIAL TO DETERMINE HIS INNOCENCE OR GUILT. WOULD YOU HAVE READ OR HEARD ANYTHING ABOUT THIS CASE?

A NO, SIR.

Q HAVEN'T SEEN IT ON T.V.?

A NO, SIR. I SEEN IT -- WELL, I SEEN IT IN THE NEWSPAPER MONDAY.

Q YOU SAW IT MONDAY?

A YES, SIR.

Q HAS ANYBODY TALKED TO YOU ABOUT THE CASE?

A NO, SIR.

Q I JUST WANT TO MAKE SURE THAT IF YOU ARE ONE OF THE 12 JURORS, YOU WILL BASE YOUR VERDICT ON WHAT YOU HEAR IN THIS COURTROOM AND NOT WHAT YOU MAY HAVE READ IN THE PAPER LAST MONDAY. CAN YOU PROMISE ME THAT?

A YES, SIR.

Q DID YOU HAVE A CHANCE TO READ THE THREE TYPES OF JURORS?

A YES, SIR.

Q YOU WOULD UNDERSTAND THAT WE MAY OR MAY NOT EVEN GET TO THAT QUESTION. IF IN THE FIRST PART OF THIS TRIAL HE IS FOUND NOT GUILTY, THAT ENDS IT. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q NOW, IF YOU FIND HIM GUILTY OF MURDER -- AND I SAY THAT ADVISEDLY -- IF YOU FIND HIM GUILTY OF MURDER, THE NEXT PART OF THE TRIAL DEALS WITH THE SENTENCE THAT THE JURY WANTS TO GIVE. I DON'T GIVE

IT. THE JURY GIVES IT.

THERE IS ONE OR TWO SENTENCES FOR SOMEBODY CONVICTED OF MURDER. ONE IS LIFE IMPRISONMENT. THE OTHER IS DEATH BY ELECTROCUTION OR LETHAL INJECTION, ONE OR THE OTHER. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q JURORS WHEN CONFRONTED WITH THIS DECISION FALL INTO THREE GROUPS. THERE IS ONE GROUP WHO SAYS WE HAVE CONVICTED HIM OF MURDER. I WILL BE FOR THE DEATH PENALTY ALWAYS. THE SECOND GROUP SAYS EVEN THOUGH WE HAVE CONVICTED HIM OF MURDER, I CAN NEVER SENTENCE ANOTHER HUMAN BEING TO DEATH.

THE THIRD GROUP SAYS WE HAVE FOUND HIM GUILTY OF MURDER. I AM NOW GOING TO CONSIDER ALL THE FACTS AND I CAN DECIDE. THAT JUROR SAYS I CAN IMPOSE A SENTENCE OF DEATH. EQUALLY IMPORTANT I CAN GIVE HIM LIFE IN PRISON.

WOULD YOU BE THE FIRST THAT SAYS ALWAYS, THE SECOND THAT SAYS NEVER OR THE THIRD WHO SAYS I WILL LISTEN AND THEN DECIDE? WHICH WOULD YOU BE?

A THE THIRD.

Q THE THIRD. YOU ARE SAYING THAT YOU COULD DO EITHER ONE DEPENDING ON HOW YOU FELT?

A YES, SIR.

Q NOW, LET ME TELL YOU ABOUT OUR PROCEDURE. IF

YOU AND THE OTHER 11 JURORS BACK IN THE JURY ROOM UNANIMOUSLY CONCLUDE THAT DEATH IS THE APPROPRIATE SENTENCE, OUR SYSTEM REQUIRES THAT EACH ONE OF YOU COME OUT HERE, STAND UP IN OPEN COURT AND SAY THAT IS YOUR SENTENCE. CAN YOU DO THAT?

A YES, SIR.

Q IF YOU DO IT BACK THERE. NOW, OUR SYSTEM ALSO SAYS THAT IF 12 JURORS IN THE JURY ROOM HAVE CONCLUDED UNANIMOUSLY THAT DEATH IS THE APPROPRIATE SENTENCE, THEY HAVE GOT TO SIGN A FORM SAYING SO. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q DO YOU UNDERSTAND THAT IT IS THE JURY'S DECISION AND NOT MINE WHETHER LIFE OR DEATH IS IMPOSED?

A YES, SIR.

Q I TELL YOU THAT IF THE JURY GIVES LIFE IMPRISONMENT, THAT'S WHAT I WILL DO. WITH EQUAL IMPORTANCE I TELL YOU IF IT IS THE JURY'S DECISION THAT DEATH BE IMPOSED, THAT'S EXACTLY WHAT I WILL DO. DO YOU UNDERSTAND THAT?

A YES, SIR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MR. ASBERRY, I THINK THE JUDGE COVERED EVERYTHING I WOULD HAVE ASKED YOU OTHERWISE BUT JUST

A COUPLE OF THINGS TO MAKE SURE I UNDERSTAND FULLY YOUR ANSWERS. YOU HAVE INDICATED IF THE CASE IS BAD ENOUGH, YOU COULD IMPOSE A DEATH PENALTY KNOWING THAT SENTENCE WOULD ACTUALLY BE CARRIED OUT?

A YES, SIR.

Q THE OTHER THING IS THE JURY WILL BE PUT IN A MOTEL AT NIGHT UNTIL THIS TRIAL IS OVER, STARTING TOMORROW THROUGH THE WEEKEND AND MAYBE MONDAY OR TUESDAY OF NEXT WEEK.

A YES, SIR.

Q I REALIZE THAT IS A HARDSHIP ON EVERYBODY. IS THERE ANYTHING AS FAR AS YOUR PERSONAL LIFE OR WORK, ANYTHING THAT WOULD CAUSE YOU ANY UNUSUAL HARDSHIP TO BE PUT UP LIKE THAT IN A MOTEL?

A NO, SIR.

Q THANK YOU. THAT'S ALL I HAVE.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q MR. ASBERRY, I'M DUFFIE STONE. I ALONG WITH MR. SIMS REPRESENT BAYAN ALEKSEY, THE GENTLEMAN DOWN HERE AT THE END. A LOT OF PEOPLE HAVE TALKED TO YOU ABOUT THE DEATH PENALTY. DOES THAT MAKE YOU FEEL ONE WAY OR THE OTHER ABOUT MR. ALEKSEY'S GUILT?

A NO, SIR.

Q EXCUSE ME?

A NO, SIR.
Q I DON'T THINK THAT MICROPHONE WORKS. YOU MAY HAVE TO SPEAK UP A LITTLE BIT. WHEN THE SOLICITOR WAS ASKING YOU YOUR OPINIONS OF THE DEATH PENALTY, YOU UNDERSTAND AS A JUROR THAT YOU MAY NEVER GET TO THAT POSITION OF DECIDING WHETHER OR NOT THAT SENTENCE IS APPROPRIATE, DEATH OF LIFE. DO YOU UNDERSTAND THAT?
A YES, SIR.
Q YOU UNDERSTAND THAT THE SOLICITOR HAS TO PROVE THAT CASE BEYOND A REASONABLE DOUBT BEFORE YOU CAN EVEN FIND HIM GUILTY. DO YOU UNDERSTAND THAT?
A YES, SIR.
Q DOES THAT GIVE YOU ANY CONCERN OR PROBLEM OR ANYTHING LIKE THAT?
A NO, SIR.
Q DO YOU KNOW THIS CASE IS ABOUT THE DEATH OF A HIGHWAY PATROLMAN?
A YES, SIR.
Q IT'S A PRETTY SERIOUS CASE OBVIOUSLY. DOES THAT MAKE YOU -- KNOWING THAT YOU COULD STILL COME BACK, IF YOU DIDN'T THINK THE SOLICITOR PROVED HIS CASE, WITH A VERDICT OF NOT GUILTY?
A YES, SIR.
Q IT DOESN'T BOTHER YOU THE FACT THAT YOU HAVE A

DECEASED HIGHWAY PATROLMAN INVOLVED?

A YES, SIR.

Q IT DOESN'T BOTHER YOU?

A NO, SIR.

Q DO YOU THINK THAT WOMEN ARE CAPABLE OF THE SAME THINGS MEN ARE?

A YES, SIR.

Q DO YOU HOLD WOMEN TO THE SAME STANDARDS THAT YOU HOLD MEN?

A YES, SIR.

Q I DON'T HAVE ANYTHING ELSE. THANK YOU, SIR. I APPRECIATE IT.

MR. STONE: THANK YOU, YOUR HONOR.

(THE JUROR LEAVES THE COURTROOM.)

SOLICITOR BAILEY: QUALIFIED, JUDGE.

MR. STONE: YES, SIR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. ASBERRY, YOU HAVE BEEN FOUND QUALIFIED TO SERVE BY THE STATE AND THE DEFENSE COUNSEL IF SELECTED. IN THE MORNING PROMPTLY AT 9:30, WE ARE GOING TO SELECT 12 JURORS AND TWO ALTERNATES, A TOTAL OF 14.

YOU MAY OR MAY NOT BE SELECTED, BUT I RESPECTFULLY REQUEST NOW THAT YOU RETURN PROMPTLY AT 9:30, BRINGING WITH YOU SUCH PERSONAL EFFECTS AND

CLOTHING THAT YOU WOULD REQUIRE FOR STAYING IN THE MOTEL IF YOU ARE SELECTED.

JUROR: YES, SIR.

THE COURT: DO YOU HAVE ANY QUESTIONS?

JUROR: NO, SIR.

THE COURT: I WILL SEE YOU AT 9:30 IN THE MORNING.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

ROBERTA SEEGARS, (BLACK FEMALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

SOLICITOR BAILEY: CAN WE APPROACH, JUDGE?

THE COURT: YES, SIR. WE NOW HAVE --

SOLICITOR BAILEY: THIRTY-FIVE.

THE COURT: I WILL GET TWO MORE IN AN ABUNDANCE OF PRECAUTION.

SOLICITOR BAILEY: ALL RIGHT, SIR.

VOIR DIRE EXAMINATION

BY THE COURT:

Q GOOD AFTERNOON.

A GOOD AFTERNOON, SIR.

Q I WOULD ASK, PLEASE, THAT YOU SIT FORWARD AND TALK INTO THE MICROPHONE SO THAT WE CAN HEAR. YOUR NAME IS ROBERTA SEEGARS?

A THAT IS CORRECT.

Q YOU WENT TO SOUTH CAROLINA STATE COLLEGE, HAVING GRADUATED FROM ORANGEBURG WILKERSON HIGH SCHOOL?

A THAT IS CORRECT.

Q YOU HAVE BEEN EMPLOYED AT COFFER MANUFACTURING IN MATTHEWS FOR THE LAST THREE MONTHS?

A EXACTLY.

Q WHERE WERE YOU EMPLOYED PRIOR TO THAT, PLEASE, MA'AM?

A ALL AMERICAN BODY SHOP, SAINT MATTHEWS, SOUTH CAROLINA.

Q DID YOU QUIT THERE OR THEY WENT OUT OF BUSINESS OR WHAT HAPPENED?

A I WAS WORKING PART-TIME WITH MY HUSBAND. MY HUSBAND OWNS AND OPERATES THAT BUSINESS.

Q I SEE. NOW, THE CASE THAT WE ARE PREPARING TO TRY INVOLVES THE DEATH OF A HIGHWAY PATROLMAN, WHEREIN THIS DEFENDANT IS ACCUSED OF THAT AND TO WHICH ACCUSATION HE HAS PLED NOT GUILTY. WOULD YOU HAVE READ OR HEARD ANYTHING ABOUT THIS CASE?

A YES, SIR, I HAVE HEARD ABOUT IT.

Q YOU READ SOMETHING IN THE NEWSPAPER AND PROBABLY SAW IT ON T.V.?

A YES, SIR.

Q HAS SOMEBODY DISCUSSED IT WITH YOU, TOO?

A YES.
Q WHEN WAS IT DISCUSSED?
A WHEN IT INITIALLY HAPPENED.
Q WHEN IT INITIALLY HAPPENED.
A I DISCUSSED IT.
Q LET ME SAY THIS TO YOU. UNDER OUR SYSTEM WE BRING ALL THE FACT WITNESSES HERE ON BOTH SIDES. WE ASK THE JURY TO JUDGE THEIR CREDIBILITY AND BELIEVABILITY. THEN WE ASK THE JURY TO MAKE A DECISION BASED ON WHAT THEY HEARD IN THIS COURTROOM, NOT WHAT THEY MAY HAVE READ OR HEARD ON THE OUTSIDE.

MOST JURORS SAY THAT THEY CAN SET THAT ASIDE AND BASE THEIR VERDICT ON WHAT IS IN THIS COURTROOM. OTHER JURORS HAVE SAID I HAVE ALREADY MADE AN OPINION AND I WILL NOT CHANGE MY MIND. I DON'T FEEL I COULD. WHICH WOULD YOU BE? CAN YOU TELL ME ABOUT THAT? HOW DO YOU FEEL ABOUT THAT?

A I FEEL AS THOUGH I CAN SIT AND LISTEN TO ALL THE FACTS AND THEN BASE MY DECISION UPON THE FACTS.
Q BASED ON WHAT YOU HEAR IN THIS COURTROOM?
A YES, SIR.
Q YOU UNDERSTAND THAT THIS MIGHT OR MIGHT NOT BE A TWO-PART TRIAL?
A YES, SIR.
Q IF THEY FIND HIM NOT GUILTY, WE STOP. IF THEY

FIND HIM GUILTY, THEN THE JURY HAS GOT TO DECIDE THE PUNISHMENT, LIFE IMPRISONMENT OR DEATH. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q DID YOU READ THE LETTER ABOUT THE THREE TYPES OF JURORS?

A I DID.

Q WHICH GROUP WOULD YOU BE IN, THE FIRST, SECOND OR THIRD?

A THE SECOND GROUP.

Q WHAT IS YOUR VIEW OF THE SECOND, PLEASE?

A I JUST DO NOT BELIEVE IN THE DEATH PENALTY.

Q YOU JUST DO NOT?

A YES, SIR.

Q YOU UNDERSTAND THERE'S NO RIGHT OR WRONG ANSWERS. EVERYBODY IS ENTITLED TO AN OPINION.

A EXACTLY.

Q MAY I ASK YOU THIS. IS THAT A PERSONAL OPINION OR RELIGIOUS OPINION OR BOTH?

A IT'S A RELIGIOUS OPINION.

Q HAVE YOU HELD THAT OPINION FOR SOME PERIOD OF TIME?

A I HAVE, SIR.

Q I WILL LET YOU GO TO THE JURY ROOM JUST FOR A MOMENT.

(THE JUROR LEAVES THE COURTROOM.)

SOLICITOR BAILEY: NOT QUALIFIED, YOUR HONOR.

MR. STONE: YES, SIR.

THE COURT: BY AGREEMENT OF COUNSEL.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MRS. SEEGARS, I WANT TO THANK YOU FOR YOUR PRESENCE HERE TODAY. THANK YOU FOR YOUR CANDID ANSWERS. I AM IN A POSITION TO EXCUSE YOU. THANK YOU SO MUCH.

JUROR: THANK YOU, YOUR HONOR.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

PAUL DREW, (WHITE MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MR. DREW, ARE YOU PAUL B. DREW OR ARE YOU KNOWN AS BRIAN DREW?

A I'M KNOWN AS BRIAN DREW BUT I GO BY PAUL DREW.

Q PAUL DREW. YOU FINISHED NORTH HIGH SCHOOL. YOU HAVE WORKED AT NORTH FURNITURE STORE FOR THE LAST FIVE YEARS?

A YES, SIR.

Q YOU ARE A SALESMAN AND CLAIMS AND DELIVERY

THERE?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q YOU UNDERSTAND THAT THIS DEFENDANT IS ON TRIAL FOR THE MURDER OF A HIGHWAY PATROLMAN, TO WHICH CHARGE HE HAS PLED NOT GUILTY. MANY JURORS HAVE INDICATED THAT THEY MAY HAVE READ OR HEARD SOMETHING ABOUT THIS CASE. WOULD YOU HAVE BEEN AMONG THAT NUMBER?

A THE ONLY THING I SAY WAS THE PAPERS, THE ONLY THING I HAVE READ.

Q HAVE YOU FORM OR EXPRESSED AN OPINION AS TO THE INNOCENCE OR GUILT OF ANYBODY?

A NO.

Q ARE YOU WILLING TO SET ASIDE WHAT YOU MAY HAVE READ OR HEARD AND BASE YOUR VERDICT, EITHER NOT GUILTY OR GUILTY, BASED ON THE TESTIMONY IN THE TRIAL OF THIS CASE?

A YES, I WOULD.

Q YOU UNDERSTAND THAT UNDER OUR SYSTEM A JURY IS THE SOLE FINDERS OF THE FACTS. THEY ARE THE JUDGES OF THE CREDIBILITY AND THE BELIEVABILITY OF THE WITNESSES.

IT IS IMPERATIVE THAT A JURY, IN ASSESSING THE GUILT OR INNOCENCE OF ANYBODY, BASE IT ON WHAT THEY

HEAR IN THIS COURTROOM, NOT WHAT THEY MAY HAVE READ OR HEARD ON THE OUTSIDE. CAN YOU ACCEPT THAT?

A YES, SIR.

Q YOU UNDERSTAND THAT THERE MIGHT OR MIGHT NOT BE A SECOND PHASE. IF THE DEFENDANT IS FOUND NOT GUILTY, WE STOP THERE. IF HE IS FOUND GUILTY, WE THEN GO TO THE SECOND PART WHICH IS THE PUNISHMENT PART. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q AT THE PUNISHMENT PART, THE ONLY QUESTION FOR THE JURY IS THIS: WE FOUND HIM GUILTY OF MURDER. WHAT WILL THE PUNISHMENT BE? SHALL WE GIVE HIM LIFE IMPRISONMENT OR DEATH? DO YOU UNDERSTAND THAT?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q GENERALLY WHEN CONFRONTED WITH THIS DECISION, JURORS FALL INTO THREE GROUPS. ONE GROUP SAYS HAVING CONVICTED HIM OF MURDER, I WILL ALWAYS BE FOR THE DEATH PENALTY. THE SECOND GROUP SAYS I CAN NEVER BE FOR THE DEATH PENALTY, PERIOD.

THE THIRD GROUP SAYS I AM WILLING TO CONSIDER ALL OF THE FACTS. WE HAVE CONVICTED HIM OF MURDER. NOW I AM GOING TO CONSIDER EVERYTHING ABOUT THIS CASE AND THEN I WILL DECIDE. THAT JUROR SAYS I CAN IMPOSE

A SENTENCE OF DEATH. EQUALLY IMPORTANT I CAN GIVE HIM LIFE IMPRISONMENT. WOULD YOU BE ONE, TWO OR THREE?

A THE FIRST ONE.

Q SIR?

A THE FIRST ONE.

Q WHICH ONE?

A THE FIRST GROUP.

Q WHAT IS YOUR OPINION OF THE FIRST GROUP?

A THAT IT SHOULD BE A DEATH SENTENCE IF HE IS FOUND GUILTY.

Q IF HE IS FOUND GUILTY, YOU THINK -- AND THAT'S JUST A VIEW YOU HAVE HAD FOR A NUMBER OF YEARS?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q YOU THINK IF ONE IS FOUND GUILTY OF MURDER, IN EVERY CASE HE OUGHT TO BE EXECUTED? IS THAT WHAT YOU THINK?

A YES, SIR.

SOLICITOR BAILEY: YOUR HONOR, I HAVE NO QUESTIONS.

THE COURT: I WILL LET YOU GO TO THE JURY ROOM JUST A MOMENT.

(THE JUROR LEAVES THE COURTROOM.)

MR. STONE: WE ASK HE BE EXCUSED. HE IS

NOT QUALIFIED.

THE COURT: YES, SIR.

SOLICITOR BAILEY: WE AGREE.

THE COURT: I AGREE.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. JUROR, I EXPRESS TO YOU OUR APPRECIATION FOR YOUR ATTENDANCE HERE TODAY. I AM IN A POSITION TO EXCUSE YOU FOR THE REST OF THE WEEK. THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

(THE NEXT JUROR ENTERS THE COURTROOM.)

LEVON TYLER, (BLACK MALE), BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

VOIR DIRE EXAMINATION

BY THE COURT:

Q MR. TYLER?

A YES, SIR.

Q ARE YOU IN THE MARINE CORPS?

A YES, SIR.

Q ARE YOU ACTIVE DUTY RIGHT NOW?

A YES, SIR.

Q ARE YOU HOME ON LEAVE OR WHAT?

A NO, SIR.

Q SIR?

A I'M STATIONED IN COLUMBIA AT FORT JACKSON.

Q BUT YOU LIVE HERE IN ORANGEBURG?
A I LIVE IN ORANGEBURG COUNTY, SIR.
Q WHAT TYPE OF -- YOUR SPECIALTIES ARE IN WHAT, PLEASE?
A ADMINISTRATIVE SPECIALIST.
Q ADMINISTRATIVE SPECIALIST?
A YES, SIR.
Q IF YOU ARE SELECTED AS A JUROR, WILL THEY LET YOU OFF YOUR MILITARY DUTY TO SERVE AS A JUROR?
A YES, SIR.
Q YOU CAN SERVE. LET ME ASK YOU THIS. HAVE YOU FORMED OR EXPRESSED AN OPINION ABOUT THIS CASE? HAVE YOU READ ANYTHING ABOUT IT? MOST PEOPLE IN ORANGEBURG HAVE MAYBE SEEN OR HEARD SOMETHING.
A I HAVE READ ABOUT IT, SIR.
Q LET ME ASK YOU THIS. UNDER OUR SYSTEM WE ASK ALL JURORS TO DISMISS WHAT THEY READ OR HEARD AND BASE THEIR VERDICT ON THE TESTIMONY IN THE TRIAL OF THIS CASE IN THIS COURTROOM UNDER OATH. COULD YOU DO THAT?
A I SURE COULD, SIR.
Q THIS DEFENDANT IS ON TRIAL FOR MURDER, FOR THE KILLING OF A HIGHWAY PATROLMAN. HE HAS PLED NOT GUILTY. HE IS PRESUMED INNOCENT AND THE STATE HAS TO PROVE HIM GUILTY IF THEY CAN BEYOND A REASONABLE

DOUBT. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q CAN YOU ACCEPT THAT PROPOSITION OF LAW?

A YES, SIR.

Q DID YOU HAVE AN OPPORTUNITY TO READ THE THREE TYPES OF JURORS?

A YES, SIR?

Q DO YOU UNDERSTAND THOSE?

A YES, SIR.

Q YOU UNDERSTAND THAT THIS IS A TWO-PART TRIAL. IF HE IS FOUND NOT GUILTY, WE STOP THERE. IF HE IS FOUND GUILTY, THEN THE JURY HAS TO DETERMINE THE APPROPRIATE SENTENCE. DO YOU UNDERSTAND?

A YES, SIR.

Q IN CONSIDERING THIS DECISION OF PUNISHMENT, WHICH GROUP WOULD YOU COME IN, ONE, TWO OR THREE?

A I THINK I WOULD COME IN THREE, SIR.

Q IN THREE?

A YES, SIR.

Q CAN YOU GIVE ME YOUR VIEW OF THE THIRD GROUP?

A MY VIEW OF THE THIRD GROUP IS ONCE HE IS FOUND GUILTY, IF FOUND GUILTY, THERE WOULD BE ANOTHER TRIAL TO FIND OUT WHETHER OR NOT CAPITAL PUNISHMENT SHOULD BE GIVEN.

I THINK DURING THAT TRIAL I HAVE GOT TO LEARN A

LITTLE BIT ABOUT THE WITNESS OR WHATEVER, ABOUT THE DEFENDANT, IF HE IS FOUND GUILTY TO SEE WHAT COULD HAVE CAUSED HIM TO HAVE COMMITTED THE CRIME, WHETHER IT COULD BE -- WHETHER IT COULD COME FROM SOCIETY OR ANYTHING OF THAT NATURE.

Q LET ME ASK YOU THIS. WE ARE HOPEFULLY NOT INVADING YOUR PRIVACY. THESE ARE QUESTIONS THAT NEED TO BE ASKED. IF IN THE SECOND PHASE IF A JURY IN THE JURY ROOM UNANIMOUSLY, ALL 12, CONCLUDE THAT THE PROPER PUNISHMENT IS DEATH, OUR SYSTEM REQUIRES EACH JUROR TO COME INTO THE COURTROOM AND STAND UP AND SAY SO. COULD YOU DO THAT IF THAT WAS YOUR DECISION BACK THERE?

A YES, SIR.

Q OUR SYSTEM ALSO SAYS THAT IF THAT IS YOUR DECISION AND IF YOU STOOD UP IN COURT AND SAID THAT, YOU ALSO HAVE TO SIGN A FORM THAT SAYS THAT. CAN YOU SIGN YOUR NAME TO THAT FORM?

A YES, SIR.

Q YOU UNDERSTAND THAT IN A PROCEEDING OF THIS KIND, WHATEVER THE JURY SAYS THE PROPER SENTENCE WILL BE DONE. IF YOU SAY LIFE IMPRISONMENT, THAT IS WHAT I WILL DO. IF YOU SAY DEATH, THAT IS WHAT I WILL DO. DO YOU UNDERSTAND THAT?

A YES, SIR.

VOIR DIRE EXAMINATION

BY SOLICITOR BAILEY:

Q MR. TYLER, I WILL BE VERY BRIEF BECAUSE I THINK THE JUDGE PRETTY WELL COVERED EVERYTHING. I WANT TO MAKE SURE I UNDERSTAND 100 PERCENT WHAT YOUR POSITION IS IN REGARD TO THAT SECOND PART OF THE TRIAL IF WE GET THERE.

IS WHAT YOU ARE SAYING IF THE CASE IS BAD ENOUGH, YOU COULD VOTE FOR THE DEATH PENALTY AND SIGN YOUR NAME TO A DEATH VERDICT FORM AND ANNOUNCE THAT DECISION KNOWING THAT PERSON WOULD BE EXECUTED?

A YES, SIR.

Q THE JURY WILL BE PUT UP IN A MOTEL STARTING TOMORROW FOR THE REST OF THE TRIAL. IT WILL PROBABLY BE THROUGH THE WEEKEND AND MAYBE MONDAY OR TUESDAY. IS THAT GOING TO CAUSE YOU ANY HARDSHIP?

A NO, SIR.

Q THANK YOU. THAT'S ALL I HAVE.

MR. STONE: JUST A FEW, YOUR HONOR.

THE COURT: YES, SIR.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q MR. TYLER, YOU UNDERSTAND THAT THIS CASE IS ABOUT THE MURDER OF A HIGHWAY PATROL OFFICER?

A YES, SIR.

Q DOES THAT GIVE ANY CONCERN WHEN IT COMES TO DETERMINING THE GUILT OR INNOCENCE OF MR. ALEKSEY HERE?

A NO, SIR.

Q YOU CAN STILL BE FAIR TO MR. ALEKSEY DESPITE THE FACT IT CONCERNS SUCH A SERIOUS OFFENSE?

A YES, SIR.

Q YOU UNDERSTAND THAT WHILE THE JUDGE AND THE SOLICITOR HAVE ASKED YOU A GOOD BIT ABOUT THE DEATH PENALTY, THERE MAY BE -- WE MAY BE IN A SITUATION WHERE YOU NEVER HAVE TO MAKE THAT DECISION AS A JUROR. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q AND YOU COULD DO THAT?

A YES, SIR.

Q DO YOU FEEL LIKE WOMEN ARE CAPABLE OF THE SAME THINGS MEN ARE CAPABLE OF?

A YES, SIR.

Q YOU ARE ACTIVELY SERVING IN THE MARINES NOW?

A YES, SIR.

Q I DON'T HAVE ANYTHING ELSE. THANK YOU.

(THE JUROR LEAVES THE COURTROOM.)

SOLICITOR BAILEY: QUALIFIED.

MR. STONE: YES, SIR.

(THE JUROR RETURNS TO THE COURTROOM.)

THE COURT: MR. JUROR, YOU HAVE BEEN FOUND QUALIFIED TO SERVE IF SELECTED. WE ARE QUALIFYING 35 INDIVIDUALS. IN THE MORNING YOU MAY OR MAY NOT BE SELECTED, BUT PLEASE RETURN TO THIS COURTROOM WITH SUCH PERSONAL EFFECTS AND CLOTHING THAT YOU WILL REQUIRE IF YOU ARE SELECTED. DO YOU UNDERSTAND THAT?

JUROR: YES, SIR.

THE COURT: WE, OF COURSE, WILL GIVE YOUR COMMANDING OFFICER ANY EXCUSE THAT WE NEED TO; BUT YOU ARE TELLING ME THAT THEY ARE GOING TO LET YOU SERVE?

JUROR: YES, SIR.

THE COURT: SEE YOU BACK HERE AT 9:30 IN THE MORNING.

JUROR: ALL RIGHT, SIR.

(THE JUROR LEAVES THE COURTROOM.)

THE COURT: HOLD THAT JUROR UP. THAT QUALIFIES 36. WE CAN BRING THE REST OF THE PANEL BACK. IN THE EVENT WE NEED ANYMORE TOMORROW, WE CAN QUALIFY ANOTHER. I THINK WE WILL JUST STOP WHERE WE ARE.

MR. STONE: YES, SIR.

THE COURT: AND I WILL BRING THE REST OF THEM BACK. FIRST BRING THOSE FOUR JURORS IN. JUST HOLD THAT PANEL. I WILL LET THIS CROWD GO.

MR. STONE: THANK YOU.

THE COURT: THE FOUR JURORS, ARE THEY THERE.

CLERK: IT'S THREE.

(THE JURY PANEL ENTERS THE COURTROOM.)

THE COURT: LADIES AND GENTLEMEN, WE HAVE QUALIFIED SUFFICIENT JURORS FOR OUR PURPOSES. YOU ARE NOW EXCUSED FOR THE DAY AND FOR THE WEEK. THANK YOU.

(THE JURY PANEL LEAVES THE COURTROOM.)

THE COURT: BRING THE OTHER PANEL IN HERE. BRING THE ENTIRE PANEL.

(THE JURY PANEL RETURNS TO THE COURTROOM.)

THE COURT: LADIES AND GENTLEMEN OF THE JURY, WE HAVE NOW QUALIFIED 35 JURORS AND ONE ADDITIONAL JUROR, 36, WHICH FROM THAT NUMBER WILL GIVE US A SUFFICIENCY TO SELECT 12 JURORS AND TWO ALTERNATES, WHICH ARE 14.

HOWEVER GIVEN THE CIRCUMSTANCE OF THE HURRICANE BONNIE AND OTHER THINGS, MY EXPERIENCES HAVE BEEN THAT SOMETIMES SOMETHING HAPPENS TO THE QUALIFIED JURORS AND THEY DON'T SHOW UP. ACCIDENTS HAPPEN, SICKNESS OCCURS AND OTHERWISE.

I DO NOT ANTICIPATE THAT WE WILL NEED ANY OF YOU, BUT IN AN ABUNDANCE OF PRECAUTION I AM GOING

TO ASK THAT ALL OF YOU RETURN TO THIS COURTROOM AT 9:30 IN THE MORNING. I WANT THEM RETURNED TO THE JURY ROOM. WE WILL SELECT THIS JURY IMMEDIATELY.

IF EVERYBODY IS HERE AND NOBODY IS SICK, I WILL BE IN A POSITION TO EXCUSE YOU FOR THE DAY AND FOR THE WEEK, YOU UNDERSTAND. BUT I CAN'T EXCUSE YOU YET BECAUSE I HAVE GOT TO MAKE SURE THAT EVERYBODY IS HERE.

NOW, REMEMBER MY CONTINUING ADMONITION. IT MAY BE THAT YOU WILL SERVE ON THIS JURY. I DON'T THINK SO. CAN YOU COME BACK FOR ME AND BE IN THE JURY ROOM AT 9:30 IN THE MORNING?

DOES ANYBODY HAVE ANY PROBLEMS WITH THAT? EVERYBODY UNDERSTAND IT? SEE YOU AT 9:30 IN THE MORNING. THANK YOU SO MUCH. PLEASE REMEMBER DON'T DISCUSS THIS CASE AND LET NO ONE DISCUSS IT WITH YOU.

(THE JURY PANEL LEAVES THE COURTROOM.)

THE COURT: GENTLEMEN, LET'S BEGIN. MRS. MCCALL IS GOING TO CALL THOSE QUALIFIED. I WANT TO MAKE SURE WE ARE ALL IN AGREEMENT. MRS. MCCALL.

MRS. MCCALL: I WILL CALL THE JUROR NUMBER AND THEN THEIR NAME: 217, HARRY MIMS; 28, REBECCA BREWINGTON; 21, MARVIN BONNETTE; 102, NARONE FRANKLIN; 69, JASON COTE; 43, REGINALD BUTLER; 340, SANDRA MCWATERS; 120, DUANE GREEN; 71, CHRIS CRABB;

289, HOMER THRAILKILL; 112, TYRONE GILLARD; 305, ELAINE WHETSTONE; 179, WILLIE JOHNSON, JR.; 110, NORRIS GIBSON; 255, DEBORA SANFORD; 323, BONNIE ZEIGLER; 144, GIGI HAYES; 22, KAYE BONNETTE; 237, KEDRAIN PELZER; 29, PHYLLIS BRICKLE; 227, ERNEST MYERS; 133, BARBARA HANTON; 270, MALCOLM SIMPSON; 146, COLE HAYWOOD; 114, JOANNE GLOVER; 238, EMILY PINDAK; 118, MARY GAMBLING; 6, BONNIE ANTLEY; 27, JUDY BRANTLEY; 259, HARRIETTE SEABROOKS.

SOLICITOR BAILEY: IS IT 257 OR 259?

MR. STONE: IT'S 259. SHE IS CORRECT.

THE COURT: I THOUGHT SHE WAS. SHE USUALLY IS. GO AHEAD.

MRS. MCCALL: NUMBER 99, CAROLINE FORD; 162, MARY JAMISON; 167, MICHELLE JENKINS; 173, FANNIE JOHNSON; 7, JEROME ASBERRY; 296, PAUL DREW.

SOLICITOR BAILEY: NO, IT'S LEVON TYLER.

MR. STONE: IT WAS LEVON TYLER.

MRS. MCCALL: LEVON TYLER.

THE COURT: IS EVERYBODY IN AGREEMENT?

SOLICITOR BAILEY: YES, SIR.

MR. STONE: YES, SIR.

THE COURT: IN THE STRIKING PER AGREEMENT THERE WILL NOT BE ANOTHER DRAW. WE WILL STRIKE AS THEY WERE QUALIFIED.

MR. STONE: YES, SIR.

THE COURT: WE WILL STRIKE FIRST IN LIMINE SO THAT IF ANY BATSON PROBLEMS ARISE, THE STRIKE WOULD NOT HAVE OCCURRED IN THE PRESENCE OF THE JURY. ONCE THAT IS DETERMINED, WE WILL COME BACK IN THE COURTROOM AND THE JURY WILL BE SELECTED IN THE PRESENCE OF THE DEFENDANT IN THE COURTROOM, AND THE PROCEEDING IN MY CHAMBERS WILL BE UPON THE RECORD AND IN THE PRESENCE OF THE DEFENDANT.

MR. STONE: YES, SIR. TEN AND FIVE ON THE STRIKES?

THE COURT: YES, SIR. ANY FURTHER QUESTIONS?

SOLICITOR BAILEY: NO, SIR.

THE COURT: AS I UNDERSTAND IT NOW, WE WILL START AT 9:30 IN THE MORNING. WE SHOULD GET RIGHT INTO THIS TRIAL BY NO LATER THAN 10:30. HAVE ALL YOUR WITNESSES READY. ANY MATTERS I NEED TO DISCUSS NOW WITH EITHER ONE OF YOU? ANY SUBPOENAS NEED TO BE ISSUED OR ANYTHING LIKE THAT?

MR. STONE: NOT AT THIS POINT, YOUR HONOR.

SOLICITOR BAILEY: YOUR HONOR, THE ONLY PROBLEM I CAN ANTICIPATE MAYBE THAT A LOT OF THESE WITNESSES I THINK ON BOTH SIDES ARE COMING IN FROM OUT OF STATE. I DON'T KNOW WHAT THAT HURRICANE IS

GOING TO DO TO THE AIRPORTS THEY ARE LEAVING FROM.

THE COURT: WE WILL JUST HAVE TO WORK AROUND THAT. I UNDERSTAND FOR BOTH OF YOU WE HAVE GOT THAT CONSIDERATION.

MR. STONE: YES, SIR.

THE COURT: TO THE EXTENT WE CAN AGREE, WE WILL TAKE THEM OUT OF ORDER.

MR. STONE: YES, SIR.

THE COURT: I UNDERSTAND YOUR PROBLEMS AND WE WILL WORK AROUND THEM.

(PAUSE.)

THE COURT: YES, JUROR SHANAHAN WE AGREED THAT WE WOULD EXCUSE HER. SHE WAS THE ONE THAT MAY HAVE INDEPENDENT KNOWLEDGE.

MR. STONE: YES, SIR.

SOLICITOR BAILEY: YES, SIR.

THE COURT: YOU UNDERSTAND?

MR. STONE: YES, SIR.

THE COURT: SHE WAS ON THE EIGHTH PANEL. WE DIDN'T GET TO HER ANYWAY. THE RECORD WILL REFLECT THAT SHE WAS EXCUSED BY CONSENT OF ALL PARTIES.

MR. STONE: YES, SIR.

SOLICITOR BAILEY: YES, SIR.

THE COURT: WE NOW HAVE THE JURORS THAT ARE SUFFICIENT, WE THINK. IN THE MORNING THE REMAINDER

OF THAT PANEL NUMBER SEVEN WILL BE COMING IN. I WANT THEM PUT IN THE JURY ROOM.

ALL JURORS WHO WERE QUALIFIED TO SERVE MAY COME INTO THE COURTROOM. YOU WILL HAVE TO DISTINGUISH BETWEEN THE TWO. I WANT THEM ALL SITTING OVER THERE ON THE RIGHT-HAND SIDE SO WE CAN CALL THE ROLL OF JURORS. YOU WILL HAVE TO DISTINGUISH BETWEEN THOSE WHO ARE ON THE REMAINDER OF PANEL SEVEN AND THE QUALIFIED JURORS.

MR. BAILEY, IS THERE ANYTHING ELSE WE NEED FOR HOUSEKEEPING AT THIS TIME?

SOLICITOR BAILEY: YOUR HONOR, YES, SIR, VERY BRIEFLY. I INTEND TO CALL A COUPLE OF THESE WITNESSES MORE THAN ONE TIME BECAUSE THEY ARE INVOLVED IN DIFFERENT ASPECTS OF THE CASE. THERE'S SOMETHING IN THE RULES THAT SAYS I HAVE GOT TO HAVE THE COURT'S PERMISSION TO DO THAT.

THE COURT: YES, SIR I UNDERSTAND THAT AND I WILL GRANT THE DEFENDANT THE SAME THING.

MR. STONE: YES, SIR. IN YOUR DISCRETION, YES, SIR.

SOLICITOR BAILEY: LET ME JUST CHECK SOMETHING REAL QUICK.

(PAUSE.)

SOLICITOR BAILEY: YOUR HONOR, IN REGARD TO

THE SEQUESTRATION ORDER, AS YOU KNOW FROM THE JACKSON V. DENNO HEARING, I HAVE GOT TWO CASE AGENTS THAT WORKED JOINTLY ON THIS FROM S.L.E.D., MR. DARNELL AND MR. MEARS. I WOULD LIKE THEM BOTH IN THROUGHOUT THE ENTIRE TRIAL.

THE COURT: THEY WERE BOTH INVESTIGATORS. YES, I WILL PERMIT THAT.

SOLICITOR BAILEY: SOME OF THE WITNESSES I HAVE GOT ARE EXPERTS --

THE COURT: ARE YOU ASKING FOR SEQUESTRATION?

MR. STONE: AS TO FACT WITNESSES, YOUR HONOR, YES, I AM.

THE COURT: OBVIOUSLY THE TWO INVESTIGATORS WILL REMAIN.

SOLICITOR BAILEY: BUT NOT IN REGARD TO EXPERTS; IS THAT CORRECT?

MR. STONE: THAT'S RIGHT.

SOLICITOR BAILEY: ONE OF THE THINGS I WANT TO DO, JUDGE, IS TO PLAY A DISPATCH TAPE. THEY CALLED THE TAG IN AND ALL THAT. I HAVE GOT THE DISPATCHER SUBPOENAED FROM THE HIGHWAY DEPARTMENT TO IDENTIFY THAT TAPE.

LIN SHIRER IS THE DEPUTY WHO WAS RIDING WITH SERGEANT LINGARD. HIS VOICE IS ON THE TAPE. IN

ORDER TO AVOID PLAYING THE TAPE TWICE, I WOULD LIKE TO HAVE MR. LINGARD (SIC) PRESENT WHEN THE DISPATCHER TESTIFIES SO HE CAN SAY THAT IS THIS VOICE ON THE TAPE INSTEAD OF PLAYING THE TAPE TWICE. DO YOU SEE WHAT I'M SAYING?

MR. STONE: YOU ARE SAYING THAT YOU ARE GOING TO PUT THE DISPATCHER UP --

SOLICITOR BAILEY: TO INTRODUCE THE TAPE.

MR. STONE: -- TO INTRODUCE THE TAPE ITSELF.

SOLICITOR BAILEY: IT'S GOT MR. SHIRER'S VOICE ON IT. I WANT MR. SHIRER PRESENT WHEN THE TAPE IS PLAYED IN FRONT OF THE JURY TO BE ABLE TO IDENTIFY HIS VOICE WHEN HE TESTIFIES.

THE COURT: SO WHAT ABOUT IT?

SOLICITOR BAILEY: I DON'T WANT HIM SEQUESTERED.

THE COURT: YOU WANT HIM IN THE COURTROOM SO THAT HE CAN SAY, "THAT IS MY VOICE."

SOLICITOR BAILEY: YES, SIR.

MR. STONE: I THINK WE PROBABLY CAN HANDLE THAT PRETTY QUICKLY.

THE COURT: I THINK YOU CAN DO THAT MAYBE BY STIPULATION.

MR. STONE: I THINK THAT'S FINE. UNLESS

IT'S SOMETHING I DON'T FORESEE, I THINK THAT IS PROBABLY FINE. ON THE SEQUESTRATION, YOUR HONOR, I DO HAVE AN ISSUE.

THE COURT: ALL RIGHT.

MR. STONE: THE SEQUESTRATION IS AS TO THE FACT WITNESSES. ONCE AGAIN I AM NOT INTERESTED IN THE SOLICITOR'S EXPERT WITNESSES, BUT THE FACT WITNESSES I WOULD LIKE THEM SEQUESTERED EVEN IN OPENING ARGUMENTS, EVEN IN THE OPENING STATEMENTS.

THE COURT: YES, SIR, I WILL DO THAT. BY THE SAME TOKEN, HOW ABOUT SEQUESTRATION FOR HIS WITNESSES?

SOLICITOR BAILEY: YES, SIR. YOUR HONOR, I THINK IT SHOULD APPLY BOTH WAYS.

THE COURT: YES, SIR. HOW MANY WITNESSES HAVE YOU GOT?

SOLICITOR BAILEY: YOUR HONOR, COUNTING WITNESSES I WILL CALL AND RECALL AGAIN AT SOME POINT, ROUGHLY 40. I THINK I CAN GET THROUGH 20 A DAY. IT SOUNDS LIKE A LOT.

THE COURT: WHO IS GOING TO HELP US MAKE ARRANGEMENTS FOR HOUSING ON THE SEQUESTRATION?

SOLICITOR BAILEY: JUDGE, WE GENERALLY USE THIS ROOM DOWN AT THE END OF THE HALL.

THE COURT: FOR FORTY WITNESSES?

SOLICITOR BAILEY: I WILL HAVE HALF OF THEM TOMORROW AND HALF OF THEM THE NEXT DAY. MR. MURDAUGH TELLS ME THAT ROOM IS GOING TO BE OCCUPIED. I AM GOING TO USE OUR OFFICE DOWNSTAIRS AND JUST HAVE A RUNNER.

THE COURT: WHO WILL BE HANDLING THAT FOR US, S.L.E.D. OR WHO?

SOLICITOR BAILEY: YOUR HONOR, I WAS JUST GOING TO GET MY INVESTIGATOR TO MAKE SURE THE RIGHT PEOPLE WERE AT THE DOOR OUTSIDE SO WE WOULDN'T HAVE ANY DELAY AND TAKE CARE OF THAT.

THE COURT: WHERE DO YOU WANT TO SEQUESTER DEFENSE WITNESSES?

SOLICITOR BAILEY: I HAVEN'T THOUGHT ABOUT THAT, JUDGE.

MR. STONE: AS FAR AS FACT WITNESSES, IF WE ARE LIMITING IT TO FACT WITNESSES, THAT SHOULDN'T BE A PROBLEM. WE ARE LIMITING OUR MOTION TO FACT WITNESSES.

THE COURT: DO YOU HAVE ANY SEQUESTERED?

MR. STONE: I DON'T BELIEVE SO.

THE COURT: YOU ARE GOING TO BE RESPONSIBLE FOR SEQUESTRATION OF YOUR WITNESSES?

SOLICITOR BAILEY: YES, SIR.

THE COURT: YOU ARE GOING TO MAKE

ARRANGEMENTS WITH SOMEBODY TO HAVE THEM AVAILABLE TO CALL SO WE WON'T BE WASTING A LOT OF TIME GOING TO GET THEM AND THIS, THAT AND THE OTHER?

SOLICITOR BAILEY: YES, SIR, I WILL TAKE CARE OF THAT.

THE COURT: SO YOU ARE NOT ASKING THAT S.L.E.D. BE RESPONSIBLE?

SOLICITOR BAILEY: THAT'S CORRECT.

THE COURT: THANK YOU, SIR.

SOLICITOR BAILEY: THE NEXT THING, JUDGE, DR. SEXTON, THE PATHOLOGIST, WHO IS ONE OF OUR WITNESSES.

THE COURT: YES, SIR.

SOLICITOR BAILEY: HE IS HARD TO GET A HOLD OF SOMETIMES.

THE COURT: I THINK WE CAN AGREE TO TAKE HIM OUT OF ORDER WHEN HE GETS HERE, CAN WE NOT?

MR. STONE: YES, SIR.

THE COURT: SURE.

SOLICITOR BAILEY: I INTEND TO INTRODUCE SOME CRIME SCENE PHOTOGRAPHS IN THE GUILT PHASE. TWO OF THOSE -- THE DEFENSE HAS SEEN ALL OF THE PHOTOGRAPHS. TWO OF THEM ARE PICTURES OF TROOPER LINGARD'S BODY, BUT ONE OF THEM IS THE BODY AT SORT OF A DISTANCE.

HE IS COVERED IN A BLANKET. YOU CAN'T SEE ANY FEATURES. THE PROBATIVE VALUE OF THAT IS TO SHOW THE LOCATION OF THE BODY IN RELATION TO THE LOCATION OF THE SHELL CASINGS THAT WERE RECOVERED.

THE COURT: WHAT WAS THE OTHER PICTURE?

SOLICITOR BAILEY: THE OTHER PICTURE IS A CLOSER-UP VIEW WHICH DOES NOT SHOW SERGEANT LINGARD'S FACE OR ANYTHING. IT SHOWS HIS WAIST. IT SHOWS HIS SERVICE PISTOL IN THE HOLSTER TO VERIFY THAT HE APPROACHED THE CAR IN A NON-THREATENING MANNER.

MR. STONE: I HAVE NO OBJECTION TO THE SECOND PHOTOGRAPH, THE PICTURE OF THE GUN. THE FIRST PHOTOGRAPH THOUGH MY UNDERSTANDING IS THAT THE BODY WAS ACTUALLY MOVED BY LIN SHIRER. SO I DON'T KNOW THAT THAT IS AN ACCURATE DEPICTION OF WHERE THE BODY WAS.

SOLICITOR BAILEY: YOUR HONOR, THE BODY FELL INTO THE PAVED PORTION OF I-95. DEPUTY SHIRER PULLED THE BODY OVER OUT OF THE LANE OF TRAFFIC, BUT IT DOES INDICATE -- HE WILL HAVE TO EXPLAIN IT.

THE COURT: YES, SIR. YOU CAN EXPLORE THAT ON CROSS EXAMINATION. I WILL PERMIT THOSE TWO PICTURES.

SOLICITOR BAILEY: I ALSO WANTED JUST FOR THE RECORD TO STATE THAT I DO HAVE AN OPEN-FILE

POLICY. I PROVIDED THE DEFENSE WITH EVERYTHING IN THE FILE. I WILL GO AHEAD AND FILE THE COVER LETTERS ON DISCOVERY WITH THE CLERK TO MAKE THAT A PART OF THE PERMANENT RECORD.

THE COURT: YES, SIR.

SOLICITOR BAILEY: MR. DARNELL DOES HAVE SOME EVIDENTIARY ITEMS WITH HIM THAT HE CAN SHOW THEM ANY TIME THIS AFTERNOON I THINK.

THE COURT: HAVE YOU SEEN THIS TAPE THAT WE ARE TALKING ABOUT EARLIER? HAVE YOU HEARD THAT TAPE?

MR. STONE: THE DISPATCH TAPE?

THE COURT: YES, SIR.

MR. SIMS: IS THAT THE ONE FROM ORANGEBURG COUNTY?

SOLICITOR BAILEY: NO, IT SAYS ORANGEBURG. IT'S NOT THE DISPATCH TAPE FROM HERE. IT'S THE HIGHWAY PATROL DISPATCH TAPE. Y'ALL HAVE BOTH OF THEM.

MR. STONE: OKAY.

THE COURT: TO PRESENT THE WITNESS IN REGARDS TO THE GENTLEMAN'S VOICE ON IT, CAN YOU STIPULATE AS TO HIS VOICE OR DO YOU WANT TO CALL HIM IN HERE AND HAVE HIM TESTIFY THAT IS HIS VOICE?

MR. STONE: I DON'T THINK WE HAVE ANY PROBLEM.

SOLICITOR BAILEY: HE WILL BE TESTIFYING ANYWAY.

THE COURT: OKAY.

SOLICITOR BAILEY: I JUST DIDN'T WANT TO PLAY THE TAPE TWICE.

MR. STONE: I WOULD RATHER IN FACT ERR ON THE SIDE OF KEEPING HIM OUT OF THE COURTROOM ANYWAY. I WILL STIPULATE THAT IS HIS VOICE.

THE COURT: SO HE WON'T NEED TO BE IN HERE TO HEAR THE PLAYING OF THE TAPE.

SOLICITOR BAILEY: ALL RIGHT, SIR.

THE COURT: YES, SIR.

SOLICITOR BAILEY: YOUR HONOR, THE OTHER THING AND I MENTIONED THIS EARLIER, THERE WILL BE SOME -- IT'S MY UNDERSTANDING THERE WILL BE SOME HIGHWAY PATROL OFFICERS IN HERE AS SPECTATORS.

THE COURT: I CAN APPRECIATE AND UNDERSTAND THAT. THIS IS A FELLOW OFFICER WHO WAS KILLED BY SOMEONE. I AM CERTAINLY NOT GOING TO DEPRIVE THEM OF THE OPPORTUNITY IN AN OPEN COURTROOM TO COME IN HERE WHEN YOU TRY THE CASE. YOU WOULD UNDERSTAND THAT.

MR. STONE: YES, SIR.

MR. SIMS: YOUR HONOR, MAY I?

MR. STONE: CAN WE JUST HAVE A MOMENT.

THE COURT: YES, SIR.

(PAUSE.)

SOLICITOR BAILEY: YOUR HONOR, MY SECOND WITNESS --

MR. STONE: EXCUSE ME JUST A MOMENT. HANG ON JUST A SECOND.

(PAUSE.)

MR. STONE: THE CONCERN WE HAVE AS THE DEFENSE, YOUR HONOR, IS I DON'T SEE -- I UNDERSTAND THAT THE COURTROOM IS OPEN. I CERTAINLY HAVE NO OBJECTION TO ANYONE, WHETHER THEY BE POLICE OFFICERS OR NOT, COMING AND VIEWING THE TRIAL ITSELF.

HOWEVER, I DON'T THINK IT'S NECESSARY FOR A POLICE OFFICER TO COME IN IN HIS UNIFORM. I THINK THAT THE PRESENCE OF A NUMBER OF HIGHWAY PATROL OFFICER UNIFORMS IN THE COURTROOM IS INTIMIDATING. I THINK IT SENDS A BAD MESSAGE -- WELL, SENDS A DEFINITE MESSAGE TO THE JURY.

THE COURT: THE RECENT DECISION NOW, THOSE WHO TESTIFY WHO ARE POLICE OFFICERS, THEY MAY COME IN AND TESTIFY IN THEIR UNIFORM.

MR. STONE: I UNDERSTAND THAT.

THE COURT: YOU ARE TALKING ABOUT SPECTATORS?

MR. STONE: YES, SIR.

THE COURT: HOW MANY SPECTATORS ARE YOU

TALKING ABOUT?

SOLICITOR BAILEY: JUDGE, I DON'T KNOW. I HAVE NO IDEA. I DON'T KNOW HOW MANY ARE COMING. I KNOW THERE IS A LOT OF INTEREST AMONG THESE TROOPERS.

THE COURT: I UNDERSTAND BUT I UNDERSTAND HIS POSITION NOW. I WOULD CERTAINLY UNDERSTAND THEM BEING HERE, BUT THEY DON'T ALL HAVE TO BE HERE IN UNIFORM; DO THEY?

I WILL NOT HAVE A COURTROOM FULL OF UNIFORMED HIGHWAY PATROL, THOUGH I REGARD THEM VERY HIGHLY. I HAVE GOT TO PROTECT THIS RECORD, NOT ONLY FOR OUR COURTROOM BUT THE UNITED STATES SUPREME COURT.

SOLICITOR BAILEY: YES, SIR.

THE COURT: I WOULD WELCOME THESE INDIVIDUALS. SOMEBODY HAS KILLED A COLLEAGUE HERE. I UNDERSTAND THEIR CONCERNS AND INTEREST. I WANT THEM HERE IF THEY WANT TO BE HERE, BUT I DON'T WANT THEM ALL HERE IN UNIFORM WITH PISTOLS ON. CAN'T YOU HANDLE THAT?

SOLICITOR BAILEY: I WILL DO MY BEST, JUDGE. I AM NOT TRYING TO ORCHESTRATE THEM IN THEIR APPEARANCE.

THE COURT: YOU WOULD NOT DO THAT. SOME OF THEM CAN COME BUT YOU UNDERSTAND MY CONCERN IF WE HAD

A COURTROOM FULL OF HIGHWAY PATROLMAN ARMED AND IN UNIFORM.

SOLICITOR BAILEY: YES, SIR.

MR. STONE: CAPTAIN DEERING, I THINK, HAS BEEN HERE MOST OF THE PROCESS. I HAVE NO OBJECTION TO HIM BEING HERE OBVIOUSLY, BUT I THINK HE COULD PROBABLY HELP YOU OUT WITH THAT.

THE COURT: I WILL LEAVE IT TO THE --

MR. STONE: I DON'T SEE HIM HERE TODAY BUT HE HAS BEEN HERE.

THE COURT: I WILL PERMIT SOME OF THEM BECAUSE THE FAMILY IS ENTITLED TO KNOW THAT THE HIGHWAY PATROL SUPPORTS THEM IN THEIR GRIEVOUS LOSS.

MR. STONE: YES, SIR.

THE COURT: I JUST DON'T WANT A COURTROOM FULL OF THEM.

MR. STONE: I UNDERSTAND. I DON'T EITHER.

THE COURT: I DON'T THINK THAT WILL BE A PROBLEM. YOU UNDERSTAND MY CONCERNS AND YOURS, TOO, IN PROTECTING THE RECORD.

SOLICITOR BAILEY: YOUR HONOR, MY SECOND WITNESS WILL REQUIRE AN IDENTITY HEARING. IN ORDER TO AVOID HAVING THE JURY LISTEN TO ONE WITNESS AND GO OUT AGAIN, YOU MIGHT WANT TO DO THAT RIGHT OFF THE BAT.

MR. STONE: YES, SIR, THAT'S FINE.

THE COURT: AS SOON AS WE SELECT THE JURY, WE WILL PUT THEM IN THE JURY ROOM AND WE WILL DO THAT.

MR. STONE: YES, SIR.

SOLICITOR BAILEY: YES, SIR.

THE COURT: WE WILL HEAR ANY OTHER MOTIONS, TOO, AND ADDRESS ANY OTHER CONCERNS. THAT'S FINE.

SOLICITOR BAILEY: YOUR HONOR, I CAN'T THINK OF ANY OTHER HOUSEKEEPING MATTERS.

MR. STONE: I CAN'T THINK OF ANYTHING. WE MAY HAVE AN ISSUE AS TO THE FINGERPRINTS, BUT THAT WILL BE SOMETHING WE TAKE UP LATER IF THE SOLICITOR WILL JUST GIVE ME A NOD ABOUT WHEN HE IS HEADING INTO THAT.

AS FAR AS LOGISTICS AND IT DOESN'T MAKE ANY DIFFERENCE TO US, BUT JUST FOR PLANNING OUT WITNESSES, HOW LONG ARE WE GOING TO GO INTO THE AFTERNOON?

THE COURT: I WOULD ANTICIPATE THAT THE JURY IS GOING TO WANT TO WORK. I WOULD ANTICIPATE GOING TO SIX, 6:30.

MR. STONE: ALL RIGHT, SIR.

THE COURT: MY EXPERIENCE HAS BEEN THAT A JURY WHO IS BEING SEQUESTERED WANTS TO KEEP WORKING.

SO I THINK YOU ARE LOOKING AT A 6:30 TIME. THAT WILL GIVE THE GENTLEMEN FROM S.L.E.D. -- WILL THAT GIVE YOU TIME TO TAKE THEM TO THE MOTEL AND ARRANGE FOR SUPPER AND SO FORTH?

AGENT: IT'S BEEN MADE ALREADY.

THE COURT: IS IT ALL RIGHT IF WE QUIT AT SIX, 6:30?

AGENT: THAT WILL BE FINE, SIR.

MR. STONE: THANK YOU.

THE COURT: NOW, WITH REFERENCE TO MARKING OF EXHIBITS, CAN WE DO SOME OF THAT AHEAD OF TIME AND EXCHANGING OF EXHIBITS?

MR. STONE: I THINK WE PROBABLY CAN. IF WE COULD, I WOULD BE GLAD TO MEET TOMORROW MORNING EARLY.

THE COURT: WHAT'S WRONG WITH NOW?

MR. STONE: NOTHING, EXCEPT I DON'T HAVE ANYTHING WITH ME NOW.

SOLICITOR BAILEY: I CAN MARK MINE NOW, JUDGE, OR AFTER LUNCH, WHATEVER YOU WANT TO DO.

THE COURT: HERE IS WHAT I WANT TO DO. LET'S GO AHEAD AND MARK WHAT YOU CAN NOW. YOU BRING YOURS IN THE MORNING AND LET'S START MARKING AS SOON AS MY COURT REPORTER GETS HERE. CAN YOU DO THAT NOW?

SOLICITOR BAILEY: YES, SIR.

THE COURT: LET'S GO AHEAD AND AGREE ON WHAT YOU CAN.

SOLICITOR BAILEY: JUDGE, SOME OF THE PHYSICAL EVIDENCE IS OVER IN THE SHERIFF'S OFFICE IN THE EVIDENCE LOCKER. MR. DARNELL HAS SOME HE CAN GET NOW. THE PHOTOGRAPHS AND DOCUMENTARY STUFF I HAVE GOT HERE.

THE COURT: TO THE EXTENT THAT WE CAN SAVE TIME, LET'S DO IT. IT WILL BE IMPOSSIBLE TO DO SOME OF IT. LET'S DO THAT WHICH WE CAN.

SOLICITOR BAILEY: YES, SIR.

THE COURT: WE WILL BE IN RECESS UNTIL 9:30 IN THE MORNING.

(WHEREUPON THE PROCEEDINGS WERE CONCLUDED FOR AUGUST 26, 1998, AT 1 P.M.)

(THE FOLLOWING PROCEEDINGS WERE REPORTED ON AUGUST 27, 1998.)

THE COURT: LET THE RECORD REFLECT THAT ALL PARTIES ARE PRESENT AND THAT THE DEFENDANT IS IN THE COURTROOM. GOOD MORNING, LADIES AND GENTLEMEN. THE FIRST ORDER OF BUSINESS WILL BE THE ROLL CALL OF THE 35 JURORS WHO WERE QUALIFIED DURING THE PRECEDING THREE DAYS. MADAME CLERK, WILL YOU PLEASE CALL THE ROLL.

CLERK: YES, SIR

(THE ROLL OF THE QUALIFIED JURORS IS CALLED.)

THE COURT: LET THE RECORD NOW REFLECT THAT ALL QUALIFIED JURORS ARE HERE PRESENT. LADIES AND GENTLEMEN OF THE PROPOSED JURY PANEL, AGAIN I EXPRESS TO YOU MY DEEPEST APPRECIATION FOR YOUR PRESENCE HERE.

I WOULD UNDERSTAND AGAIN, AS I SAID, THAT ALL OF YOU ARE HERE AT CONSIDERABLE INCONVENIENCE TO YOUR PERSONAL LIVES, TO YOUR FAMILIES AND TO YOUR JOBS.

JURY DUTY, HOWEVER, IS ONE OF THE HIGHEST CALLING ANOTHER THAN IN TIMES OF WAR THAT A CITIZEN OF THIS MAGNIFICENT COUNTRY WILL EVER BE CALLED UPON TO PERFORM. AGAIN, ON BEHALF OF OUR COURT SYSTEM, I EXPRESS TO YOU MY APPRECIATION.

ON MONDAY MORNING WHEN YOU FIRST ARRIVED HERE, YOU WERE GIVEN AN OATH UNDER VOIR DIRE FOR QUESTIONING PURPOSES. I REMIND YOU NOW THAT YOU ARE STILL UNDER OATH.

DURING THE PAST THREE DAYS, WE HAVE QUALIFIED THE 36 OF YOU. I NEED TO ASK YOU NOW. IN EACH INSTANCE ALL OF YOU TOLD US UNDER OATH THAT YOU WERE QUALIFIED TO SERVE.

HAS ANYTHING OCCURRED SINCE YOUR

QUALIFICATION THAT YOU NEED TO CALL TO MY ATTENTION AT THIS TIME WHICH IN YOUR VIEW MIGHT POSSIBLY DISQUALIFY YOU FROM SERVICE AS A JUROR IN THIS CASE? IF SO, PLEASE STAND.

(JUROR STANDS.)

THE COURT: YOU MAY COME FORWARD. WE WILL DEAL WITH THIS. MADAME COURT REPORTER, WE WILL SET UP IN MY CHAMBERS IN JUST A MOMENT.

COURT REPORTER: YES, SIR.

THE COURT: IS THERE ANYBODY ELSE?

(THERE WAS NO RESPONSE.)

THE COURT: PLEASE ESCORT THIS JUROR TO MY CHAMBERS AND WE WILL INQUIRE AS TO HIS CIRCUMSTANCE. LADIES AND GENTLEMEN, IN JUST A FEW MOMENTS WE WILL BEGIN THE JURY SELECTION PROCESS BY WHICH 12 OF YOUR NUMBER WILL BE DESIGNATED AS JURORS AND TWO ADDITIONAL OF YOUR NUMBER WILL BE DESIGNATED AS ALTERNATES.

YOU WILL SIT IN THE JURY BOX AND OBSERVE IN THE SAME MANNER AS ALL OTHER JURORS AND WILL BE AVAILABLE TO SERVE AS A JUROR IN THE EVENT OF DISABILITY OR INABILITY TO SERVE OF ANY OF THE 12 JURORS. WILL COUNSEL FOR THE STATE AND THE DEFENSE AND THE DEFENDANT HIMSELF REPORT TO MY CHAMBERS NOW.

MR. STONE: YES, SIR.

THE COURT: MADAME COURT REPORTER, PLEASE SET UP IN CHAMBERS. LADIES AND GENTLEMEN, WE WILL BE WITH YOU VERY SHORTLY. THANK YOU SO MUCH.

(THE FOLLOWING PROCEEDINGS WERE REPORTED IN CHAMBERS.)

THE COURT: LET THE RECORD REFLECT THAT THIS HEARING IS BEING HELD IN CHAMBERS PURSUANT TO AGREEMENT OF COUNSEL FOR THE STATE AND COUNSEL FOR THE DEFENDANT. THE DEFENDANT, TOO, IS PRESENT.

THIS HEARING IS CONDUCTED PURSUANT TO A REQUEST OF ONE OF THE 36 QUALIFIED JURORS WHO IN OPEN COURT INDICATED THAT PERHAPS SOME MATTER HAD COME UP THAT WOULD BEAR ON HIS QUALIFICATION. THAT JUROR IS PRESENT.

VOIR DIRE EXAMINATION

BY THE COURT:

Q YOUR NAME, MR. JUROR?

A WILLIE JOHNSON, JR.

Q WHAT IS YOUR JUROR NUMBER?

A 179.

Q WHAT IS IT THAT YOU NEED TO CALL TO OUR ATTENTION?

A WELL, MR. LINGARD, HE LIVED ABOUT FOUR MILES FROM ME AND MY MOTHER CALL IT TO MY ATTENTION THAT HE WAS ONE OF THE -- VISITED OUR CHURCH AND SOMEHOW, YOU

KNOW, LIKE WHEN YOU TALK TO YOUR MOTHER -- WE WASN'T DISCUSSING THE CASE.

Q I UNDERSTAND.

A BUT IT GOT TO ME A LITTLE BIT. SHE SAID, "WELL, I THINK THAT HE OUGHT TO BE PUNISHED FOR WHAT HE DID." I SAID, "MOMMA, I CAN'T DECIDE ON THAT REALLY," BUT, YOU KNOW, MY MOTHER, SHE GOT A WAY OF TALKING AND STUFF AND KIND OF GOT TO ME.

Q I GOT TO TELL YOU NOW. YOU ARE AN INTELLIGENT JUROR.

A YES, SIR.

Q YOU PROMISED ME YESTERDAY THAT YOU WOULD BASE YOUR VERDICT ON THE LAW AND THE EVIDENCE HEARD IN THIS COURTROOM UNDER OATH. DO YOU UNDERSTAND THAT?

A YES, SIR.

Q AND WITHOUT REGARD TO YOUR MOTHER. I APPRECIATE YOUR MOTHER. I HAVE ONE, TOO. I WANT YOU TO BE ABLE TO REACH A VERDICT IN THIS CASE ON THE LAW AND THE EVIDENCE HEARD IN THIS COURTROOM AND FROM NO OTHER SOURCE, INCLUDING YOUR MOTHER. DO YOU UNDERSTAND THAT?

A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)

Q CAN'T YOU DO THAT?

A YES, SIR.

Q YOU CAN DO THAT, CAN'T YOU?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q YOU KNOW YOUR MOTHER WILL NOT INFLUENCE YOU.
A WELL, SHE HAS JUST -- LIKE SHE HAS A WAY OF KIND OF GETTING TO ME, YOU KNOW, AND STUFF.
Q YOU WANT ME TO CALL YOUR MOTHER IN HERE?
A CALL HER IN FOR WHAT?
Q I WILL NOT HAVE ANYBODY INTIMIDATING ONE OF MY JURORS.
A NO, NO, IT WASN'T INTIMIDATING.
Q YOU HAVE GOT TO TELL ME NOW THAT YOU CAN BASE YOUR VERDICT ON THE LAW AND EVIDENCE IN THIS CASE AND NOT WHAT YOUR MOTHER SAYS.
A ALL RIGHT, SIR.
Q YOUR MOTHER, AS I UNDERSTAND, HASN'T HEARD ANY TESTIMONY; HAS SHE?
A NO, SIR.
Q WHAT?
A NO, SIR.
THE COURT: DO YOU WANT TO ASK SOME QUESTIONS, SOLICITOR?
VOIR DIRE EXAMINATION
BY SOLICITOR BAILEY:
Q MR. JOHNSON, I WANT TO ASK YOU A COUPLE OF

THINGS. DO YOUR CONCERNS CENTER AROUND MAKING A DECISION IN THE GUILT PHASE OR THE PENALTY PHASE?

A WELL, I WOULDN'T KNOW UNTIL I HEAR THE CASE.

Q WHEN DID YOU HAVE YOUR DISCUSSION WITH YOUR MOTHER?

A YESTERDAY.

Q LAST NIGHT?

A SHE WAS JUST TALKING. YOU KNOW, I TOLD HER I REALLY DIDN'T WANT -- IT WAS NO DISCUSSION. SHE WAS JUST TALKING, YOU KNOW.

Q ALL RIGHT. DO YOU STILL THINK YOU WOULD BE ABLE TO SIT AS A FAIR JUROR DESPITE WHAT YOUR MOTHER SAID TO YOU?

A I WILL DO MY BEST.

VOIR DIRE EXAMINATION

BY MR. STONE:

Q MR. JOHNSON, HOW IS YOUR MOMMA GOING TO FEEL IF YOU COME BACK WITH A NOT GUILTY VERDICT? WILL THAT UPSET HER?

A WELL...

Q BE HONEST. THERE ARE NO RIGHT OR WRONG ANSWERS. THESE PEOPLE ARE NOT GOING TO TRY TO GET YOU TO SAY SOMETHING.

A SHE CAN'T MAKE A DECISION FOR ME.

Q I UNDERSTAND THAT. IS THAT GOING TO UPSET HER

AND THEREFORE UPSET YOU?
A I HOPE NOT. I DON'T THINK SO. I HOPE NOT.
Q WHAT WE ARE CONCERNED ABOUT IS HOW ARE YOU GOING TO FEEL IF YOU ARE BACK THERE THINKING YOU NEED TO NOT DISAPPOINT YOUR MOTHER?
A IT'S NOT DISAPPOINTING HER. THAT'S JUST WHAT SHE SAID, YOU KNOW.
VOIR DIRE EXAMINATION
BY THE COURT:
Q YOU ARE JUST REPORTING TO ME THAT SHE HAD THIS CONVERSATION?
A WELL, YEAH, SHE WAS JUST TALKING, YOU KNOW.
Q YOU ARE TELLING ME THOUGH YOU ARE NOT GOING TO BE INFLUENCED BY IT?
A I HOPE NOT, NO, SIR.
Q NO, SIR. DON'T TELL ME YOU HOPE NOT. YOU ARE A RESPONSIBLE MAN. ARE YOU GOING TO BASE YOUR VERDICT ON WHAT YOUR MOMMA SAYS WHEN YOU HAVEN'T HEARD ANYTHING?
A NO, SIR.
Q OR BASE IT ON WHAT YOU HEAR IN THE COURTROOM?
A I WILL BASE IT ON WHAT I HEAR.
Q THAT'S WHAT I THOUGHT. I UNDERSTAND IN THIS WORLD A LOT OF PEOPLE MIGHT THINK ONE WAY OR A LOT OF PEOPLE MIGHT THINK ANOTHER WAY. YOU ARE THE ONE THAT

HAS GOT TO MAKE THE DECISION.

A YES, SIR.

Q IF YOU DON'T THINK YOU CAN MAKE YOUR OWN DECISION, YOU WILL HAVE TO TELL ME SO OR IF YOU THINK YOU WILL MAKE YOUR OWN DECISION ON THE FACTS IN THE CASE, YOU CAN TELL ME THAT.

A I WILL MAKE MY DECISION.

Q ON THE FACTS IN THIS CASE?

A YES, SIR.

Q AND NOT THE FACT THAT YOUR MOMMA SAID SOMETHING TO YOU?

A RIGHT.

THE COURT: DO YOU WANT TO EXPLORE IT ANY FURTHER?

SOLICITOR BAILEY: NO, SIR.

MR. STONE: NO, SIR.

THE COURT: HOW ABOUT YOU, SIR? GO AHEAD, TOM.

MR. SIMS: NO, WE WILL TALK ABOUT IT.

THE COURT: THANK YOU. I APPRECIATE YOU CALLING THIS TO MY ATTENTION.

(THE JUROR LEAVES CHAMBERS.)

(PAUSE.)

THE COURT: YES, SIR.

MR. SIMS: WE WILL LEAVE HIM ON.

THE COURT: THAT'S FINE. LET THE RECORD REFLECT THAT I FRANKLY APPRECIATE THE FACT -- AND PUT THIS ON THE RECORD. BUT YOU DO AGREE THAT HIS MOMMA SAID SOMETHING TO HIM AND HE SPECIFICALLY STATED HE DIDN'T SAY ANYTHING TO HER?

THIS IS ANOTHER EXAMPLE OF A CONSCIENTIOUS JUROR. SOMEBODY SAID SOMETHING TO HIM AND HE REPORTED IT TO THE COURT. I CONCLUDE HE WOULD BE A FAIR AND IMPARTIAL JUROR. WE WILL LEAVE HIM ON.

LET'S NOW PROCEED TO STRIKE THIS JURY. LET THE RECORD REFLECT THAT AGAIN WE ARE IN CHAMBERS PURSUANT TO THE AGREEMENT OF ALL PARTIES WITH THE DEFENDANT PRESENT. WE ARE STRIKING THE JURY TO ALLEVIATE ANY BATSON CONCERNS IN THE PRESENCE OF THE ENTIRE VENIRE.

AFTER STRIKING BACK HERE, WE WILL THEN GO THROUGH THE ENTIRE PROCEDURE AGAIN IN OPEN COURT. COUNSEL FOR THE STATE AND THE DEFENDANT AGREE THAT THIS IS THE BEST PROCEDURE IN THE EVENT A BATSON ISSUE ARISES? YOU AGREE WITH THAT SOLICITOR?

SOLICITOR BAILEY: YES, SIR.

MR. STONE: YES, SIR.

THE COURT: ARE WE NOW READY?

SOLICITOR BAILEY: THE STATE IS READY, JUDGE.

MR. STONE: YES, SIR.

THE COURT: MADAME CLERK.

CLERK: JUROR NUMBER ONE, HARRY MIMS. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: STRIKE.

CLERK: NUMBER TWO, REBECCA BREWINGTON. WHAT SAYS THE STATE?

SOLICITOR BAILEY: STRIKE.

CLERK: NUMBER THREE, 21, DENNIS BONNETTE.

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: STRIKE.

CLERK: NUMBER FOUR, NARONE FRANKLIN. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER FIVE, JASON COTE. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER SIX, REGINALD BUTLER. WHAT

SAYS THE STATE?

SOLICITOR BAILEY: STRIKE.

CLERK: NUMBER SEVEN, SANDRA MCWATERS. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER EIGHT, DUANE GREEN. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER NINE, CHRIS CRABB. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: STRIKE.

CLERK: NUMBER TEN, HOMER THRAILKILL. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: STRIKE.

CLERK: NUMBER ELEVEN, TYRONE GILLARD. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

THE COURT: FIVE HAVE BEEN SEATED.

CLERK: NUMBER TWELVE, ELAINE WHETSTONE. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER THIRTEEN, WILLIE JOHNSON. WHAT SAYS THE STATE?

SOLICITOR BAILEY: STRIKE.

CLERK: STRUCK BY THE STATE. NUMBER FOURTEEN, NORRIS GIBSON. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER FIFTEEN, DEBRA SANFORD. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER SIXTEEN, BONNIE ZEIGLER. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER SEVENTEEN, GIGI HAYES. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER EIGHTEEN, KAYE BONNETTE. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: STRIKE.

CLERK: STRUCK BY THE DEFENSE. THAT WAS NUMBER FIVE.

MR. STONE: YES, SIR.

SOLICITOR BAILEY: GIVE ME A SECOND, PLEASE.

MR. STONE: WE HAVE TEN JURORS.

THE COURT: YES, SIR.

CLERK: NUMBER NINETEEN, KEDRAIN PELZER. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: NUMBER TWENTY, PHYLLIS BRICKLE. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: STRIKE.

CLERK: STRUCK BY THE DEFENSE. NUMBER TWENTY-ONE, ERNEST MYERS. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: STRIKE.

CLERK: STRUCK BY THE DEFENSE. NUMBER TWENTY-TWO, BARBARA HANTON. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

CLERK: THAT'S THE 12.

THE COURT: THAT CONSTITUTES 12 JURORS. WE WILL BEGIN WITH THE 23RD JUROR WHO WAS QUALIFIED BY THE NAME OF MALCOLM SIMPSON. THE STRIKES WILL BE ONE FOR THE STATE AND TWO FOR THE DEFENSE.

CLERK: WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

THE COURT: THE STRIKES ARE ONE AND TWO AGAIN.

CLERK: NUMBER TWENTY-FOUR, COLE HAYWOOD,

WHAT SAYS THE STATE?

SOLICITOR BAILEY: STRIKE.

CLERK: STRUCK BY THE STATE. NUMBER TWENTY-FIVE, JOANNE GLOVER. WHAT SAYS THE STATE?

MR. STONE: STRIKE.

THE COURT: WAIT A MINUTE.

MR. STONE: EXCUSE ME. I'M SORRY.

CLERK: THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: STRIKE.

CLERK: STRUCK BY THE DEFENSE. NUMBER TWENTY-SIX, EMILY PINDAK. WHAT SAYS THE STATE?

SOLICITOR BAILEY: STRIKE.

CLERK: STRUCK BY THE STATE. NUMBER TWENTY-SEVEN, MARY GRAMLING. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT.

CLERK: DEFENSE?

MR. STONE: SEAT.

THE COURT: ALL RIGHT. THE RECORD WILL REFLECT THAT WE WENT THROUGH 27 OF THE 36 QUALIFIED STRIKES; IS THAT CORRECT?

MR. STONE: YES, SIR.

CLERK: THAT'S RIGHT.

THE COURT: ALL RIGHT, SIR. NOW, ARE THERE

ANY ISSUES WITH REGARD TO THE SELECTION PROCESS INCLUDING BATSON ISSUES? WHAT SAYS THE STATE?

SOLICITOR BAILEY: YOUR HONOR, I FEEL COMPELLED TO MAKE A REVERSE BATSON MOTION. ACCORDING TO MY RECORDS HERE, THEY STRUCK SEVEN JURORS, ALL MEMBERS OF THE WHITE RACE.

THE COURT: WITH REGARD TO THE BATSON MOTION WHAT SAYS THE DEFENSE?

MR. SIMS: CAN I GET MY SHEET?

THE COURT: YES, SIR.

(PAUSE.)

THE COURT: BEFORE WE DO THAT, LET ME MAKE A NOTATION HERE. I WANT TO KNOW HOW MANY BLACKS AND WHITES WERE ON THE JURY PANEL. WHO HAS GOT THAT INFORMATION? LINDA HAD IT FOR ME.

LAW CLERK: I WILL GET IT OFF THE BENCH.

(PAUSE.)

THE COURT: JOE, HAVE YOU GOT THAT?

LAW CLERK: YES.

THE COURT: GENTLEMEN, BEFORE WE PROCEED, MY NOTES REFLECT THAT THOSE QUALIFIED WERE SIX WHITE MALES -- EXCUSE ME -- SEVEN WHITE MALES, TEN WHITE FEMALES, TEN BLACK MALES AND NINE BLACK FEMALES. YOU HAVE INDICATED THAT HE STRUCK WHAT NOW?

SOLICITOR BAILEY: OUT OF SEVEN STRIKES, HE

STRUCK FIVE WHITE MALES AND TWO WHITE FEMALES.

THE COURT: FIVE WHITE MALES AND TWO WHITE FEMALES. WHAT REMAINS?

MR. STONE: WHAT IS ON THE PANEL?

SOLICITOR BAILEY: SIX BLACKS, SIX WHITES. AS FAR AS THE SEX, I DIDN'T ADD THAT UP.

THE COURT: YOU HAVE SIX WHITES AND SIX BLACKS ON THE PANEL?

MR. STONE: YES, SIR.

SOLICITOR BAILEY: ON THE JURY.

THE COURT: LET'S CONDUCT THE HEARING AND IN ACCORDANCE WITH THE RULES, I WILL ASK THAT YOU RESPOND. WHAT WAS THE FIRST ONE?

MR. STONE: THE FIRST ONE IS HARRY MIMS. THIS ONE WASN'T EXACTLY IN MY FRATERNITY BUT IN A DIFFERENT CHAPTER. THAT FRATERNITY PUTS A LOT OF EMPHASIS ON THE SOUTH AND OBVIOUSLY MY CLIENT IS FROM THE NORTH.

THE COURT: THIS WAS THE ONE YOU HAD THE CONCERNS ABOUT, THE K.A.?

MR. STONE: FROM DAY ONE I WOULDN'T WANT TO PUT MY FRATERNITY BROTHERS ON THIS JURY. THAT'S THE WAY I FEEL ABOUT IT. THAT'S BASICALLY WHAT IT IS IS A VERY CONSERVATIVE FRATERNITY.

THE COURT: I WOULD CONSIDER THAT RACE

NEUTRAL. YOU DIDN'T PUT ANY OTHER FRATERNITY BROTHERS ON THERE?

MR. STONE: NOT THAT I KNOW OF.

THE COURT: DO YOU CARE TO RESPOND.

SOLICITOR BAILEY: NO, SIR.

MR. STONE: THE SECOND ONE I STRUCK I DON'T HAVE THE RACE WRITTEN ON THIS LIST. I STRUCK HIM BECAUSE OF THE REASON -- DENNIS BONNETTE -- HE INDICATED A GOOD BIT OF NEWS COVERAGE, BUT THE REAL PROBLEM I HAD WITH HIM WAS THAT WHEN HE AND MR. MIMS GOT INTO THE JURY BOX ITSELF, THEY WENT OUT OF THEIR WAY TO SHAKE HANDS AND IT WAS ALMOST LIKE, "HEY WE MADE IT," THAT KIND OF THING. THAT GAVE ME SOME CONCERNS.

THE COURT: HE AND WHO?

MR. STONE: MR. MIMS, THE FIRST. IT WAS MAINLY BECAUSE I WAS STRIKING MR. MIMS. I LIKED HIM UNTIL HE DID THAT. WHEN HE DID THAT, THAT WAS MY CONCERN. THAT'S WHY WE STRUCK HIM. THE SECOND JUROR WAS A WHITE FEMALE. WE PRESENTED HER.

THE COURT: YOUR NEXT ONE?

MR. STONE: THE NEXT STRIKE WE USED WAS CHRIS CRABB. HE LOOKED ANGRY. I THINK YOU ASKED HIM IF HE COULD PUT THINGS ASIDE HE HEARD AND HIS RESPONSE WAS, "I THINK SO." IT WASN'T POSITIVE

ENOUGH FOR ME.

WE ASKED HIM THE FOREIGN NATIONAL QUESTION AS TO WHETHER OR NOT -- TO POTENTIALLY SHOW ANY KIND OF PREJUDICE HE HAD, AND HIS RESPONSE WAS, "IT'S OKAY IF THEY ARE AMERICAN CITIZENS."

HE ALSO HAD ON -- HE WAS ON MY BUMPER STICKER RESPONSE -- HE WAS THE ONE WHO NOT ONLY SAID HE HAD A CONFEDERATE BUMPER STICKER BUT WENT OUT OF HIS WAY TO APOLOGIZE TO MR. SIMS FOR IT.

THE COURT: I REMEMBER HIM VERY VIVIDLY. HE WAS THE HUNTER.

MR. STONE: YES, SIR.

THE COURT: HE DIDN'T SAY WHAT HE WAS HUNTING. OKAY.

MR. STONE: THE FOURTH STRIKE -- I WILL KEEP ROLLING -- WAS HOMER THRAILKILL, WHO IS A FRIEND AND ATTENDED THE SAME CHURCH WITH ANDY MYERS, WHO IS A KEY WITNESS IN THIS CASE.

HE SAID THAT HE COULD TRY TO PUT EVERYTHING HE KNEW ABOUT IT OUT OF HIS MIND WHEN YOU ASKED HIM IF HE KNEW ANYTHING ABOUT IT, BEING A FRIEND OF ANDY MYERS. THAT AGAIN WAS NOT POSITIVE ENOUGH FOR ME. HE SAID -- I THINK HIS QUOTE WAS WHEN YOU ASKED HIM IF HE HAD ANY PRECONCEIVED IDEAS -- HE SAID, "I CAN'T FORGET IT."

THE COURT: I RECALL THAT.

MR. STONE: THE NEXT STRIKE WE USED WAS FOR KAYE BONNETTE. THIS IS THE LADY WITH THE PETTING ZOO. I WAS CONCERNED WITH HER FIRST BECAUSE OF WHAT I PERCEIVED AS A WEAK ATTEMPT TO GET OFF THE JURY. SHE WAVERED A GOOD BIT WITH THE FOREIGN NATIONAL QUESTION.

SHE SAID SHE READ THE NEWSPAPER A GOOD BIT ABOUT IT. SHE WAS A HOUSEWIFE. I THINK THIS IS KEY TO OUR DEFENSE IS TO AT LEAST DEPICT A WOMAN AS A STRONG, CAPABLE PERSON. SHE GAVE ME SOME CONCERNS WITH ACCEPTING HER IN HER STATUS.

THE COURT: NEXT.

MR. STONE: PHYLLIS BRICKLE, THE EXACT SAME THING. WHEN I THINK I ASKED HER IF SHE THOUGHT THAT WOMEN AND MEN WERE CAPABLE OF THE SAME THING, SHE SAID, "NO MEN ARE MORE INDEPENDENT," I THINK IS EXACTLY WHAT SHE SAID. THEY WERE MUCH STRONGER AND AGAIN THAT'S DIRECTLY AGAINST MY THEORIES.

THE NEXT STRIKE I USED WAS ERNEST MYERS. HIS RESPONSE WHEN YOU ASKED HIM ABOUT WAS HE IN CATEGORY ONE, TWO OR THREE, HE SAID, "AS FAR AS I KNOW, I WOULD BE IN THE LATTER." HE HAS BEEN ON TWO PRIOR CRIMINAL TRIALS IN WHICH BOTH OF THEM WERE GUILTY. I THOUGHT THAT WAS ENOUGH TO USE MY SEVENTH

STRIKE. I DIDN'T USE OBVIOUSLY MY OTHER THREE STRIKES.

THE COURT: DO YOU CARE TO RESPOND?

SOLICITOR BAILEY: NO, SIR.

THE COURT: I WOULD CONCLUDE THAT THOSE STRIKES ARE RACIALLY NEUTRAL, PARTICULARLY IN A CASE OF THIS KIND WHERE THE VICTIM HIMSELF IS A HIGHLY RESPECTED AFRICAN-AMERICAN OFFICER WITH A WIDE RAGE OF INFLUENCE AND FRIENDS IN ORANGEBURG COUNTY. SO I DO NOT CONCLUDE THERE IS ANYTHING RACIALLY MOTIVATED ABOUT THE STRIKES EXERCISED IN THIS CASE. THE JURY WILL REMAIN SEATED. LET'S GO THROUGH THAT SAME PROCEDURE AGAIN IN THE COURTROOM.

SOLICITOR BAILEY: YES, SIR.

MR. STONE: FOR THE RECORD, YOUR HONOR, AS FAR AS A BATSON MOTION AGAINST THE SOLICITOR'S OFFICE, WE HAVE CONSIDERED IT AND DISCUSSED IT AND HAVE OPTED NOT TO DO THAT.

THE COURT: THAT'S FINE.

(WHEREUPON THE HEARING WAS CONCLUDED IN CHAMBERS, AND THE FOLLOWING PROCEEDINGS WERE REPORTED IN OPEN COURT.)

THE COURT: LET THE RECORD REFLECT THAT WE HAVE RESUMED THE PROCEEDINGS IN THE COURTROOM WITH THE DEFENDANT AND ALL COUNSEL PRESENT. FOR THE STATE

ARE WE NOW READY TO SELECT THE JURY?

SOLICITOR BAILEY: THE STATE IS READY, YOUR HONOR.

THE COURT: FOR THE DEFENSE?

MR. STONE: THE DEFENSE IS READY, YOUR HONOR.

THE COURT: LET ME DEAL WITH THE REST OF THE PANEL FIRST. I APPRECIATE YOUR ATTENDANCE HERE THIS MORNING. I HAD TO BRING YOU BACK IN THE EVENT SOMETHING HAPPENED TO SOME OF MY 35 QUALIFIED JURORS.

THEY WERE ALL HERE PRESENT. SO I WILL NOT NEED YOU. YOU ARE CERTAINLY WELCOME TO REMAIN IN THE COURTROOM, BUT I WOULD ASK THAT YOU PLEASE VACATE THESE PREMISES. I WILL PROVIDE SOME SEATS FOR YOU IN THE COURTROOM. I AGAIN CONTINUE TO THANK YOU.

(THE JURY PANEL IS EXCUSED.)

THE COURT: LET'S BEGIN THE JURY PROCESS OF SELECTION.

CLERK: AS I CALL YOUR NAME, PLEASE COME FORWARD IN FRONT OF -- BY THE COURT REPORTER HERE AND FACE THE BACK OF THE COURTROOM. JUROR NUMBER 217, HARRY MIMS.

(HARRY MIMS, WHITE MALE, COMES FORWARD.)

CLERK: NUMBER 217, MR. MIMS, WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE EXCUSE THE JUROR.

CLERK: EXCUSED BY THE DEFENSE. YOU CAN HAVE A SEAT WITH THE REST OF THE PANEL. NUMBER 28, REBECCA BREWINGTON.

(REBECCA BREWINGTON, WHITE FEMALE, COMES FORWARD.)

CLERK: NUMBER 28, MRS. BREWINGTON, WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT EXCUSE THE JUROR.

CLERK: EXCUSED BY THE STATE. YOU CAN HAVE A SEAT BACK WITH THE REST OF THE PANEL. NUMBER 21, DENNIS BONNETTE.

(DENNIS BONNETT, WHITE MALE, COMES FORWARD.)

CLERK: NUMBER 21, MR. BONNETTE, WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE EXCUSE THE JUROR.

CLERK: HAVE A SEAT BACK WITH THE REST OF THE PANEL. NUMBER 102, NARONE FRANKLIN.

(NARONE FRANKLIN, BLACK MALE, COMES

FORWARD.)

CLERK: WE HAVE NUMBER 102, MR. FRANKLIN. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MR. FRANKLIN.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, SIR. NUMBER 69, JASON COTE.

(JASON COTE, WHITE MALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 69, MR. COTE. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MR. COTE.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, SIR. NUMBER 43, REGINALD BUTLER.

(REGINALD BUTLER, BLACK MALE, COMES FORWARD.)

CLERK: NUMBER 43, MR. BUTLER, WHAT SAYS THE STATE?

SOLICITOR BAILEY: EXCUSE THE JUROR.

CLERK: EXCUSED BY THE STATE. YOU CAN HAVE A SEAT BACK IN THE AUDIENCE, PLEASE, SIR. NUMBER 340, SANDRA MCWATERS.

(SANDRA MCWATERS, WHITE FEMALE, COMES

FORWARD.)

CLERK: WE HAVE NUMBER 340, MRS. MCWATERS. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MRS. MCWATERS.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, MA'AM. NUMBER 120, DUANE GREEN.

(DUANE GREEN, BLACK MALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 120, MR. GREEN. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MR. GREEN.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, SIR. NUMBER 71, CHRIS CRABB.

(CHRIS CRABB, WHITE MALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 71, MR. CRABB. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE EXCUSE MR. CRABB.

CLERK: EXCUSED BY DEFENSE. NUMBER 289, HOMER THRAILKILL.

(HOMER THRAILKILL, WHITE MALE COMES

FORWARD.)

CLERK: WE HAVE 289, MR. THRAILKILL. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE EXCUSE THE JUROR.

CLERK: EXCUSED BY DEFENSE. NUMBER 112, TYRONE GILLARD.

(TYRONE GILLARD, BLACK MALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 112, MR. GILLARD. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MR. GILLARD.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, SIR. NUMBER 305, ELAINE WHETSTONE.

(ELAINE WHETSTONE, WHITE FEMALE, COMES FORWARD.)

CLERK: NUMBER 305, MRS. WHETSTONE, WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MRS. WHETSTONE.

CLERK: HAVE A SEAT IN THE JURY BOX,

PLEASE, MA'AM. NUMBER 179, WILLIE JOHNSON, JR.

(WILLIE JOHNSON, JR., BLACK MALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 179, MR. JOHNSON. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PLEASE EXCUSE THE JUROR.

CLERK: EXCUSED BY THE STATE. NUMBER 110, NORRIS GIBSON.

(NORRIS GIBSON, WHITE MALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 110, MR. GIBSON. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MR. GIBSON.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, SIR.

THE COURT: MR. GIBSON, I AM GOING TO DESIGNATE YOU AS THE FOREPERSON OF THIS JURY. YOUR JOB WILL BE TO PRESIDE IN THE DISCUSSIONS IN THE JURY ROOM AND TO BE THE JURY SPOKESMAN IN THE COURTROOM. AT ALL TIMES WOULD YOU PLEASE OCCUPY THE FOREPERSON'S CHAIR. THANK YOU SO MUCH.

CLERK: NUMBER 255, DEBRA SANFORD.

(DEBRA SANFORD, WHITE FEMALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 255, MRS. SANFORD. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MRS. SANFORD.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, MA'AM. NUMBER 323, BONNIE ZEIGLER.

(BONNIE ZEIGLER, WHITE FEMALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 323, MRS. ZEIGLER. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MRS. ZEIGLER.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, MA'AM. NUMBER 144, GIGI HAYES.

(GIGI HAYES, BLACK FEMALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 144, MRS. HAYES. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MRS. SCOFIELD HAYES.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, MA'AM. NUMBER 22, KAYE BONNETTE.

(KAYE BONNETTE, WHITE FEMALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 22, MRS. BONNETTE. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE EXCUSE MRS. BONNETTE.

CLERK: EXCUSED BY DEFENSE. NUMBER 237, KEDRAIN PELZER.

(KEDRAIN PELZER, BLACK MALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 237, MR. PELZER. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MR. PELZER.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, SIR. NUMBER 29, PHYLLIS BRICKLE.

(PHYLLIS BRICKLE, WHITE FEMALE, COMES FORWARD.)

CLERK: NUMBER 29, MRS. BRICKLE, WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE EXCUSE MRS. BRICKLE.

CLERK: EXCUSED BY DEFENSE. NUMBER 227, ERNEST MYERS.

(ERNEST MYERS, WHITE MALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 227, MR. MYERS. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE EXCUSE MR. MYERS.

CLERK: HAVE A SEAT BACK WITH THE REST OF THE PANEL, PLEASE, SIR. NUMBER 133, BARBARA HANTON.

(BARBARA HANTON, BLACK FEMALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 133, MRS. HANTON. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MRS. HANTON.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, MA'AM.

THE COURT: YOU 12 WILL CONSTITUTE THE JURY FOR THE TRIAL OF THIS CASE. AT THIS TIME WE WILL NOW SELECT TWO ALTERNATES. THE STRIKES WILL BE ONE AND TWO. YOU MAY PROCEED.

CLERK: NUMBER 270, MALCOLM SIMPSON.

(MALCOLM SIMPSON, BLACK MALE, COMES

FORWARD.)

CLERK: WE HAVE NUMBER 270, MR. SIMPSON. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE SEAT MR. SIMPSON.

CLERK: HAVE A SEAT IN THE JURY BOX, PLEASE, SIR. NUMBER 146, COLE HAYWOOD.

(COLE HAYWOOD, BLACK MALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 146, MR. HAYWOOD. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PLEASE EXCUSE THE JUROR.

CLERK: EXCUSED BY THE STATE. YOU CAN HAVE A SEAT BACK WITH THE REST OF THE PANEL, PLEASE, SIR. NUMBER 114, JOANNE GLOVER.

(JOANNE GLOVER, BLACK FEMALE, COMES FORWARD.)

CLERK: WE HAVE NUMBER 114, MRS. GLOVER. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. STONE: PLEASE EXCUSE MRS. GLOVER.

CLERK: EXCUSED BY DEFENSE.

SOLICITOR BAILEY: YOUR HONOR, CAN WE APPROACH BRIEFLY?

THE COURT: YES, SIR.

COURT REPORTER: IS THIS ON THE RECORD?

SOLICITOR BAILEY: NO.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD IN THE PRESENCE OF THE JURY BUT OUT OF THE HEARING OF THE JURY.)

CLERK: NUMBER 238, EMILY PINDAK.

(EMILY PINDAK, WHITE FEMALE, COMES FORWARD.)

CLERK: WE HAVE 238, MRS. PINDAK. WHAT SAYS THE STATE?

SOLICITOR BAILEY: PRESENT THE JUROR.

CLERK: DEFENSE?

MR. SIMS: ONE MOMENT, YOUR HONOR, IF WE MAY.

(PAUSE.)

MR. STONE: PLEASE SEAT MRS. PINDAK.

CLERK: HAVE A SEAT IN THE JURY BOX PLEASE, MA'AM.

(THE JURY WAS DULY IMPANELED AT 10:30 A.M..)

(DURING THE JURY SELECTION PROCESS, THE JURORS WERE CALLED FORWARD AND PEREMPTORY STRIKES WERE EXERCISED AS NOTED BY THE ATTACHED VOIR DIRE SHEET MADE A PART OF THIS RECORD AT PAGE 33.)

THE COURT: THAT THEN WILL CONCLUDE THE SELECTION OF THE JURY AND THE TWO ALTERNATES, HAVING DESIGNATED MR. GIBSON AS FOREPERSON OF THE JURY. LADIES AND GENTLEMEN OF THE JURY, I WILL ASK YOU TO GO TO THE JURY ROOM. I WILL BE CALLING YOU BACK VERY SHORTLY TO BEGIN THIS CASE. TAKE THEM TO THE JURY ROOM.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: AS THE FIRST ORDER OF BUSINESS, LADIES AND GENTLEMEN, FOR THOSE OF YOU ON THE PANEL AND THOSE OF YOU WHO WERE QUALIFIED, WE HAVE NOW COMPLETED THE SELECTION PROCESS.

YOU ARE NOW EXCUSED TO LEAVE WITH MY THANKS AND APPRECIATION FOR YOUR PATIENCE DURING THE LAST FOUR DAYS. OBVIOUSLY IF YOU CARE TO STAY AND REMAIN, WE WOULD BE DELIGHTED TO HAVE YOU. IF YOU CARE TO LEAVE, HOWEVER, PLEASE DO SO AT THIS TIME.

(PAUSE.)

THE COURT: I WANT TO SWEAR ALL THE BAILIFFS AT THIS TIME AND ALL S.L.E.D. AGENTS WHO WILL BE WORKING WITH THE JURY. LET'S DESIGNATE THEM BY NAME FIRST. COME FORWARD, PLEASE.

PRESENT ARE THE BAILIFFS WHO WILL BE WORKING WITH THE JURY DURING THESE PROCEEDINGS. LIEUTENANT WILLIAMS IS IN CHARGE OF THE MATTER. FOR

THE RECORD I WANT YOU TO GIVE YOUR NAME FOR THE RECORD.

BAILIFF: CARMEN PLATT.

BAILIFF: CONNIE JOHNSON.

BAILIFF: MARGARET VAUGHN.

AGENT: I'M AGENT DEBRA RODGERS.

AGENT: ANN REESE.

BAILIFF: DELAURIE NIVENS.

AGENT: STEPHEN RUDLOFF, R-U-D-L-O-F-F.

AGENT: JIMMY FREEMAN.

BAILIFF: ROBERT JENKINS.

THE COURT: LIEUTENANT, AS I UNDERSTAND IT, THERE WOULD BE ONE MORE TO BE SWORN AT A LATER TIME?

AGENT: YES, SIR.

THE COURT: THE COURT EXPRESSES TO YOU ITS DEEPEST APPRECIATION FOR YOUR WILLINGNESS TO SERVE IN THESE CAPACITIES. PLEASE SWEAR THEM.

(THE AGENTS AND BAILIFFS ARE DULY SWORN.)

THE COURT: LIEUTENANT EDWARDS, I APOLOGIZE. I ADDRESSED YOU AS LIEUTENANT WILLIAMS.

AGENT: THAT'S QUITE ALL RIGHT.

THE COURT: BEFORE WE BEGIN DO YOU NEED TO SPEAK TO THE JURY ABOUT THEIR PERSONAL EFFECTS AND HOUSEKEEPING?

AGENT: I CAN DO IT NOW.

THE COURT: ANY OBJECTION FOR HIM TO MAKE THOSE ARRANGEMENTS AT THIS TIME?

MR. STONE: NO OBJECTION.

SOLICITOR BAILEY: NO OBJECTION.

THE COURT: YOU WILL DO SO AND LET ME KNOW WHEN YOU ARE READY.

AGENT: THANK YOU, SIR.

THE COURT: AS HE MAKES THOSE ARRANGEMENTS, WE WILL BE IN RECESS SUBJECT TO THE CALL OF THE COURT. WE WILL BE STARTING IN JUST A MINUTE.

(WHEREUPON THERE WAS A RECESS.)

(WHEREUPON THE FOLLOWING HEARING WAS REPORTED IN CHAMBERS.)

THE COURT: LET THE RECORD REFLECT THE DEFENDANT IS PRESENT, ACCOMPANIED BY BOTH OF HIS LAWYERS AND THE SOLICITOR IS PRESENT, TOO. AGAIN, SOLICITOR BAILEY IN THE SELECTION PROCESS FOR THE ALTERNATES INADVERTENTLY STRUCK EMILY PINDAK, JUROR NUMBER 238.

RECOGNIZING THAT HE HAD ALREADY USED HIS STRIKE AS TO THE SECOND ALTERNATE, HE IMMEDIATELY WITHDREW IT AND THAT JUROR WAS SUBSEQUENTLY SEATED. THESE PROCEEDINGS ARE MADE IN THE PRESENCE OF THE DEFENDANT BY AND WITH THE CONSENT OF DEFENSE COUNSEL.

THERE IS ABSOLUTELY NO PREJUDICE THAT ATTACHES TO THE DEFENDANT BECAUSE THAT JUROR -- BECAUSE MR. BAILEY INADVERTENTLY ATTEMPTED TO STRIKE HER AND SHE HAS BEEN SEATED AS THE SECOND ALTERNATE. YOU AGREE WITH THAT FOR THE RECORD?

MR. STONE: YES, SIR.

THE COURT: YOU AGREE?

MR. SIMS: YES, SIR.

THE COURT: THAT'S FINE. TAKE HIM BACK OUT.

(THE HEARING IN CHAMBERS WAS CONCLUDED, AND THE FOLLOWING WAS REPORTED IN OPEN COURT.)

THE COURT: GENTLEMEN FOR THE STATE AND THE DEFENSE, LIEUTENANT EDWARDS OF S.L.E.D. ADVISED ME THAT HE HAS CONSULTED WITH THE JURY AND HE HAS MADE THE APPROPRIATE ARRANGEMENTS SATISFACTORY TO HIM AND TO THEM; IS THAT CORRECT?

AGENT: THAT IS CORRECT.

THE COURT: I CONTINUE TO EXPRESS TO YOU AND S.L.E.D. MY APPRECIATION FOR YOUR WORK IN THIS CASE.

AGENT: THANK YOU, SIR.

THE COURT: PRIOR TO SWEARING THE JURY AND BEGINNING THE TAKING OF THE TESTIMONY IN THE CASE, AS I UNDERSTAND IT, YOU HAVE A MOTION,

COUNSEL?

MR. STONE: YES, SIR, YOUR HONOR. ACCORDING TO SOUTH CAROLINA VERSUS SIMMONS, THE DEFENSE REQUESTS AN IDENTIFICATION HEARING. IT'S MY UNDERSTANDING THE SOLICITOR WISHES TO INTRODUCE AN IDENTIFICATION FROM SOMEONE FROM, I BELIEVE, PENNSYLVANIA TO IDENTIFY MY CLIENT.

I THINK I AM ENTITLED TO A HEARING TO DETERMINE IF THAT IDENTIFICATION IS ONE IN WHICH IT IS INDEPENDENTLY RELIABLE. I WOULD MOVE AT THIS TIME TO HAVE A HEARING TO EXPLORE THAT.

THE COURT: THAT MOTION IS GRANTED. STATE VERSUS SIMMONS GIVE YOU THAT OPPORTUNITY. IS THAT WITNESS HERE, SOLICITOR?

SOLICITOR BAILEY: YES, SIR.

THE COURT: CALL HIM UP.

SOLICITOR BAILEY: THOMAS FRENCH.

CLERK: STATE YOUR FULL NAME FOR THE RECORD.

THE WITNESS: THOMAS J. FRENCH.

CLERK: SPELL YOUR LAST NAME FOR THE COURT REPORTER.

THE WITNESS: F-R-E-N-C-H.

THOMAS J. FRENCH, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

(THE FOLLOWING TESTIMONY WAS REPORTED IN CAMERA.)

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. FRENCH, TELL THE JUDGE, PLEASE, WHERE YOU ARE FROM.

A BUCKS COUNTY, PENNSYLVANIA, SIR.

Q AND HOW ARE YOU EMPLOYED THERE?

A I AM A BUCKS COUNTY SHERIFF'S DEPARTMENT DEPUTY SHERIFF.

Q HOW LONG HAVE YOU BEEN CERTIFIED AS A LAW ENFORCEMENT OFFICER?

A IN BUCKS COUNTY FOR THREE AND A HALF YEARS.

Q AND DO YOU HAVE ANOTHER JOB IN ADDITION TO BEING A DEPUTY SHERIFF?

A YES, I DO.

Q WHAT DO YOU DO?

A I OWN A SPORTING GOODS STORE IN BENSALEM, PENNSYLVANIA.

Q DO YOU SELL FIREARMS AT THAT SPORTING GOOD STORE?

A YES, I DO.

Q DID YOU OWN THAT STORE BACK IN OCTOBER OF 1997?

A YES.

Q AND THE NAME OF THE STORE IS TOM'S SPORTING

GOODS?

A THAT'S CORRECT.

Q AND WHAT IS THE PROCEDURE FOR SELLING A HANDGUN IN PENNSYLVANIA?

A AT THAT PARTICULAR TIME THERE WAS WHAT IS CALLED A BRADY BILL, WHICH IS A FIVE-DAY WAITING PERIOD BACKGROUND CHECK. ALSO PROPER IDENTIFICATION FROM -- OR FOR THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.

Q I WANT TO CALL YOUR ATTENTION TO OCTOBER 17, 1997, AND ASK WHETHER OR NOT SOME CUSTOMERS CAME INTO YOUR STORE FOR THE PURPOSE OF INQUIRING ABOUT BUYING A PISTOL?

A YES, SIR.

Q WOULD YOU DESCRIBE THEM. WAS IT A MALE, FEMALE OR WHO WAS IT THAT CAME IN?

A BOTH MALE AND FEMALE TOGETHER.

Q DO YOU RECALL THE NAME OF THE FEMALE?

A YES, I DO.

Q WHAT WAS HER NAME?

A YELENA BATKILINA.

Q AND AT THE TIME MS. BATKILINA ARRIVED AT THE STORE, YOU SAID SHE HAD SOMEBODY WITH HER?

A THAT'S CORRECT.

Q AT THE TIME THIS PERSON CAME IN, HAD YOU SEEN HIM PREVIOUSLY ON ANY OCCASION?

A I HAVE SEEN HIM ONCE BEFORE JUST IN THE STORE AND DIDN'T HAVE A CONVERSATION OR ANYTHING OF THAT SORT.

Q AND HOW LONG WAS MS. BATKILINA AND THIS PERSON IN YOUR STORE ON THE 17TH OF OCTOBER, 1997?

A I WOULD SAY APPROXIMATELY ABOUT 45 MINUTES.

Q DID YOU HAVE A CONVERSATION WITH BOTH OF THEM DURING THAT PERIOD OF TIME?

A YES, I DID.

Q WERE THERE OTHER CUSTOMERS IN THE STORE AT THAT TIME?

A I BELIEVE MAYBE ONE OR TWO MAY HAVE COME IN AND LEFT AT THE SAME TIME.

Q WHAT IS THE LIGHTING LIKE INSIDE THE STORE?

A I HAVE 16 EIGHT-FOOT FLUORESCENT LIGHTING TUBE FIXTURES IN THE CEILING, NINE FEET FROM THE FLOOR TO THE CEILING.

Q HOW CLOSE DID YOU GET TO MS. BATKILINA AND THE PERSON WITH HER?

A I WOULD SAY MY COUNTER WIDTH IS 24 INCHES. I WOULD SAY MAYBE 36 INCHES AT THE MOST, THREE FEET.

Q DO YOU SEE THE PERSON IN COURT HERE TODAY THAT WAS WITH MS. BATKILINA IN YOUR STORE ON OCTOBER 17TH OF LAST YEAR?

A YES, I DO.

Q WOULD YOU POINT HIM OUT, PLEASE.
A HE IS SITTING AT THE DEFENSE TABLE WITH THE WHITE SHIRT AND BLUE TIE AND BLACK HAIR.
Q FOR THE RECORD YOU ARE INDICATING THE DEFENDANT, BAYAN ALEKSEY; IS THAT CORRECT?
A YES, SIR.
Q DID YOU HAVE ANY DIRECT CONVERSATION WITH HIM?
A YES, I DID.
Q DO YOU RECALL, NOT WORD FOR WORD, BUT THE GIST OF WHAT Y'ALL WERE TALKING ABOUT?
A WHAT I REMEMBER IS THAT HE INTRODUCED HIMSELF TO ME UNDER THE NAME OF MICHAEL PIVERO. HE NEVER MADE MENTION TO THE FIREARM IN QUESTION. HE JUST MADE MENTION TO THE FACT THAT HE WANTED HIS GIRLFRIEND TO HAVE A FIREARM FOR PROTECTION.
Q DID MS. BATKILINA PICK OUT A FIREARM THAT DAY?
A YES, SHE DID.
Q WAS SHE ABLE TO TAKE IT HOME WITH HER THAT DAY?
A NO.
Q AND I WANT TO CALL YOUR ATTENTION TO NOVEMBER 2, 1997. DID YOU ACTUALLY EFFECT THE SALE OF A FIREARM ON THAT DAY?
A YES, I DID.
Q AND DID MS. BATKILINA COME INTO YOUR STORE?
A YES.

Q WAS SHE BY HERSELF OR WITH SOMEBODY ELSE?
A SHE WAS WITH MICHAEL PIVERO.
Q THE SAME PERSON YOU HAVE INDICATED AS THE DEFENDANT OVER HERE, BAYAN ALEKSEY?
A THAT'S CORRECT.
Q ON THIS OCCASION HOW LONG WERE THEY IN THE STORE?
A AGAIN I WOULD SAY MAYBE 45 MINUTES, HALF AN HOUR TO 45 MINUTES, NO LESS THAN A HALF AN HOUR.
Q DID YOU ENGAGE MISTER -- YOU SAID MR. PIVERO -- BUT MR. ALEKSEY, DID YOU ENGAGE HIM IN ANY CONVERSATION ON THAT OCCASION?
A YES, I DID.
Q AND DID SHE PURCHASE A GUN --
A YES, SHE DID.
Q -- AT THAT POINT IN TIME AND LEAVE THE STORE WITH THE GUN?
A YES, SHE DID.
Q YOU TESTIFIED PREVIOUSLY THAT PRIOR TO THE OCTOBER DATE YOU HAD SEEN HIM IN THE STORE BEFORE?
A YES, THAT'S CORRECT.
Q YOU SAW HIM ON OCTOBER 17TH?
A YES.
Q AND YOU SAW HIM ON NOVEMBER 2ND?
A THAT IS CORRECT.

Q DID YOU SEE HIM AT ANY OTHER POINT IN TIME BEFORE TODAY?

A YES. I SAW HIM ACTUALLY PRIOR TO HER RECEIVING THE FIREARM THAT PARTICULAR DAY IN NOVEMBER. I THINK IT WAS PROBABLY ON TWO OCCASIONS WHERE THEY CAME IN AGAIN TO SEE IF THE PAPERWORK HAD GOTTEN BACK YET. SOMETIMES IN PHILADELPHIA IT TAKES MORE THAN FIVE DAYS. SOMETIMES IT'S SEVEN OR EIGHT DAYS. THEY WERE JUST LOOKING TO SEE IF THE PAPERWORK WAS BACK.

Q DO YOU RECALL HOW HE WAS DRESSED ON THE OCCASIONS WHEN YOU SAW HIM BACK IN OCTOBER AND NOVEMBER OF LAST YEAR?

A WHAT I REMEMBER BASICALLY IS HE ALWAYS WORE A TURTLENECK SWEATER, USUALLY A WHITE ONE, ALWAYS HAD A BLACK LEATHER JACKET, ALWAYS HAD JEANS AND FAIRLY CLEAN, BRAND NEW LOOKING TENNIS SHOES.

Q DID THE STATE LAW ENFORCEMENT DIVISION FAX SOME PHOTOGRAPHS TO YOU?

A YES, THEY DID.

Q TO LET YOU LOOK AT THEM AND SEE IF THIS WAS THE PERSON THAT CAME IN THE STORE?

A YES.

Q LET ME HAND YOU THESE TWO AND ASK IF YOU RECOGNIZE THAT.

A YES, THESE ARE THE ONES THAT WERE FAXED TO ME AT

THE SHERIFF'S DEPARTMENT IN BUCKS COUNTY.

SOLICITOR BAILEY: LET ME MARK THESE FOR THIS HEARING.

(STATE'S EXHIBITS NUMBER 1 AND 2, FAX PHOTOGRAPHS OF THE DEFENDANT, ARE MARKED FOR IDENTIFICATION.)

THE COURT: HAVE YOU SEEN THESE DOCUMENTS?

SOLICITOR BAILEY: THEY HAVE BEEN PROVIDED COPIES, YOUR HONOR.

THE COURT: THEY HAVE BEEN PREVIOUSLY SUPPLIED?

SOLICITOR BAILEY: YES, SIR.

THE COURT: ALL RIGHT, SIR.

Q MR. FRENCH, MY QUESTION IS WHETHER OR NOT YOU ARE IDENTIFYING MR. ALEKSEY HERE IN COURT BASED ON YOUR RECOLLECTION OF SEEING HIM WITH MS. BATKILINA ON THOSE TWO OCCASIONS?

A YES.

Q OCTOBER 17TH AND NOVEMBER 2ND, 1997, OR WHETHER YOU ARE IDENTIFYING HIM FROM THESE PICTURES THAT YOU SAW.

A I CAN IDENTIFY HIM FROM BEING IN MY STORE AND ALSO FROM THE PHOTOGRAPHS THAT YOU SHOWED ME NOW.

Q IF YOU HAD NEVER SEEN THOSE PHOTOGRAPHS, COULD YOU STILL IDENTIFY HIM TODAY AS YOU TESTIFIED YOU ARE

IDENTIFYING HIM?
A ABSOLUTELY.
Q IS THERE ANY QUESTION IN YOUR MIND AT ALL THAT THAT MAN OVER THERE, BAYAN ALEKSEY, IN THE WHITE SHIRT IS THE PERSON THAT ACCOMPANIED MS. BATKILINA TO YOUR STORE ON OCTOBER 17TH AND NOVEMBER 2ND OF LAST YEAR?
A NONE WHATSOEVER.
Q THANK YOU. PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.
CROSS EXAMINATION
BY MR. SIMS:
Q GOOD MORNING, MR. FRENCH.
A GOOD MORNING.
Q I'M THOMAS SIMS AND I'M ONE OF THE ATTORNEYS FOR BAYAN ALEKSEY HERE. LET ME ASK YOU. WHEN HE FIRST CAME INTO THE STORE, HE CAME IN WITH SOMEONE ELSE; IS THAT CORRECT?
A THAT'S CORRECT.
Q AND THE INFORMATION THAT YOU WANTED TO ELICIT WAS NOT FROM HIM BUT RATHER WAS FROM THAT OTHER PERSON; IS THAT CORRECT?
A THAT'S CORRECT.
Q SO YOU DIDN'T TAKE ANY IDENTIFICATION FROM HIM?
A NO.

Q HE WAS NOT THE FOCUS OF YOUR ATTENTION?
A NO.
Q THE YOUNG LADY WHO WAS GOING TO PURCHASE A WEAPON WAS THE PERSON WHOM YOU DEALT WITH SPECIFICALLY?
A THAT'S CORRECT. BUT THERE IS ALSO ANOTHER PART OF THE EQUATION IS THAT EVEN THOUGH THAT HE WAS NOT A FOCUS OF MY ATTENTION, HE WAS PARTLY THE FOCUS DUE TO THE FACT THAT I WAS LOOKING TO SEE IF THERE WAS GOING TO BE A STRAW PURCHASE, MEANING WAS SHE BUYING THIS PARTICULAR FIREARM FOR SOMEONE ELSE OTHER THAN HERSELF.
Q BUT IN THIS PARTICULAR INSTANCE THE ONLY PERSON WHO TALKED ABOUT ACTUALLY PURCHASING THE WEAPON WAS MS. BATKILINA? I AM HAVING DIFFICULTY WITH HER NAME.
A YES, THAT'S THE ONLY PERSON THAT MENTIONED ANYTHING ABOUT THAT PARTICULAR FIREARM.
Q I WOULD ASSUME THAT PURSUANT TO THE BRADY BILL THAT THE INFORMATION THAT YOU WOULD GET WOULD BE FROM THAT PERSON WHO WAS ACTUALLY GOING TO PURCHASE THE WEAPON?
A CORRECT.
Q YOUR CONVERSATION WOULD BE SPECIFICALLY WITH THAT PERSON TO MAKE SURE THAT HE OR SHE WAS GOING TO PROVIDE THE NECESSARY INFORMATION PURSUANT TO THE

BRADY APPLICATION FORM?
A THAT'S CORRECT.
Q AND I WOULD ASSUME YOU WOULD GET A DRIVER'S LICENSE OR SOME OTHER IDENTIFICATION FROM THAT PERSON; IS THAT CORRECT?
A THAT'S CORRECT.
Q AND YOU NEVER HAD THE OPPORTUNITY TO GET ANYTHING FROM BAYAN ALEKSEY OR THE PERSON WHO WAS THERE WITH HER?
A NOTHING AS FAR AS HIM SHOWING ME ANYTHING THAT WAS A DOCUMENTED PIECE OF IDENTIFICATION, ONLY THE FACT THAT HE HAD MENTIONED HIS NAME TO ME MORE THAN ONCE.
Q HE MENTIONED THAT. NOW, THE PERSON WHO WAS THERE THAT DAY MENTIONED THE NAME OF MICHAEL PIVERO?
A THAT IS CORRECT.
Q NOT BAYAN ALEKSEY?
A NO, MICHAEL PIVERO.
Q BASICALLY HE WAS A PERIPHERAL PERSON. YOU WERE DEALING WITH MS. BATKILINA, WHATEVER HER NAME IS, AND HE WAS JUST ON THE SIDE?
A I WOULDN'T SAY JUST ON THE SIDE. I HAD SOME FOCUS ON HIM ALSO.
Q HOW LONG DID YOU TALK WITH HIM? WELL, YOU DIDN'T TALK WITH HIM THAT LONG. HE ASKED ACCORDING

TO YOU --

A ABOUT -- I DIDN'T HAVE A 45-MINUTE DIRECT CONVERSATION WITH HIM BUT BACK AND FORTH. AS YELENA WAS DOING HER PAPERWORK, I WAS TALKING WITH HIM, TALKING WITH HER, TALKING WITH HIM ON A BACK AND FORTH SITUATION.

Q HOW LONG WERE THEY IN THE STORE?

A FORTY-FIVE MINUTES.

Q ABOUT 45 MINUTES AND MOST OF THE CONVERSATION WAS WITH YELENA?

A SOME WITH HER, SOME WITH HIM.

Q AND YOU DIDN'T HAVE ANY -- THERE WAS NOTHING THAT YOU TOOK AT THAT TIME ON THAT DAY WHICH WOULD HAVE GIVEN YOU A PICTURE OF BAYAN ALEKSEY OR MICHAEL PIVERO OR WHOEVER THAT PERSON WAS THAT WAS IN THAT ROOM IN YOUR STORE THAT DAY, RIGHT?

A NOTHING -- HE DIDN'T SHOW ME ANYTHING THAT PORTRAYED HIM ON ANY KIND OF DOCUMENTATION, NO.

Q RIGHT. YOU SAY THEY CAME BACK AGAIN?

A YES.

Q THAT PERSON CAME BACK AGAIN AND SHE WAS CONCERNED ABOUT THE FIVE-DAY WAITING PERIOD, WHETHER OR NOT HER APPLICATION HAD GONE THROUGH; IS THAT CORRECT?

A THAT IS CORRECT.

Q HE WAS SIMPLY OR THAT PERSON WAS WITH HER AGAIN?
A HE WAS WITH HER BUT HE WAS ALSO ASKING QUESTIONS: HOW LONG WOULD IT TAKE? DO YOU SEE IT TAKING MUCH LONGER? DO YOU FEEL IT MIGHT BE THIS FRIDAY OR NEXT FRIDAY?
Q AND AFTER THAT TIME YOU NEVER SAW THEM AGAIN; IS THAT CORRECT?
A AFTER THE FIREARM WAS PURCHASED AND THEY LEFT THE STORE WITH THE FIREARM, NO, I NEVER -- I SAW HIM ONE OTHER TIME.
Q BUT SPECIFICALLY IN TERMS OF THE PURCHASE OF THAT WEAPON, THE PERSON WHO WAS WITH THE YOUNG LADY WHO PURCHASED THAT WEAPON, YOU NEVER SAW THEM SPECIFICALLY FOR THE PURCHASE OF ANOTHER WEAPON OR ANYTHING LIKE THAT; IS THAT CORRECT?
A NO.
Q WHAT I AM ASKING YOU IS THAT SINCE THAT TIME OR DURING THAT PERIOD OF TIME, WAS THAT THE ONLY GUN PURCHASE THAT YOU MADE, SALE AT THAT TIME?
A THAT PARTICULAR DAY WITHIN THAT TIME PERIOD.
Q BUT WITHIN THAT FIVE TO SEVEN-DAY TIME PERIOD?
A NO, I MADE OTHERS.
Q YOU MADE OTHERS. SO THERE WERE OTHER PEOPLE COMING AND GOING FROM YOUR STORE?
A THAT'S CORRECT.

Q THERE WAS NO PARTICULAR REASON FOR YOU TO HAVE FOCUSED ON THE PERSON OTHER THAN THE FACT THAT THEY WERE PURCHASING A WEAPON?

A NO. AGAIN, AS I SAID BEFORE, I FOCUS ON COUPLES THAT COME IN LOOKING TO SEE IF IT'S GOING TO BE A STRAW PURCHASE, AN ILLEGAL PURCHASE.

Q SPECIFICALLY DO YOU HAVE AN IDEA IN TERMS OF THE NUMBER OF PEOPLE WHO COME INTO YOUR STORE ON AN WEEKLY BASIS?

A I WOULD SAY MAYBE 50 OR 60.

Q FIFTY OR 60 PEOPLE DURING THE COURSE OF A WEEK?

A THAT'S CORRECT.

Q AND YOU TALK TO 50 OR 60 PEOPLE DURING THE COURSE OF A WEEK?

A I DON'T TALK TO THEM ALL. SOME PEOPLE ARE JUST LOOKERS. THEY WILL LOOK, THEY WILL BROWSE AND THEY WILL LEAVE.

Q BUT 50 TO 60 PEOPLE DURING THE COURSE OF A WEEK, AND OCTOBER WAS THE FIRST TIME YOU SAW THEM, AND IT WAS HOW MANY WEEKS AFTER THAT WHEN THEY CAME BACK AGAIN IN NOVEMBER?

A YES.

Q SO THERE WERE A COUPLE OF WEEKS IN BETWEEN?

A YES.

Q SO THAT IS PRESUMABLY, MAYBE BY YOUR STANDARDS,

120 PEOPLE MAY HAVE COME AND GONE THROUGH YOUR STORE DURING THAT PERIOD OF TIME?

A MOST LIKELY, YES.

Q SINCE NOVEMBER UP UNTIL THE TIME THAT YOU WERE FAXED A PICTURE FROM THE AUTHORITIES HERE IN SOUTH CAROLINA, THERE WERE A NUMBER OF PEOPLE WHO HAD COME INTO YOUR STORE, YOU HAD TALKED TO. THERE WAS NO SPECIFIC REASON FOR YOU TO HAVE ANY INDEPENDENT RECOLLECTION OF THE PERSON WHO WAS IN THERE; IS THAT RIGHT?

A NO, THAT'S INCORRECT.

Q YOU HAVE NO OTHER PHOTOGRAPHS IN YOUR STORE OF THAT PERSON, DO YOU?

A NO.

Q AND THE ONLY TIME THAT YOU GOT ANY PHOTOGRAPHS WAS BASED UPON THE FAX THAT HAD BEEN SENT TO YOU BY THE AUTHORITIES HERE IN SOUTH CAROLINA?

A THAT'S CORRECT.

Q THESE HAVE BEEN INTRODUCED AT THIS POINT. THESE ARE THE ONLY PHOTOGRAPHS THAT YOU HAVE?

A THAT'S RIGHT.

Q NONE OF YOUR OWN?

A NO.

MR. SIMS: ONE MOMENT, YOUR HONOR.

(PAUSE.)

Q DID THE AUTHORITIES FROM SOUTH CAROLINA SEND YOU ANY OTHER PICTURES?

A NO.

Q THE ONLY PICTURES THAT YOU HAD FROM SOUTH CAROLINA WERE THOSE FAXES?

A THAT'S RIGHT.

Q SO YOU DID NOT HAVE A PHOTO LINEUP WHICH WOULD HAVE GIVEN THE OPPORTUNITY FOR SEVERAL OTHER PEOPLE TO BE SENT UP THERE TO YOU SO YOU COULD HAVE MADE AN IDENTIFICATION BASED UPON A LINEUP?

A THAT WAS THE ONLY PHOTOGRAPHS I HAD SEEN.

MR. SIMS: THAT'S ALL I HAVE AT THIS TIME, YOUR HONOR.

SOLICITOR BAILEY: A COUPLE ON REDIRECT IF I MAY, YOUR HONOR.

REDIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. FRENCH, I THINK YOU SAID YOU HAD SEEN MR. ALEKSEY AFTER THE GUN PURCHASE IN NOVEMBER; IS THAT CORRECT?

A THAT'S CORRECT.

Q WHERE DID YOU SEE HIM?

A BUCKS COUNTY PRISON.

Q AND THAT'S WHERE YOU WORK?

A I WAS TAKING ANOTHER INMATE TO THAT PARTICULAR

FACILITY AND I SAW BAYAN ALEKSEY WITH ANOTHER GROUP OF PRISONERS.

Q DID YOU IMMEDIATELY RECOGNIZE HIM THERE?

A ABSOLUTELY.

Q DO YOU REMEMBER THE APPROXIMATE DATE?

A NO, I DON'T.

Q BUT IT WAS AFTER NOVEMBER 2ND?

A YES, IT WAS.

SOLICITOR BAILEY: YOUR HONOR, I WOULD CAUTION THE WITNESS AT THIS TIME NOT TO MENTION THAT IN FRONT OF THE JURY IF THE COURT RULES THAT HE CAN TESTIFY, THAT LAST SITUATION. THAT'S ALL I HAVE.

THE COURT: ANY FURTHER CROSS EXAMINATION?

MR. SIMS: NOTHING, YOUR HONOR.

THE COURT: I AM PREPARED TO RULE ON THIS AS A PRELIMINARY MATTER. ANYTHING FURTHER?

MR. SIMS: YOUR HONOR, THE DEFENSE TAKES THE POSITION THAT IN THIS SITUATION THERE WAS NO OUTSTANDING REASON FOR THIS WITNESS TO HAVE IDENTIFIED OR REMEMBERED OUR CLIENT, BAYAN ALEKSEY. THERE WAS NO INDEPENDENT RECOLLECTION OF MR. ALEKSEY.

THE ONLY THING THAT HE GOT WAS THE PHOTOGRAPHS WHICH WERE FAXED UP BY THE AUTHORITIES HERE IN SOUTH CAROLINA, WHICH WAS A ONE-PERSON FAX. THE ONLY PICTURE THAT THEY ACTUALLY GOT WAS BAYAN

ALEKSEY'S PICTURE.

THERE WAS NO ATTEMPT BY THE AUTHORITIES TO PROVIDE A LINEUP WHICH WOULD HAVE BEEN A BETTER WAY IN WHICH TO DETERMINE WHETHER THIS WAS AN INDEPENDENT RECOLLECTION ON THE PART OF MR. FRENCH TO IDENTIFY OUR CLIENT.

WHAT WE HAVE IS A TYPICAL ONE-PERSON SHOWUP, THE ONLY PERSON WHO WAS SENT UP THERE AND THE ONLY INFORMATION THAT WAS SENT TO HIM. WE TAKE THE POSITION THAT THAT IN ITSELF TAINTED ANY IDENTIFICATION OF OUR CLIENT.

WE WOULD ASK THE COURT TO SUPPRESS THE IN-COURT IDENTIFICATION OF OUR CLIENT BASED UPON THE TAINT OF INFORMATION THAT WAS SENT AND THE WAY THAT THE IDENTIFICATION WAS DONE BY THE STATE OF SOUTH CAROLINA.

THE COURT: YOUR MOTION IS NOTED FOR THE RECORD. I RESPECTFULLY DECLINE TO SUPPRESS THIS IDENTIFICATION TESTIMONY. LET THE RECORD THUS REFLECT THAT PURSUANT TO THE MOTION OF DEFENSE COUNSEL AND IN ACCORDANCE WITH STATE V. SIMMONS, I HAVE CONDUCTED AN IN CAMERA IDENTIFICATION HEARING OUTSIDE THE PRESENCE OF THE JURY.

I CONCLUDE THAT BASED ON HIS TESTIMONY AND THE EXAMINATION THAT THE IDENTIFICATION IS PROPER FOR

THE JURY'S CONSIDERATION. I KNOW OF NO TESTIMONY HERE THAT WOULD INDICATE THAT HIS IDENTIFICATION IS TAINTED IN ANY WAY.

THE TESTIMONY HERE IS THAT HE HAD THE OPPORTUNITY AND OBVIOUSLY THE LENGTH OF TIME TO MAKE AN APPROPRIATE IDENTIFICATION. I CONCLUDE BEYOND ANY REASONABLE DOUBT THAT IT WAS NOT TAINTED IN ANY WAY AND THAT THE IDENTIFICATION ISSUE IS ONE FOR THE JURY TO DETERMINE. YOU MAY COME DOWN.

MR. SIMS: BEFORE THE WITNESS IS REMOVED, THERE WAS ONE ANOTHER ISSUE. I BELIEVE MR. BAILEY ASKED THE COURT AND I WOULD JOIN, TOO, IN ASKING THE COURT TO ADMONISH THE WITNESS AS TO ANY TESTIMONY ABOUT THE SUBSEQUENT IDENTIFICATION AT THE BUCKS COUNTY FACILITY. I BELIEVE THAT'S WHERE IT WAS.

SOLICITOR BAILEY: YES, SIR.

THE COURT: HE HAS BEEN SO ADVISED AND HE FULLY UNDERSTANDS THAT YOU WOULD NOT GO INTO THAT. ANY QUESTION ABOUT THAT?

THE WITNESS: NO, SIR.

THE COURT: YOU MAY BE SEATED AND REMAIN IN THE COURTROOM.

SOLICITOR BAILEY: I THINK HE IS A FACT WITNESSES AND IS SEQUESTERED. SO THEY MAY WANT HIM OUT.

MR. STONE: YES, SIR.

THE COURT: FINE. IN THAT REGARD -- YOU MAY COME DOWN. LET THE RECORD CLEARLY REFLECT NOW, SOLICITOR, THERE HAS BEEN A SEQUESTRATION ORDER ISSUED.

SOLICITOR BAILEY: YES, SIR. MY UNDERSTANDING IS IT IS IN REGARD TO THE FACT WITNESSES.

THE COURT: FACT WITNESSES ONLY. OF COURSE, YOUR TWO INVESTIGATORS WILL BE PERMITTED TO REMAIN IN THE COURTROOM.

SOLICITOR BAILEY: YES, SIR.

THE COURT: TO THE EXTENT THAT THIS ORDER APPLIES TO YOU, PLEASE --

MR. STONE: YES, SIR, I UNDERSTAND.

THE COURT: I WOULD LIKE THE RECORD TO FURTHER REFLECT WITH REGARD TO MY FINDING IN THE IDENTIFICATION HEARING THAT THERE IS NO SUBSTANTIAL LIKELIHOOD OF IRREPARABLE IDENTIFICATION IN THE CASE. THE TESTIMONY IS SIMPLY OVERWHELMING IN MY VIEW, BUT IT WILL BE SUBMITTED FOR THE JURY'S CONSIDERATION UNDER A PROPER CHARGE.

MR. STONE: YES, SIR.

THE COURT: BRING THE JURY IN AND SWEAR THE JURY FOR ME.

(THE JURY RETURNS TO THE COURTROOM AT 11:20 A.M.)

CLERK: IF YOU WOULD ALL PLEASE STAND AND RAISE YOUR RIGHT HAND FOR ME.

(THE JURY IS DULY SWORN.)

THE COURT: MR. FOREMAN, AND LADIES AND GENTLEMEN OF THE JURY, UNDER THE LAWS OF THE STATE OF SOUTH CAROLINA WHERE THE STATE SEEKS THE DEATH PENALTY, AS IT DOES HERE, THEN THE TRIAL IS A BIFURCATED ONE; THAT IS, IT IS A TRIAL WHICH IS HELD IN TWO PARTS.

YOU WILL RECALL ON MONDAY MORNING THAT I EXPLAINED THAT TO YOU. LET ME NOW REVIEW THAT PROCEDURE WITH YOU. FIRST, A TRIAL IS HELD BEFORE A JURY TO DETERMINE THE GUILT OR INNOCENCE OF THIS DEFENDANT HERE ON TRIAL FOR MURDER. THAT IS THE PHASE OF THE TRIAL THAT WE ARE TO BEGIN AND OUR PRESENTLY HOLDING, THE FIRST PHASE.

AT THE CONCLUSION OF THE FIRST TRIAL, SHOULD THE VERDICT OF THE JURY BE GUILTY -- AND I MAKE NO RECOMMENDATIONS TO YOU CONCERNING YOUR VERDICT -- IF THE DEFENDANT IS CONVICTED OF THE CRIME OF MURDER, THEN AND ONLY THEN A SECOND PROCEEDING WILL BE HELD.

THIS SECOND PROCEEDING IS A SENTENCING

PROCEEDING, AT WHICH EXTENUATING, AGGRAVATING AND MITIGATING CIRCUMSTANCES MAY BE INTRODUCED INTO EVIDENCE AND CONSIDERED BY YOU THE JURY. SHOULD SUCH A PROCEEDING BE NECESSARY, I WILL FURTHER INSTRUCT YOU AT THAT TIME.

PLEASE DEPRIVE NO INFERENCE FROM WHAT I HAVE JUST TOLD YOU AS TO WHAT YOUR VERDICT SHOULD BE IN THIS THE FIRST PHASE. THE PURPOSE OF MY TELLING YOU THIS IS TO EMPHASIZE TO YOU THAT YOU ARE NOT TO CONSIDER PUNISHMENT OR SENTENCE IN THIS PHASE OF THE CASE. YOU ARE ONLY TO DETERMINE THE INNOCENCE OR GUILT OF THIS DEFENDANT BASED UPON THE EVIDENCE THAT HAS BEEN INTRODUCED IN THIS PHASE OF THE CASE.

THIS, LADIES AND GENTLEMEN, IS THE FIRST PHASE OF THE TRIAL. NOW, WHAT I WILL NOW SAY IS INTENDED TO SERVE AS AN INTRODUCTION TO THE TRIAL OF THIS CASE. IT IS NOT A SUBSTITUTE FOR THE DETAILED INSTRUCTIONS OF LAW WHICH I WILL GIVE YOU AT THE CLOSE OF THE CASE AND BEFORE YOU RETIRE TO CONSIDER YOUR VERDICT.

THIS IS A CRIMINAL CASE COMMENCED BY THE STATE, WHICH I SOMETIMES REFER TO AS THE PROSECUTION, AGAINST THIS DEFENDANT. THIS CASE IS ENTITLED THE STATE VERSUS ALEKSEY. THIS CASE IS BASED UPON AN INDICTMENT WHICH THE SOLICITOR WILL READ TO YOU OR

EXPLAIN TO YOU.

YOU SHOULD DISTINCTLY UNDERSTAND THAT THIS INDICTMENT THAT I HOLD IN MY HAND IS SIMPLY A CHARGE AND THAT IT IS NOT IN ANY SENSE EVIDENCE OF THE ALLEGATIONS IT CONTAINS. EVIDENCE, IF ANY, COMES FROM THIS WITNESS STAND UNDER OATH AND FROM SUCH OTHER MATTERS AS MAY BE INTRODUCED IN THE TRIAL OF THIS CASE FOR YOUR CONSIDERATION.

THE DEFENDANT HAS PLED NOT GUILTY TO THIS INDICTMENT. THE STATE OF SOUTH CAROLINA THEREFORE HAS THE BURDEN OF PROVING EACH OF THE ESSENTIAL SETTLEMENTS OF THIS INDICTMENT BEYOND A REASONABLE DOUBT.

THE PURPOSE OF THIS TRIAL IS TO DETERMINE WHETHER OR NOT THE STATE HAS MET THIS BURDEN. YOUR PURPOSE, LADIES AND GENTLEMEN, AS JURORS IS TO FIND AND TO DETERMINE THE FACTS IN THIS CASE.

UNDER OUR SYSTEM OF CRIMINAL PROCEDURE, YOU AND YOU ALONE ARE THE SOLE AND ONLY JUDGES OF THE FACTS IN THIS CASE. IF AT ANY TIME I SHOULD MAKE ANY COMMENT REGARDING THE FACTS, YOU MUST DISREGARD THAT. I AM NOT ENTITLED TO A FACTUAL OPINION AND I TELL YOU NOW THAT I HAVE NONE.

IT IS ESPECIALLY IMPORTANT THAT YOU PERFORM YOUR DUTY OF DETERMINING THE FACTS DILIGENTLY AND

CONSCIENTIOUSLY, FOR ORDINARILY THERE IS NO MEANS OF CORRECTING AN ERRONEOUS DETERMINATION OF THE FACTS BY THE JURY.

ON THE OTHER HAND AND WITH EQUAL EMPHASIS, I INSTRUCT YOU THE LAW AS GIVEN BY ME CONSTITUTES THE ONLY LAW FOR YOUR GUIDANCE. IT IS YOUR DUTY TO ACCEPT AND TO FOLLOW THE LAW AS I GIVE IT TO YOU.

IT IS YOUR DUTY TO FOLLOW THE LAW AS I GIVE IT TO YOU, EVEN THOUGH YOU OR I FOR THAT MATTER MIGHT DISAGREE WITH WHAT THE LAW IS OR OUGHT TO BE. PLEASE FOLLOW THE INSTRUCTIONS THAT I GIVE YOU WITH REGARD TO THE LAW AS BEING THE CORRECT LAW.

YOU ARE TO DETERMINE THE FACTS FROM THE TESTIMONY THAT YOU HEAR IN THIS COURTROOM AND FROM SUCH OTHER EVIDENCE AS MAY BE INTRODUCED INTO THE TRIAL OF THIS CASE. IT IS UP FOR YOU TO DETERMINE THE INFERENCES THAT YOU FEEL MAY BE PROPERLY DRAWN FROM THE TESTIMONY AND EVIDENCE IN THIS CASE.

I TELL YOU AGAIN, AS I HAVE REPEATEDLY THROUGHOUT THE LAST SEVERAL DAYS, YOU MUST NOT CONSIDER ANYTHING THAT YOU MAY HAVE READ OR HEARD ABOUT THIS CASE OUTSIDE OF THIS COURTROOM, WHETHER BEFORE OR DURING THE TRIAL.

UNTIL THIS CASE IS SUBMITTED TO YOU, YOU MUST NOT UNDER ANY CIRCUMSTANCES DISCUSS IT WITH

ANYONE. YOU MUST NOT EVEN DISCUSS IT WITH YOUR FELLOW JURORS. AFTER IT IS SUBMITTED TO YOU, YOU MUST DISCUSS IT ONLY IN THAT JURY ROOM WITH YOUR FELLOW JURORS.

IT IS IMPORTANT THAT YOU KEEP AN OPEN MIND AND NOT DECIDE ANY ISSUE IN THIS CASE UNTIL THE ENTIRE CASE HAS BEEN SUBMITTED TO YOU UNDER MY INSTRUCTIONS. IT IS YOUR ADDED DUTY, MR. FOREMAN, TO PRESIDE IN THE JURY ROOM AND TO BE THE JURY SPOKESMAN IN THE COURTROOM.

WE WILL BEGIN THE TRIAL OF THIS CASE WITH MR. BAILEY, REPRESENTING THE STATE OF SOUTH CAROLINA, MAKING AN OPENING STATEMENT AS TO HIS POSITION. THIS WILL THEN BE FOLLOWED BY ATTORNEYS FOR THE DEFENDANT, GIVING TO YOU A STATEMENT REGARDING THEIR POSITION.

FOLLOWING THAT WE WILL TAKE THE TESTIMONY OF THE CASE WITH THE STATE OF SOUTH CAROLINA PRESENTING SUCH WITNESSES AS THEY DEEM APPROPRIATE. FOLLOWING THAT WE WILL HAVE A PRESENTATION OF THE DEFENDANT'S CASE.

AT THE CONCLUSION OF ALL THE TESTIMONY, THERE WILL BE SUMMATIONS OR ARGUMENTS, WHICH THEY ARE SOMETIMES CALLED, BY THE ATTORNEYS FOR THE STATE AND THE ATTORNEYS FOR THE DEFENDANT.

IT IS AT THAT TIME THAT I WILL GIVE YOU THE

APPROPRIATE LAW WITH REGARDS TO ANY ISSUES THAT MAY HAVE BEEN IN THIS CASE. IT IS THEN AT THAT TIME I WILL ASK YOU, MR. FOREMAN, LADIES AND GENTLEMEN, TO RETIRE TO THE JURY ROOM AND TO REACH A VERDICT IN THE CASE BASED UPON YOUR FINDINGS OF THE FACTS.

MR. BAILEY, YOU MAY HAVE THE OPENING STATEMENT.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR.

MR. STONE: EXCUSE ME, YOUR HONOR. MAY WE APPROACH REAL QUICK?

THE COURT: YES, SIR.

(THE FOLLOWING BENCH CONFERENCE WAS REPORTED.)

MR. STONE: YOUR HONOR, YOU JUST TOLD THE JURY THAT AT THE CONCLUSION OF THE STATE'S CASE, THEY WOULD HEAR FROM THE DEFENSE.

THE COURT: WHAT DO YOU WANT ME TO DO?

MR. STONE: WOULD YOU JUST TELL THEM THAT THE DEFENSE DOES NOT HAVE TO PROVE THE CASE. THEY DON'T HAVE TO PUT UP ANY EVIDENCE AT ALL.

(THE BENCH CONFERENCE WAS CONCLUDED.)

THE COURT: LADIES AND GENTLEMEN, UNDER OUR SYSTEM OF LAW THIS DEFENDANT AND EVERY DEFENDANT COMES INTO COURT WITH THE PRESUMPTION OF INNOCENCE. THIS DEFENDANT DOES NOT HAVE TO SAY A THING, DOES NOT

HAVE TO PROVE A THING, DOES NOT HAVE TO PUT UP ANY DEFENSE IF HE CHOOSES TO.

THE FACT THAT THIS DEFENDANT OR NO DEFENDANT ELECTS NOT TO TESTIFY OR NOT TO PUT UP ANY PROOF CANNOT AND MUST NOT BE HELD AGAINST HIM IN ANY WAY. THE STATE HAS THE BURDEN OF PROVING HIM GUILTY TO YOUR SATISFACTION BEYOND A REASONABLE DOUBT.

SOLICITOR BAILEY: THANK YOU, YOUR HONOR. LADIES AND GENTLEMEN, I INTRODUCED MYSELF TO ALL OF Y'ALL DURING THE SELECTION PROCESS OVER THE LAST COUPLE OF DAYS. I'M WALTER BAILEY. I'M THE SOLICITOR OF THIS JUDICIAL CIRCUIT. I WILL BE REPRESENTING THE STATE OF SOUTH CAROLINA AND THE CITIZENS OF ORANGEBURG COUNTY IN THIS PROSECUTION.

I WANT TO INTRODUCE TO Y'ALL AT THIS TIME THE OTHER PEOPLE AT COUNSEL TABLE. THIS IS ANGELA GARRICK. SHE IS A LAWYER AND PROSECUTOR IN THE ORANGEBURG OFFICE. SHE WILL BE HELPING ME OUT WITH THIS CASE. BESIDE HER, THESE TWO GENTLEMEN HERE, ARE GEORGE DARNELL AND KENNY MEARS OF THE STATE LAW ENFORCEMENT DIVISION. THEY ARE THE CASE OFFICERS ON THIS CASE.

BEHIND THEM IS DARLENE SIMMONS WHO WORKS IN OUR OFFICE HERE IN ORANGEBURG. SHE WILL BE HELPING OUT WITH THE PAPERWORK AND SOME EXHIBITS HERE.

HARRISON BELL SEATED BESIDE HER IS ALSO AN ASSISTANT SOLICITOR. HE MAY BE HERE DURING PORTIONS OF THE TRIAL.

AS ALL OF Y'ALL KNOW, BAYAN ALEKSEY, THIS YOUNG MAN HERE IN THE WHITE SHIRT AT DEFENSE TABLE, IS CHARGED WITH THE MURDER OF FIRST SERGEANT FRANKIE LINGARD OF THE SOUTH CAROLINA HIGHWAY PATROL. THIS MURDER TOOK PLACE HERE IN ORANGEBURG COUNTY ON NEW YEAR'S EVE, THIS PAST NEW YEAR'S EVE, AT ABOUT 11:30 AT NIGHT.

SERGEANT LINGARD WAS THE FATHER OF THREE CHILDREN. HE WAS A HIGH-RANKING HIGHWAY PATROLMAN. SOME OF Y'ALL MAY HAVE HAD SOME PRIOR JURY SERVICE, MAYBE A CRIMINAL CASE IN MAGISTRATE'S COURT OR CIVIL CAGE OR MAYBE A CRIMINAL CASE IN THIS COURTROOM.

I CAN ASSURE YOU THAT THIS CASE IS THE MOST SERIOUS AND MOST IMPORTANT CASE THAT YOU WILL EVER CONSIDER AS JURORS. I JOIN WITH EVERYBODY INVOLVED IN THIS CASE IN ASKING Y'ALL TO PLEASE PAY CLOSE, STRICT ATTENTION TO ALL THE TESTIMONY AND TO JUDGE COTTINGHAM WHEN HE INSTRUCTS Y'ALL ON THE LAW LATER ON DURING THIS TRIAL.

I HAVE IN MY HAND HERE A COPY OF THE INDICTMENT IN THIS CASE. AS THE JUDGE SAYS, THE INDICTMENT IS NOT EVIDENCE. THIS IS THE CHARGING

PAPER. THIS IS WHAT BRINGS MR. ALEKSEY IN COURT TO FACE THIS JURY TRIAL.

THAT INDICTMENT STATES THAT BAYAN ALEKSEY, ALSO KNOWN AS JUSTIN MATEEKI, DID IN ORANGEBURG COUNTY, ON OR ABOUT DECEMBER 31, 1997, FELONIOUSLY, WILLFULLY AND WITH MALICE AFORETHOUGHT KILL ONE SERGEANT F. L. LINGARD BY MEANS OF SHOOTING HIM WITH A PISTOL AND THAT SAID SERGEANT F. L. LINGARD DID DIE AS A PROXIMATE RESULT THEREOF ON OR ABOUT THE 31ST DAY OF DECEMBER, 1997, IN ORANGEBURG COUNTY.

JUDGE COTTINGHAM TOLD Y'ALL ABOUT WHAT WE GO THROUGH IN THE PROCESS OF A JURY TRIAL. IT IS BASICALLY FIVE PARTS. WE START OUT WITH OPENING STATEMENTS. EACH SIDE HAS AN OPPORTUNITY TO TALK TO Y'ALL BRIEFLY, NOT IN GREAT DETAIL.

WHAT I AM SAYING IS NOT EVIDENCE. WHAT THE DEFENSE LAWYERS MAY SAY TO YOU IS NOT EVIDENCE. WHAT THIS IS IS BASICALLY A PREVIEW, A ROAD MAP, OF WHAT WE EXPECT THE EVIDENCE TO SHOW TO KIND OF GIVE Y'ALL A POINT OF REFERENCE WHEN YOU START HEARING THE WITNESSES.

FOLLOWING THE OPENING STATEMENTS, WE WILL HAVE THE TRIAL ITSELF. I WILL CALL A SERIES OF WITNESSES ONE AT A TIME THAT HAVE KNOWLEDGE OF CERTAIN PARTS OF THIS CASE. LIKE THE JUDGE SAID, YOU

DON'T MAKE UP YOUR MIND AFTER ONE OR TWO WITNESSES BECAUSE THEY HAVE ALL GOT BITS PIECES AND PIECES. YOU HAVE TO PUT IT TOGETHER AT THE END.

SO LISTEN TO THESE WITNESSES. THEY WILL BE UNDER OATH. SOME OF THE WITNESS WILL IDENTIFY PHOTOGRAPHS, DOCUMENTS, PHYSICAL EVIDENCE THAT WILL BE INTRODUCED INTO EVIDENCE. AS I FINISH WITH EACH WITNESS, THE DEFENSE HAS AN OPPORTUNITY IF THEY WISH TO CROSS EXAMINE THOSE WITNESSES.

AFTER YOU HAVE HEARD ALL THE TESTIMONY THAT WILL BE INTRODUCED IN THIS TRIAL, THE LAWYERS GET A FINAL CHANCE TO GET UP HERE AND GIVE YOU A SUMMATION. THAT'S NOT EVIDENCE EITHER. THAT'S A WRAP-UP. THAT'S THE CHANCE WE GET TO POINT OUT TO Y'ALL WHAT WE THINK ARE IMPORTANT THINGS THAT CAME OUT IN THE CASE AND WHAT WE THINK YOU OUGHT TO FOCUS IN ON AND CONCENTRATE ON.

FOLLOWING THAT JUDGE COTTINGHAM WILL CHARGE YOU OR INSTRUCT YOU ON WHAT THE LAW IS. AS HE SAYS, IT'S YOUR DUTY TO TAKE THE LAW AS HE GIVES IT TO YOU, TO ACCEPT IT AS HE GIVES IT TO. WHETHER YOU THINK IT OUGHT TO BE DIFFERENT OR WHETHER YOU THOUGHT IT WAS DIFFERENT, YOU TAKE IT AS HE GIVES IT TO YOU.

THAT LEADS TO THE FINAL STAGE WHERE YOU GO BACK TO THE JURY ROOM AND YOU DELIBERATE, AND YOU

APPLY THE LAW THE JUDGE GIVES YOU TO THE FACTS THAT YOU FIND THOSE TRUE FACTS TO BE, AND YOU COME BACK WITH A JUST AND TRUE VERDICT AND YOU WILL HAVE DONE YOUR DUTY.

NOW, WHEN THE JUDGE INSTRUCTS Y'ALL ON THE LAW, AS I SAID, HE WILL TELL YOU WHATEVER YOU NEED TO KNOW ABOUT THE LAW. HE WILL GIVE YOU LEGAL DEFINITIONS. HE WILL DEFINE A LOT OF TERMS TO YOU. HE WILL DEFINE MURDER. MURDER IN SOUTH CAROLINA IS THE UNLAWFUL KILLING OF A HUMAN BEING WITH MALICE AFORETHOUGHT.

MALICE DENOTES AN EVIL STATE OF MIND, A DEPRAVED HEART. YOU CAN INFER MALICE FROM THE INTENTIONAL DOING OF A WRONGFUL ACT. THE JUDGE WILL GIVE Y'ALL THIS IN MORE DETAIL. I WILL TOUCH ON IT BRIEFLY. THE AFORETHOUGHT MEANS THAT THAT MALICIOUS STATE OF MIND, THAT EVIL STATE OF MIND, HAS TO OCCUR AT THE TIME OR SHORTLY BEFORE THE TIME OF THE ACT THAT CAUSES THE DEATH TO TAKE PLACE.

IT COULD BE A SPLIT SECOND. IT HASN'T GOT TO BE ANY LONG PERIOD OF PREMEDITATION OR ANYTHING, BUT THAT STATE OF MIND HAS TO EXIST AT THE TIME THE ACTUAL KILLING TAKES PLACE. THAT MALICE CAN BE EXPRESSED OR IMPLIED MALICE.

AN EXAMPLE OF EXPRESS MALICE WOULD BE IF I

SAY, "I AM GOING TO KILL YOU. I HATE YOU. I WILL KILL YOU." THEN I FOLLOW THROUGH AND DO THAT. I HAVE EXPRESSED THAT MALICE. IMPLIED MALICE, YOU CAN INFER MALICE IN SEVERAL WAYS. THE JUDGE WILL INSTRUCT YOU ON THIS.

ONE OF THOSE WAYS IS WHEN A HOMICIDE IS CAUSED BY THE INTENTIONAL USE OF A DEADLY WEAPON, YOU CAN INFER MALICE FROM THAT ALONE. SO THE JUDGE WILL TELL YOU ALL THE DETAILS AT THE END OF THIS CASE.

WITH THE EXCEPTION OF THE SPECTATORS OUT HERE, EVERYBODY IN THIS COURTROOM HAS A SPECIFIC, UNIQUE JOB TO DO. THE BAILIFFS ARE HERE TO TAKE CARE OF Y'ALL, TO GET YOU IN AND OUT OF COURT AND BACK AND FORTH TO YOUR MOTEL ROOM, TO TAKE CARE OF WHATEVER NEEDS Y'ALL MIGHT HAVE AS JURORS.

THE COURT REPORTER SITTING IN FRONT OF THE JUDGE TAKES DOWN EVERY WORD THAT IS SAID THROUGHOUT THE ENTIRE TRIAL AND MAKES A PERMANENT RECORD OF IT. MY JOB AS SOLICITOR IS LIKE THE DISTRICT ATTORNEY IN MOST CASES. WE CALL IT THE SOLICITOR IN SOUTH CAROLINA. I AM REPRESENTING THE STATE OF SOUTH CAROLINA.

IT IS MY JOB TO PRESENT EVIDENCE TO Y'ALL CONCERNING THIS MURDER OF SERGEANT FRANKIE LINGARD TO PROVE BAYAN ALEKSEY'S GUILT TO YOUR SATISFACTION

BEYOND A REASONABLE DOUBT. I ACCEPT THAT BURDEN OF PROOF. THAT'S A BURDEN I HAVE IN EVERY CRIMINAL CASE. I WILL DISCUSS REASONABLE DOUBT WITH Y'ALL AT THE CLOSE OF THE CASE, AND THE JUDGE WILL INSTRUCT YOU ON IT.

MR. STONE AND MR. SIMS REPRESENT THE DEFENDANT, MR. ALEKSEY. JUDGE COTTINGHAM HAS TWO ROLES REALLY. HIS FIRST ROLE IS HE KIND OF ACTS AS A REFEREE. HE PRESIDES OVER THE TRIAL. IF THE LAWYERS MAKE OBJECTIONS, HE WILL RULE ON THOSE OBJECTIONS.

HE MAY FROM TIME TO TIME SEND Y'ALL BACK INTO THE JURY ROOM TO RULE ON SOMETHING. THAT DOESN'T MEAN HE IS TRYING OR ANYBODY IS TRYING TO KEEP ANYTHING FROM Y'ALL THAT YOU NEED TO KNOW. IT'S JUST THAT LEGAL MATTERS COME UP THAT MAY HAVE TO BE DISCUSSED. AND AT THE END OF THE TRIAL HE WILL TELL Y'ALL ALL THE LEGAL STUFF THAT YOU NEED TO KNOW.

HIS SECOND ROLE IS, AND I MENTIONED THIS EARLIER, WHEN THE TRIAL IS OVER WHEN HE TELLS YOU WHAT THE LAW IS. HE INSTRUCTS YOU. YOUR JOB AS JURORS IS THE MOST IMPORTANT JOB IN THE COURTROOM. IT'S MORE IMPORTANT THAN MY JOB, THE DEFENSE ATTORNEY, THE COURT REPORTER AND THE JUDGE'S JOB BECAUSE Y'ALL ARE JUDGES, TOO.

JUDGE COTTINGHAM IS THE JUDGE OF THE LAW. YOU THE JURY ARE THE JUDGES OF THE FACTS. YOU AND ONLY YOU CAN DECIDE WHAT THE TRUE FACTS ARE IN THIS CASE.

YOU DO THAT BY USING YOUR GOOD, EVERYDAY COMMON SENSE THAT YOU USE EVERY DAY IN YOUR LIVES WITHOUT EVEN THINKING ABOUT IT. AS I SAID, AT THE END OF THIS TRIAL, Y'ALL WILL DELIBERATE AND COME BACK WITH A UNANIMOUS VERDICT ONE WAY OR THE OTHER, GUILTY OF MURDER OR NOT GUILTY.

A TRIAL IS SIMPLY A SEARCH FOR THE TRUTH. Y'ALL ARE THE FINDERS OF THE TRUTH UNDER OUR COURT SYSTEM. THE WAY YOU DETERMINE THE TRUTH IS YOU JUDGE THE CREDIBILITY OR BELIEVABILITY OF THE WITNESSES WHO APPEAR IN FRONT OF YOU USING YOUR GOOD, EVERYDAY COMMON SENSE.

YOU LOOK THEM IN THE EYE AND YOU ASK YOURSELF: WHAT DOES THAT WITNESS HAVE TO GAIN OR LOSE, IF ANYTHING, FROM HIS TESTIMONY? IS WHAT THIS WITNESS SAYS CONSISTENT OR INCONSISTENT WITH OTHER STUFF THAT I HAVE HEARD IN THE CASE THAT I BELIEVE? IS IT CONSISTENT WITH PHYSICAL EVIDENCE THAT WE HAVE IN THE CASE? DOES IT MAKE SENSE? DOES IT MAKE SENSE?

THAT'S THE BEAUTY OF THE JURY SYSTEM. WE

COULD PUT ALL THIS INFORMATION INTO A COMPUTER AND COME OUT WITH SOMETHING, BUT A COMPUTER HASN'T GOT COMMON SENSE. THAT'S WHAT Y'ALL DO IS USE YOUR EVERYDAY COMMON SENSE AND APPLY THAT TO THIS TESTIMONY YOU WILL HEAR.

LIKE I SAID, WHAT I AM TELLING Y'ALL IS NOT EVIDENCE. IT'S A PREVIEW OF WHAT I ANTICIPATE THE EVIDENCE IS GOING TO BE IN THIS CASE AND IT'S NOT A PRETTY PICTURE. IT IS MY JOB TO PRESENT THE CASE TO YOU AS IT UNFOLDS.

IN THE PRESENTATION OF THE STATE'S CASE, THE EVIDENCE IS GOING TO SHOW THAT THIS PAST NEW YEAR'S EVE, DECEMBER 31, 1997, ABOUT 11:30 SERGEANT FRANKIE LINGARD WAS WORKING ON I-95 IN ORANGEBURG COUNTY UP AROUND THE SANTEE AREA.

HE WAS ACCOMPANIED BY A CALHOUN COUNTY DEPUTY, LIN SHIRER, WHO WILL BE TESTIFYING LATER ON IN THIS TRIAL. AT ABOUT 11:30 DEPUTY SHIRER AND SERGEANT LINGARD OBSERVED A WHITE MUSTANG WITH DELAWARE TAGS GOING SOUTH ON I-95 DOING ABOUT 80 MILES AN HOUR. THE SPEED ALONG 95 THERE IS 65 MILES PER HOUR.

SO WHEN SERGEANT LINGARD AND DEPUTY SHIRER OBSERVED THE MUSTANG EXCEEDING THE SPEED LIMIT, THEY PUT ON THE LIGHTS AND GOT BEHIND THEM AND PULLED THE

MUSTANG OVER. THE EVIDENCE IS GOING TO SHOW THAT WHITE MUSTANG WAS BEING OPERATED BY THE DEFENDANT BAYAN ALEKSEY.

A WOMAN NAMED GLORYVEE PEREZ BLACKWELL WAS SEATED IN THE FRONT SEAT, THE PASSENGER SIDE. THERE WERE TWO CHILDREN IN THE CAR. THEY WERE IN THE BACK SEAT. ONE WAS AN EIGHT-YEAR-OLD GIRL, BOTH CHILDREN OF MRS. BLACKWELL. HER NAME WAS GLORIA. THERE WAS A SMALL BABY. THE BABY GIRL WAS IN THE BACK SEAT IN A CAR SEAT ALSO.

THIS MUSTANG, YOU WILL HEAR FROM THE EVIDENCE, HAD BEEN REPORTED STOLEN FROM PENNSYLVANIA. THE TAG ON THE MUSTANG HAD BEEN REPORTED STOLEN IN A SEPARATE INCIDENT.

WHEN SERGEANT LINGARD PULLED THE MUSTANG OVER, ALEKSEY STOPPED THE CAR AT THE 97 MILE MARKER. YOU WILL HEAR THAT FROM DIFFERENT PEOPLE INVOLVED HERE. THAT IS THE MILE MARKER THAT IS RIGHT ABOUT WHERE THE 301 EXIT IS OFF OF 95 COMING SOUTH THROUGH SANTEE.

THE EVIDENCE IS GOING TO FURTHER SHOW THAT WHEN SERGEANT LINGARD'S CAR PULLED IN BEHIND THE MUSTANG, BOTH SERGEANT LINGARD AND DEPUTY SHIRER GOT OUT OF THEIR POLICE CAR. DEPUTY SHIRER WALKED TO THE RIGHT FRONT BUMPER OF THE HIGHWAY PATROL CAR.

SERGEANT LINGARD APPROACHED THE DOOR.

DEPUTY SHIRER DID NOT SEE INTO THE CAR BECAUSE THE WINDOWS WERE HEAVILY TINTED, BUT HE COULD SEE SERGEANT LINGARD APPROACHING THE CAR. HE WILL BE TESTIFYING IN THIS CASE. AS SERGEANT LINGARD APPROACHED THE DRIVER'S SIDE DOOR OF THE MUSTANG, FIVE SHOTS RANG OUT.

THESE SHOTS WERE FIRED FROM A SEMIAUTOMATIC NINE MILLIMETER PISTOL FROM THE DRIVER'S SIDE OF THE MUSTANG. ONE BULLET -- FOUR OF THE FIVE BULLETS STRUCK SERGEANT LINGARD. ONE BULLET ENTERED HIS LEFT FOREARM, PASSED IN AND OUT OF THE ARM AND LODGED IN HIS LEFT CHEST.

THE SECOND BULLET STRUCK SERGEANT LINGARD HIGH ON HIS SHOULDER. ANOTHER BULLET ENTERED HIS BACK AND A FOURTH BULLET STUCK HIM IN THE TORSO AREA DOWN HERE (INDICATING) AND WENT AT AN UPWARD ANGLE. ALL FOUR BULLETS LODGED INSIDE OF THE BODY.

SERGEANT LINGARD DIED ON I-95. HE BLED TO DEATH ON THE PAVEMENT. DEPUTY SHIRER PULLED HIM OUT OF THE LANE OF TRAFFIC, GOT ON THE RADIO AND RADIOED, "OFFICER DOWN, OFFICER DOWN." THAT WENT OVER THE HIGHWAY PATROL RADIO AND EVERY OTHER POLICE OFFICER IN THE AREA RESPONDED. THERE WAS A MASSIVE RESPONSE TO IT.

THE PATHOLOGIST WILL TESTIFY THAT DID THE AUTOPSY OF SERGEANT LINGARD THAT BOTH LUNGS AND HIS HEART WERE PERFORATED BY THE BULLETS. THE CAUSE OF DEATH WAS BLEEDING TO DEATH AND THAT HE DIED WITHIN MINUTES OF BEING SHOT.

NOW, IMMEDIATELY BEFORE DEPUTY SHIRER CALLED IN -- HE WAS ARMED, OF COURSE -- HE FIRED SEVERAL SHOTS AT THE MUSTANG AS IT PULLED AWAY. HE DIDN'T HIT THE MUSTANG. THE MUSTANG PROCEEDED SOUTH ON I-95. IT TOOK AN EXIT AT 176, WHICH IS A SECONDARY ROAD LEADING EAST INTO HOLLY HILL AND GOOSE CREEK.

AS THE CAR APPROACHED HOLLY HILL JUST MINUTES AFTER THE SHOOTING, THE POLICE OFFICERS IN HOLLY HILL, OF COURSE, HAD HEARD WHAT HAPPENED OVER THE RADIO. HE ENTERED THE TOWN LIMITS OF HOLLY HILL, THE MUSTANG DID, ON HIGHWAY 176.

AS IT PASSED THE INTERSECTION OF 176 AND 310, THE HOLLY HILL POLICE OFFICER OBSERVED IT, GOT IN BEHIND IT. ANOTHER OFFICER GOT IN BEHIND IT AND THEY PULLED THE MUSTANG OVER.

TWO OFFICERS, OFFICERS WATFORD AND MYERS, THAT YOU WILL HEAR FROM LATER ON, PULLED THE CAR OVER. SERGEANT WATFORD, WHO IS A RESERVE OFFICER, WAS IMMEDIATELY BEHIND THE MUSTANG; AND SERGEANT

MYERS PULLED OVER TO THE SIDE. UNFORTUNATELY NOBODY BLOCKED THE FRONT OF THE MUSTANG, BUT THE MUSTANG CAME TO A COMPLETE STOP.

SERGEANT MYERS HAD A SHOTGUN. HE GOT OUT AND APPROACHED THE MUSTANG AT ROUGHLY 20 FEET. HE LOOKED INSIDE THE MUSTANG. THE WINDOW WAS DOWN. HE OBSERVED A WHITE MALE DRIVER OF THAT CAR WITH A GUN TO HIS HEAD THREATENING TO SHOOT HIMSELF.

AS HE DID THAT, MRS. BLACKWELL OPENED THE DOOR ON PASSENGER SIDE, GRABBED HER KIDS AND GOT OUT AND GAVE HERSELF UP TO THE POLICE. ALEKSEY IMMEDIATELY TOOK OFF. AGAIN, THERE WAS NOTHING IN FRONT OF HIM, CONTINUING EAST ON 176 OUT OF HOLLY HILL.

HE PROCEEDED INTO BERKELEY COUNTY INTO THE TOWN OF GOOSE CREEK. THERE WAS A PURSUIT OUT OF HOLLY HILL. SERGEANT MYERS PURSUED HIM FOR SOME DISTANCE BUT HE LOST HIM, WHILE SERGEANT WATFORD TOOK CARE OF THE TWO KIDS AND MRS. BLACKWELL WHO TURNED THEMSELVES OVER TO THE POLICE THERE AT HOLLY HILL.

AT ANY RATE, THERE WAS A HIGH SPEED PURSUIT THAT OCCURRED. AT TIMES ALEKSEY TURNED THE LIGHTS OFF ON THE MUSTANG. AT TIMES THE LIGHTS WERE ON. HE WAS GOING AT DIFFERENT RATES OF SPEED.

HE WENT FROM ORANGEBURG COUNTY ON 176

THROUGH HOLLY HILL INTO BERKELEY COUNTY INTO GOOSE CREEK WHERE HE MADE BASICALLY A U-TURN IN GOOSE CREEK AND GOT ON HIGHWAY 78 HEADING BASICALLY IN THE OPPOSITE DIRECTION.

HE ENTERED CHARLESTON COUNTY ON 78, PROCEEDED DOWN 78 IN DORCHESTER COUNTY. THE POLICE IN SUMMERVILLE, WHICH FOLLOWS 78 FROM GOOSE CREEK BASICALLY IN A WESTERLY DIRECTION OR NORTHERLY DIRECTION AS YOU COME INTO SUMMERVILLE, THEY WERE ALL ON THE RADIO. THEY HAD THE ROAD BLOCKED.

AS THE MUSTANG PROCEEDED INTO SUMMERVILLE WITH THE ROADS BLOCKED, HE COULDN'T GO ANYWHERE. ALEKSEY RUNS INTO A PARKING LOT OF THE K-MART, A PARKING LOT THAT IS FULL OF POLICE. IN ORDER TO STOP ALEKSEY, THEY HAD TO RAM HIS CAR WITH ANOTHER POLICE CRUISER TO STOP IT.

IN THAT COLLISION ALEKSEY WAS KNOCKED UNCONSCIOUS. THE HIGHWAY PATROLMAN, TROOPER CECIL, THAT HAD TO WRECK HIS CAR INTO ALEKSEY'S MUSTANG STOPPED AND WAS ALSO INJURED. ALEKSEY WAS HANDCUFFED AT THE SCENE, HIS HANDS BEHIND HIS BACK. E.M.S. WAS CALLED. HE WAS GIVEN EMERGENCY TREATMENT AT THE SCENE FOR ROUGHLY 15 MINUTES.

YOU WILL HEAR THAT HE WAS THEN TRANSPORTED TO THE MEDICAL UNIVERSITY OF SOUTH CAROLINA IN

CHARLESTON WHERE HE WAS TREATED IN THE TRAUMA UNIT OF THE EMERGENCY ROOM FOR ROUGHLY AN HOUR AND THEN SENT UPSTAIRS TO THE NEUROLOGY WARD WHERE HE WAS TREATED FOR A WHILE. LATER ON THAT MORNING, JANUARY 1ST, HE WAS RELEASED FROM THE HOSPITAL AND PLACED HERE IN THE ORANGEBURG DETENTION CENTER.

YOU ARE ALSO GOING TO HEAR, AS FAR AS THE STATE'S CASE, THAT ON JANUARY 2ND, THE EVENING OF JANUARY 2ND, 1998, MR. ALEKSEY WAS INTERVIEWED BY THESE TWO S.L.E.D. AGENTS, MR. MEARS AND MR. DARNELL, OVER AT THE ORANGEBURG COUNTY SHERIFF'S OFFICE AND THIS INTERVIEW WAS TAPED.

YOU WILL HEAR THAT TAPE. IT WILL BE IN EVIDENCE. INITIALLY ALEKSEY IN THE TAPE BLAMED THIS SHOOTING ON GLORYVEE BLACKWELL, SAID SHE WAS DRIVING. SHE DID THE SHOOTING. HE KNEW NOTHING ABOUT IT.

THE TAPE WENT OFF. THERE WERE CONVERSATIONS THAT OCCURRED IN THE SHERIFF'S OFFICE THAT YOU WILL HEAR TESTIMONY ABOUT. DURING THAT PERIOD OF ROUGHLY TWO HOURS THAT THE TAPE IS OFF, THE TESTIMONY WILL BE THAT ALEKSEY FINALLY DECIDED TO COME CLEAN AND TELL THEM WHAT HAPPENED.

THE TAPE IS TURNED BACK ON. YOU WILL HEAR THAT SECOND TAPE THERE. IN THAT TAPE BAYAN ALEKSEY ADMITTED TO THIS MURDER, THAT HE DID IT AND HE ACTED

ALONE. BOTH ALEKSEY AND GLORYVEE BLACKWELL WERE ARRESTED. THEY WERE BOTH CHARGED WITH MURDER.

AFTER THE INVESTIGATION WAS COMPLETE, THE CHARGES AGAINST MRS. BLACKWELL WERE DROPPED. SHE WILL BE PRESENT HERE AS A WITNESS. SHE WILL BE TESTIFYING HERE AS ONE OF NUMEROUS WITNESSES THAT WILL BE CALLED BY THE STATE IN THIS CASE.

IN ADDITION TO LAW ENFORCEMENT OFFICERS INVOLVED IN THE PURSUIT AND OTHER FACT WITNESSES, Y'ALL ARE GOING TO HEAR SEVERAL EXPERT WITNESSES LATER ON DURING THE TRIAL, PROBABLY NOT TODAY BUT MAYBE TOMORROW.

YOU ARE GOING TO HEAR ABOUT GUNSHOT RESIDUE TESTS THAT WERE DONE ON THE CAR, DONE ON ALEKSEY'S HANDS AND CLOTHING WORN BY ALEKSEY AND BY GLORYVEE BLACKWELL.

THOSE S.L.E.D. EXPERTS WHO DID THESE GUNSHOT RESIDUE OR GUN POWDER TESTS ARE GOING TO TELL Y'ALL THAT THE ONLY GUNSHOT RESIDUE THAT WAS FOUND WAS FOUND ON THE DRIVER'S SIDE OF THE MUSTANG.

THEY WILL EXPLAIN TO YOU WHY IN THEIR OPINION NO GUNSHOT RESIDUES WAS FOUND ON ALEKSEY'S HANDS OR CLOTHING. SO PLEASE LISTEN CAREFULLY WHEN THEY DISCUSS THESE MATTERS TO YOU. IT GETS KIND OF TECHNICAL AND SCIENTIFIC BUT IT'S PART OF THIS CASE.

I ASK Y'ALL TO PAY CLOSE ATTENTION TO THAT WHEN YOU GET TO THAT POINT.

Y'ALL ALSO ARE GOING TO HEAR EVIDENCE IN THE CASE, PROBABLY TODAY, PROBABLY THE FIRST THING, YOU WILL HEAR WHEN WE START CALLING WITNESSES THAT THIS WAS ALEKSEY'S GUN, NOT GLORYVEE BLACKWELL'S GUN.

YOU WILL HEAR FROM A S.L.E.D. FIREARMS EXPERT THAT WILL TESTIFY THAT THIS IS SEMIAUTOMATIC GUN AND WHEN FIRED IT EJECTS THE EMPTY SHELL CASINGS. THOSE EMPTY SHELL CASINGS WERE RECOVERED BY THE S.L.E.D. FORENSIC TEAM OUT AT THE 97 MILE MARKER WHERE SERGEANT LINGARD WAS MURDERED.

THEY WERE TAKEN INTO CUSTODY. THEY WERE SENT TO THE S.L.E.D. LAB. THEY WERE BALLISTICALLY COMPARED TO A SEMIAUTOMATIC NINE MILLIMETER PISTOL THAT WAS FOUND ON THE DRIVER'S SIDE FLOORBOARD WHERE ALEKSEY WAS WHEN THE CAR WAS WRECKED.

THE S.L.E.D. PEOPLE ARE GOING TO TESTIFY THAT IS THE MURDER WEAPON. THIS GUN FOUND WITH ALEKSEY IN THE CAR IS THE GUN TO THE EXCLUSION OF ANY OTHER GUN THAT FIRED THOSE SHOTS THAT KILLED FRANKIE LINGARD.

WITH RESPECT TO THE BULLETS THAT WERE IN SERGEANT LINGARD'S BODY, THEY WERE REMOVED AT THE

AUTOPSY AND SENT TO S.L.E.D. THEY WERE BALLISTICALLY COMPARED TO THAT GUN AND THE EXPERTS THERE ARE GOING TO TELL Y'ALL THAT THESE BULLETS FROM FRANKIE LINGARD'S BODY WERE FIRED FROM THE GUN FOUND IN THE CAR WITH MR. ALEKSEY TO THE EXCLUSION OF EVERY OTHER GUN.

YOU ARE ALSO GOING TO HEAR FINGERPRINT EXPERTS TESTIFY ABOUT THEIR EFFORTS TO GET FINGERPRINTS FROM THE CRIME SCENE. THEY WILL TESTIFY ABOUT GLORYVEE BLACKWELL'S PRINTS THAT WERE FOUND ON THE PASSENGER SIDE OF THE CAR.

THEY WILL ALSO TELL YOU THAT THEY HAVE GOT BAYAN ALEKSEY'S FINGERPRINTS ON THE GUN, ON THE CLIP THAT GOES INTO THE HANDLE OF THE GUN AND ON A PLASTIC INSERT THAT GOES INSIDE A BOX OF AMMUNITION FOUND IN THE MUSTANG. THEY WILL ALSO SAY THAT MR. ALEKSEY'S PRINTS WERE THE ONLY FINGERPRINTS FOUND ON THE GUN OR ANYTHING CONNECTED WITH THE GUN.

LADIES AND GENTLEMEN, THERE WILL BE OTHER EVIDENCE, OTHER TESTIMONY. I SAID I WOULD GIVE YOU A BRIEF OVERVIEW. I HAVE PROBABLY GONE A LITTLE BIT TOO LONG.

I AM CONFIDENT THAT AT THE END OF THIS CASE WHEN Y'ALL HAVE HEARD ALL THE FACTS THAT WILL BE INTRODUCED IN THIS CASE THAT I WILL PRESENT ON BEHALF

OF THE STATE OF SOUTH CAROLINA, YOU WILL FIND THAT BAYAN ALEKSEY'S GUILT HAS BEEN PROVEN TO YOU BEYOND ANY REASONABLE DOUBT.

GUILT, INNOCENCE IS ALL WE ARE CONCERNED POINT. DID HE DO IT? THAT'S THE ONLY QUESTION AT THIS POINT. THIS TRIAL WILL NOT BE LIKE ON TELEVISION WHEN IT'S ALL OVER IN A HALF AN HOUR OR AN HOUR. THIS IS A BIG CASE. THERE ARE A LOT OF PEOPLE INVOLVED IN IT. THERE'S A LOT OF EVIDENCE.

I AM GOING TO TRY TO MOVE THROUGH IT AS QUICKLY AS I CAN. I WILL TRY TO PUT IT IN SORT OF A LOGICAL, CHRONOLOGICAL ORDER TO HELP Y'ALL FOLLOW THE SERIES OF EVENTS THAT TOOK PLACE; BUT IT'S GOING TO TAKE THE REST OF THE DAY. IT WILL TAKE, I'M SURE, ALL DAY FRIDAY, MAYBE INTO SATURDAY TO GET ALL THIS TESTIMONY UP.

I WILL ASK Y'ALL, AS I SAID AT THE BEGINNING, TO PLEASE PAY CLOSE ATTENTION. THIS CASE DOESN'T GET ANY MORE SERIOUS. AS I SAID EARLIER, EACH WITNESS HAS SOMETHING TO SAY. SO PLEASE PAY CLOSE ATTENTION TO ALL OF THEM.

WHAT A WITNESS IS SAYING MAY NOT SOUND THAT IMPORTANT WHEN HE SAYS IT; BUT WHEN YOU PUT IT TOGETHER WITH WHAT SOMEBODY ELSE SAYS LATER ON, IT

WILL FORM A PICTURE. IT'S LIKE PUTTING A PIECE OF THE PUZZLE TOGETHER. SO RESERVE JUDGMENT UNTIL YOU HAVE HEARD EVERYTHING AND THE JUDGE TELLS Y'ALL WHAT THE LAW IS.

AGAIN, YOUR JOB, YOUR SWORN DUTY AS JURORS, IS TO USE YOUR GOOD, EVERYDAY COMMON SENSE. TAKE THE LAW AS THE JUDGE GIVES IT TO YOU AND APPLY IT TO THE TRUE FACTS AS YOU FIND THOSE FACTS TO BE AND BRING BACK A VERDICT THAT SPEAKS THE TRUTH.

MY SOLE PURPOSE AS SOLICITOR FOR THE STATE IS TO PRESENT THE TRUTH TO YOU. I JUST SIMPLY ASK THAT YOUR VERDICT SPEAK THE TRUTH. THANK YOU.

THE COURT: THANK YOU, MR. BAILEY. GENTLEMEN FOR THE DEFENSE, OPENING STATEMENTS PLEASE.

MR. STONE: MAY IT PLEASE THE COURT, YOUR HONOR. LADIES AND GENTLEMEN, THE INVESTIGATION IN THIS CASE WAS OVER IN APRIL OF 1998, APRIL OF 1998. THE SHOOTING TOOK PLACE DECEMBER 31, 1997.

MR. ALEKSEY OVER HERE WAS ARRESTED AND INDICTED IN JANUARY, JANUARY OF 1998. THE INVESTIGATION WASN'T OVER UNTIL FOUR MONTHS LATER, BUT BY THEN MR. ALEKSEY WAS CHARGED, INDICTED AND GLORYVEE PEREZ BLACKWELL WAS RELEASED.

IN APRIL OF 1998 THE GUNSHOT RESIDUE TESTS

CAME BACK FROM S.L.E.D. A GUNSHOT RESIDUE TEST IS PERFORMED BY A SCIENTIST, NOT A WITNESS, NOT ANYBODY THAT IS MOTIVATED ONE WAY OR THE OTHER, BUT A SCIENTIST.

SEE, LADIES AND GENTLEMEN, WHEN YOU SHOOT A GUN, SHOTGUN, HANDGUN, IT DOESN'T MAKE ANY DIFFERENCE, EVERY TIME YOU SHOOT A GUN, THE BULLET IS SENT OUT AND GUN POWDER FOLLOWS IT. IT COMES OUT NOT ONLY OF THE BARREL BUT IT COMES OUT OF EVERY CREVICE IN THE GUN, AND IT COVERS THE PERSON'S HANDS THAT FIRES IT.

MR. ALEKSEY WAS TESTED FOR THIS GUN POWDER RESIDUE. MR. ALEKSEY THAT SAME NIGHT WAS IN THE HOSPITAL WITH HIS HANDS BAGGED, BAGS PREVENTING THIS GUN POWDER RESIDUE FROM LEAVING IT. HIS HANDS WERE SWABBED AND THEN THEY WERE SENT TO S.L.E.D.

THE RESULTS OF THAT TEST DIDN'T COME BACK IMMEDIATELY. THE TEST CAME BACK IN APRIL OF 1998. YOU KNOW WHAT THOSE TESTS SAID? MR. ALEKSEY DIDN'T FIRE THAT GUN, NEGATIVE, NEGATIVE RESULTS, DID NOT FIRE THE GUN. UNFORTUNATELY IT WAS A LITTLE TOO LATE FOR ANY INVESTIGATION AT THAT POINT, AND A LOT OF GUESSES AND ASSUMPTIONS HAD HER BEEN CONCLUDED.

THROUGHOUT THIS ENTIRE TRIAL, MR. SIMS WILL BE REPRESENTING MR. ALEKSEY AND SO I WILL. YOU WON'T

HEAR EITHER ONE OF US SAY A NEGATIVE THING ABOUT FIRST SERGEANT FRANKIE LINGARD. THERE IS NOTHING NEGATIVE TO SAY ABOUT HIM. HE WAS A GOOD MAN. HE WAS A GENTLEMAN. HE WAS A SEASONED POLICE OFFICER, A SEASONED POLICE OFFICER THAT WALKED UP TO A CAR THAT HE COULD NOT SEE INSIDE OF AND HAD NO REASON TO THINK THAT HARM WOULD COME FROM IT.

THE EVIDENCE THAT EITHER THE SOLICITOR OR I WILL PRESENT TO YOU IS THAT TROOPER LINGARD NEVER EVEN UNBUTTONED HIS GUN. HE COULDN'T SEE INSIDE OF THAT CAR WHEN HE WAS WALKING UP TO IT, BUT HE COULD WHEN HE GOT THERE.

THE WINDOW WAS DOWN AND I WOULD SUBMIT TO YOU, LADIES AND GENTLEMEN, THAT WHAT HE SAW, WHAT HE ASSUMED WOULD NOT HURT HIM, WAS GLORYVEE PEREZ BLACKWELL, THE LADY WHO WAS NOT TESTED FOR GUNSHOT RESIDUE, THE LADY WHOSE INVESTIGATION WAS NEVER COMPLETED BECAUSE IT NEVER GOT OFF THE GROUND.

THIS CASE, THE SOLICITOR'S ENTIRE CASE, WILL BE BASED ON ASSUMPTIONS AND GUESSES AND UNFORTUNATELY ASSUMPTIONS AND GUESSES THAT CAME IN JANUARY OF 1998, NOT AS HE SAID, WHEN THE INVESTIGATION CONCLUDED.

BEFORE YOU CAME IN HERE AS A JURY PANEL, YOU PROBABLY MADE ASSUMPTIONS EVERY DAY. YOU MAYBE

HAVE READ THE PAPER, YOU MAYBE WATCHED THINGS ON TELEVISION THAT SAID SOMEBODY HAS BEEN ARRESTED. THANK GOODNESS THEY GOT HIM.

AS A CITIZEN, AS SOMEBODY THAT LIVES IN A COMMUNITY THAT HAS BREAKFAST AND READS THE PAPER OR SEES IT ON TELEVISION, THAT IS PERFECTLY FINE. THAT IS PERFECTLY IN YOUR PARAMETER TO DO THAT. WE ALL DO IT.

BUT YOU SEE, LADIES AND GENTLEMEN, THIS IS A LITTLE BIT MORE SERIOUS THAN READING YOUR NEWSPAPER AND DRINKING COFFEE. BECAUSE THE PROBLEM YOU HAVE WHEN YOU ASSUME THINGS AND YOU GUESS IS YOU DON'T HAVE ALL THE FACTS.

WE MAY SEE THINGS OR SEE PEOPLE ON THE STREET AND ASSUME WE DON'T LIKE THEM OR ASSUME WE DO LIKE THEM. I WILL TELL YOU RIGHT NOW. BAYAN ALEKSEY IS NOT ANYBODY YOU ARE GOING TO PARTICULARLY LIKE. HE HAS BEEN ARRESTED BEFORE. HE HAS BEEN CHARGED BEFORE, FORGERIES, BREACH OF TRUST, THINGS LIKE THAT.

HE HAS NEVER BEEN TRIED BEFORE BECAUSE WHAT YOU WILL LEARN EITHER FROM THE SOLICITOR OR ME IS HE HAS A COUPLE OF NAMES. HE'S GOT A COUPLE OF FAKE I.D.S. WHEN HE GETS ARRESTED, HE PRESENTS HIS FAKE I.D., HE MAKES BOND AND HE LEAVES.

IT KIND OF MAKES YOU WONDER WHY SOMEBODY

WITH THAT PROFILE WOULD SHOOT A POLICE OFFICER FOR SPEEDING. WHY WOULD HE PANIC? YOU WILL ALSO LEARN A LITTLE BIT MORE ABOUT GLORYVEE PEREZ BLACKWELL, THE SOLICITOR'S MAIN WITNESS AND I WOULD SUBMIT TO YOU ONLY WITNESS.

NOT ONE SINGLE POLICE OFFICER WILL COME INTO THIS COURTROOM DURING THE TWO DAYS OR SO OF TESTIMONY AND TELL YOU THAT THEY SAW WHO SHOT FRANKIE LINGARD, NOT ONE.

THE ONLY PERSON THAT WILL COME IN AND TELL YOU THAT IS THE LADY WHO WAS IN THAT CAR, THE LADY FRANKIE LINGARD ASSUMED WOULDN'T HURT HIM, WHO WAS NO LADY, GLORYVEE PEREZ BLACKWELL, THE LADY WHO WAS NOT TESTED, THE LADY WHO WAS NOT INVESTIGATED.

LADIES AND GENTLEMEN, ASSUMPTIONS OUTSIDE OF THIS COURTROOM ARE FINE BUT YOU WILL LEARN THE WHOLE TRUTH. IF YOU HAD SOME OPINIONS BEFORE YOU GOT HERE, FINE, BECAUSE IN THIS TRIAL YOU ARE GOING TO HEAR THE WHOLE TRUTH.

THE TRUTH IS THE ONLY EVIDENCE THAT IS OBJECTIVE, THE ONLY EVIDENCE THAT DOESN'T HAVE ANYTHING TO GAIN OR LOSE, THE ONLY EVIDENCE THAT WILL BE PRESENTED TO YOU BY A SCIENTIST WILL SAY THAT BAYAN ALEKSEY DIDN'T SHOOT THAT GUN. BUT UNFORTUNATELY THE SOLICITOR'S OFFICE AND THE POLICE

LEARNED ABOUT THAT IN APRIL AFTER THEY HAD MADE UP THEIR MIND.

THIS CASE, LADIES AND GENTLEMEN, IS NOW ABOUT THE SOLICITOR HAVING TO ASK YOU TO SIGN OFF ON HIS DEAL WITH THE DEVIL. THE DEVIL IN THIS CASE IS NOT BAYAN ALEKSEY BUT GLORYVEE PEREZ BLACKWELL. THANK YOU.

THE COURT: THANK YOU, MR. STONE. YOU MAY CALL YOUR FIRST WITNESS.

SOLICITOR BAILEY: THE STATE CALLS YELENA BATKILINA.

YELENA BATKILINA, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: HAVE A SEAT AND GIVE US YOUR FULL NAME AND SPELL YOUR LAST NAME FOR THE RECORD, PLEASE.

THE WITNESS: MY NAME IS YELENA BATKILINA, B-A-T-K-I-L-I-N-A.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MS. BATKILINA, I WILL ASK YOU A FEW QUESTIONS HERE. PLEASE TRY TO TALK KIND OF SLOW SO WE CAN FOLLOW YOU. YOU HAVE GOT A LITTLE BIT OF AN ACCENT. TELL THE JURY PLEASE HOW OLD YOU ARE.

A I'M 23 YEARS OLD.

Q WHERE DO YOU LIVE NOW?

A I LIVE IN PHILADELPHIA.
Q AND ARE YOU EMPLOYED?
A NO.
Q ARE YOU IN SCHOOL?
A NOT YET, STARTING ON MONDAY.
Q WHERE ARE YOU GOING TO SCHOOL?
A TEMPLE UNIVERSITY.
Q WHAT ARE YOU TAKING AT TEMPLE?
A WHAT CLASSES?
Q WHAT MAJOR?
A CARDIOVASCULAR TECHNOLOGY.
Q CARDIOVASCULAR TECHNOLOGY. WHERE ARE YOU FROM INITIALLY?
A RUSSIA.
Q WHEN DID YOU MOVE FROM RUSSIA TO THE UNITED STATES?
A 1990.
Q AND DO YOU KNOW THE DEFENDANT IN THIS CASE, BAYAN ALEKSEY, SEATED HERE IN THE WHITE SHIRT WITHOUT THE COAT OVER TO YOUR RIGHT?
A YES.
Q AND WHEN DID YOU FIRST MEET HIM?
A IN JULY TWO YEARS AGO.
Q WOULD YOU TELL US WHERE YOU MET HIM, THE CIRCUMSTANCES UNDER WHICH YOU MET HIM.

A AT MY GIRLFRIEND'S HOUSE.
Q AT THE TIME YOU MET HIM, DID YOU KNOW HIM AS BAYAN ALEKSEY?
A NO, I DIDN'T.
Q WHAT NAME WERE YOU INTRODUCED TO HIM?
A MICHAEL PIVERO.
Q MICHAEL PIVERO.

SOLICITOR BAILEY: BEAR WITH ME ONE SECOND, PLEASE.

(PAUSE.)

Q NOW, TELL THE JURY BRIEFLY, DID YOU DEVELOP A RELATIONSHIP WITH MR. PIVERO?
A YES, I DID.
Q WHAT TYPE RELATIONSHIP DID YOU DEVELOP WITH HIM?
A AS A BOYFRIEND AND GIRLFRIEND.
Q I WANT TO CALL YOUR ATTENTION TO OCTOBER 17, 1997, AND ASK WHETHER OR NOT YOU WENT TO A PLACE CALLED TOM'S SPORTING GOODS.
A YES, I DID.
Q WHERE IS THAT LOCATED?
A IT WAS LOCATED ON, IF I'M NOT MISTAKEN, ON A STREET ROAD IN BENSALEM.
Q AND BENSALEM IS A SUBURB OF PHILADELPHIA?
A YES.
Q WHEN YOU WENT TO TOM'S SPORTING GOODS, WAS THAT

FOR THE PURPOSE OF PICKING OUT A GUN?
A NOT TO PICK UP THE GUN, TO PURCHASE A GUN.
Q YOU WANTED TO BUY A GUN?
A YES.
Q DID YOU GO BY YOURSELF?
A NO, I DIDN'T. I WENT WITH BAYAN ALEKSEY.
Q AT THAT POINT IN TIME, DID YOU STILL KNOW HIM AS MICHAEL PIVERO OR WAS HE BAYAN ALEKSEY?
A MICHAEL PIVERO.
Q SO YOU AND MICHAEL WENT THERE OR BAYAN WENT ON OCTOBER 17, 1997?
A YES.
Q FOR A GUN; IS THAT CORRECT?
A THAT'S CORRECT.
Q DID YOU PICK A GUN OUT?
A I LOOKED AT THE GUNS AND I JUST TRY WHICH ONE, YOU KNOW, WAS THE ONE THAT I CAN HOLD AND I HAVE IT THAT I CAN USE IF I NEED ANYTHING.
Q WERE YOU ABLE TO PURCHASE THAT SAME DAY?
A NO, I DIDN'T.
Q DID YOU HAVE TO COME BACK INTO THE STORE TO FINALIZE EVERYTHING?
A YES, SIR.
Q AND PICK UP THE GUN AFTER YOU GAVE YOUR LICENSE AND THAT KIND OF STUFF?

A YES.
Q NOW, HOW LONG DO YOU THINK YOU WERE IN THE STORE THE FIRST TIME THAT YOU WENT THERE ON OCTOBER 17TH WITH BAYAN ALEKSEY?
A MAYBE HALF AN HOUR, MAYBE A LITTLE LONGER.
Q WHEN YOU WENT BACK IN, DID YOU GO BACK ON NOVEMBER THE 2ND?
A I DON'T REMEMBER.
Q BUT YOU RECALL GOING BACK INTO THE STORE TO PICK THE GUN UP?
A I THINK SO.
Q DO YOU RECALL GOING TO TOM'S SPORTING GOODS MORE THAN ONE TIME, ONCE TO SEE ABOUT BUYING THE GUN AND ONCE TO ACTUALLY PICK IT UP?
A WOULD YOU REPEAT THAT.
Q DID YOU GO INTO THE STORE MORE THAN ONE TIME?
A YES, I DID.
Q WHEN YOU WENT BACK IN TO ACTUALLY GET THE GUN, WAS BAYAN ALEKSEY WITH YOU ON THAT OCCASION?
A YES, HE WAS.
Q I WILL HAND YOU A COUPLE OF PIECES OF PAPER HERE AND ASK IF YOU WILL TAKE A LOOK AT THEM AND SEE IF YOU CAN IDENTIFY THOSE.
A YES.
Q IS YOUR NAME ON BOTH OF THOSE, YOUR SIGNATURE?

A YES.
Q -- IS THIS THE PAPERWORK YOU FILLED OUT AT TOM'S SPORTING GOODS TO BUY THAT GUN?
A YES.
SOLICITOR BAILEY: ANY OBJECTION?
MR. SIMS: THAT'S FINE.
SOLICITOR BAILEY: YOUR HONOR, I WOULD OFFER BOTH OF THESE INTO EVIDENCE AT THIS TIME.
THE COURT: WITHOUT OBJECTION.
(STATE'S EXHIBIT NUMBER 3, RECORD OF SALE FOR A FIREARM; AND NUMBER 4, FIREARMS TRANSACTION RECORD, ARE RECEIVED INTO EVIDENCE.)
Q MS. BATKILINA, IS ALL THE INFORMATION THAT YOU FILLED OUT ON THIS CORRECT AS FAR AS YOUR NAME AND SOCIAL SECURITY NUMBER AND SO FORTH?
A YES.
Q AND DOWN HERE ON ITEM TEN ON STATE'S EXHIBIT NUMBER 4 BENEATH YOUR SIGNATURE, DOES IT HAVE THE SERIAL NUMBER ON THE GUN?
A YES.
Q COULD YOU READ THAT INTO THE RECORD, PLEASE.
A 23973431.
Q DOWN HERE, ITEMS 11, 12, 13 AND 14, DOES THAT LIST THE PISTOL, THE MODEL NUMBER, THE CALIBER AND THE SERIAL NUMBER?

A YES.
Q WOULD YOU READ OUT LOUD THE SERIAL NUMBER THERE.
A 749485.
Q I WILL HAND YOU THIS PISTOL AND ASK IF YOU WILL READ THE SERIAL NUMBER OFF THE PISTOL.
A 749485.
Q IS THAT THE SAME SERIAL NUMBER THAT YOU HAVE ON THE FORM?
A YES.
Q IS THIS THE GUN YOU PURCHASED AT TOM'S SPORTING GOODS BACK IN OCTOBER AND NOVEMBER OF LAST YEAR?
A YES.
Q THANK YOU.

SOLICITOR BAILEY: YOUR HONOR, I OFFER THIS GUN INTO EVIDENCE AT THIS TIME.

MR. SIMS: NO OBJECTION.

THE COURT: WITHOUT OBJECTION. I ASSUME YOU HAVE CHECKED IT.

SOLICITOR BAILEY: YES, SIR.

(STATE'S EXHIBIT NUMBER 5, NINE MILLIMETER PISTOL, IS RECEIVED INTO EVIDENCE.)

Q DO YOU RECALL HOW YOU PAID FOR THE GUN, WHETHER IT WAS CASH OR CHECK?
A IT WAS CASH.
Q AFTER YOU BOUGHT THE GUN, WHAT DID YOU DO WITH

IT? WHERE DID YOU TAKE IT?
A I BROUGHT IT HOME AND GAVE IT TO MY MOM.
Q WHERE DID SHE KEEP IT IN THE HOME?
A SHE PUT IT SOMEWHERE IN HER ROOM.
Q WHEN IS THE LAST TIME YOU SAW THE GUN, DO YOU REMEMBER?
A YES, WHEN I GIVE IT TO MY MOM.
Q DO YOU REMEMBER ABOUT WHEN THAT WAS?
A WHENEVER THE DAY WAS I PICKED IT UP. I DON'T REMEMBER THE DATE.
Q SO IF THAT DATE ON THAT FORM IS NOVEMBER THE 2ND, THAT WOULD HAVE BEEN THE DAY?
A YES, THAT'S THE DAY, THE LAST TIME I SEE THE GUN.
Q AND YOU NEVER SAW THE GUN AFTER THAT?
A NO.
Q WHEN IS THE LAST TIME YOU SAW BAYAN ALEKSEY OR MICHAEL PIVERO?
A SOMEWHERE IN NOVEMBER.
Q YOU NEVER SAW HIM AFTER NOVEMBER OF 1997?
A NO.
Q BACK WHEN YOU KNEW BAYAN ALEKSEY, DID HE GO BY ANY NAMES BESIDES MICHAEL PIVERO THAT YOU KNOW OF?
A WHEN I MET HIM?
Q AT ANY TIME DURING THE TIME YOU KNEW HIM, DID HE

USE ANY OTHER NAMES BESIDE MICHAEL PIVERO?
A HE WAS USING MY LAST NAME.
Q YOUR LAST NAME?
A (WITNESS NODS.) (INDICATING AFFIRMATIVE RESPONSE.)
Q WHICH IS BATKILINA?
A YES.
Q WHAT FIRST NAME WAS HE USING?
A MICHAEL.
Q MS. BATKILINA, BACK WHEN YOU KNEW BAYAN ALEKSEY, DID HE DRESS LIKE HE IS DRESSED NOW WITH A COAT AND TIE -- SHIRT AND TIE?
A NO.
Q HOW DID HE NORMALLY DRESS BACK THEN?
A USUALLY WHITE TURTLENECK, BLUE JEANS, WHITE SNEAKERS.
Q PLEASE ANSWER ANY QUESTIONS THAT DEFENSE MAY HAVE FOR YOU.
CROSS EXAMINATION
BY MR. SIMS:
Q GOOD MORNING, IS IT MS. BATKILINA?
A THAT'S RIGHT.
Q FORGIVE ME IF I DON'T GET YOUR NAME CORRECT ALL THE TIME. I WANT TO ASK YOU A COUPLE OF QUESTIONS HERE. YOU HAVE KNOWN BAYAN FOR A WHILE; IS THAT

CORRECT?
A THAT'S RIGHT.
Q AND BY YOUR OWN TESTIMONY HE HAD USED OTHER NAMES; IS THAT CORRECT?
A THAT'S RIGHT.
Q DID YOU EVER SEE ANY OF THE OTHER NAMES OR IDENTIFICATION CARDS THAT HE HAD?
A NO.
Q BUT HE ASSUMED YOUR LAST NAME; IS THAT CORRECT?
A YES.
Q AND DURING THE TIME THAT YOU WERE TOGETHER AND YOU HAD A RELATIONSHIP WITH HIM, DID YOU NOT ALSO HELP HIM GET OUT OF JAIL?
A YES, I DID.
Q SO YOU HELPED HIM GET OUT OF JAIL AND YOU POSTED OR YOU HAD SOMEONE TO POST A BOND FOR HIM; IS THAT CORRECT?
A THAT'S RIGHT.
Q AND THAT BOND WAS IN THE AMOUNT OF WHAT, ABOUT $10,000?
A THAT'S RIGHT.
Q AND AFTER HE GOT OUT OF JAIL THAT TIME, YOU HELPED HIM AGAIN, IS THAT CORRECT, GET OUT OF JAIL OR DID YOU HELP HIM AGAIN?
A WITH WHAT?

Q WITH ANOTHER BOND.
A NO, I JUST HELPED HIM TO GET OUT OF JAIL. I PAID FOR HIM. THAT'S IT.
Q THAT WAS ALL. LET ME ASK YOU THIS. NOW, YOU WERE SPECIFICALLY LOOKING FOR A GUN; IS THAT CORRECT? YOU WERE THE ONE WHO WAS LOOKING FOR A GUN FOR YOURSELF OR YOUR MOTHER; IS THAT CORRECT?
A YES.
Q AND YOU WANTED A GUN THAT A WOMAN COULD HANDLE; IS THAT CORRECT?
A THAT'S CORRECT.
Q YOU DIDN'T GO TO TOM'S TO FIND A BIG GUN WHICH WAS DIFFICULT FOR YOUR HAND TO HANDLE; IS THAT CORRECT?
A THAT'S RIGHT.
Q YOU WERE LOOKING FOR A GUN THAT BASICALLY A FEMALE COULD HANDLE WITH NO PROBLEM?
A THAT'S RIGHT.
Q SO WHEN YOU BOUGHT THIS GUN, I WOULD ASSUME THAT YOU HAD THE OPPORTUNITY TO HOLD IT IN YOUR HAND?
A RIGHT.
Q WOULD YOU MIND HOLDING THIS GUN FOR ME.
A (WITNESS COMPLIES.)
Q IT IS A SMALL WEAPON IN WHICH A WOMAN COULD HANDLE VERY EASILY; ISN'T THAT CORRECT?

A RIGHT.
Q AND THAT'S WHY YOU PURCHASED IT?
A RIGHT.
Q WHEN YOU WENT TO THE STORE, TO TOM'S SPORTING GOODS, YOU WERE THE PRIMARY PERSON WHO WAS LOOKING TO PURCHASE THE WEAPON?
A YES.
Q AS A MATTER OF FACT, YOU GOT THAT WEAPON AND YOU GAVE IT TO YOUR MOM?
A RIGHT.
Q BECAUSE, AGAIN, THAT IS THE KIND OF WEAPON THAT YOU FELT A WOMAN COULD HANDLE VERY EASILY AND OPERATE VERY EASILY?
A RIGHT.
Q WHEN YOU STOOD THE BOND FOR HIM OR PAID THE MONEY FOR THE BOND, DO YOU KNOW WHAT NAME HE USED AT THAT TIME?
A MICHAEL PIVERO.
Q MICHAEL PIVERO?
A WELL, YEAH. THEY KNEW HIS NAME BEING ALEKSEY. I BAILED HIM OUT BAYAN ALEKSEY.
Q AND WHEN YOU POSTED THAT BOND, DID HE SHOW UP FOR TRIAL?
A NO, HE DIDN'T.
MR. SIMS: THAT'S ALL I HAVE, YOUR HONOR.

SOLICITOR BAILEY: A COUPLE MORE ON REDIRECT.

REDIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q WHEN HE DIDN'T SHOW UP FOR TRIAL, WHAT DID HE DO? WHERE DID HE GO?

A I DON'T KNOW. HE DIDN'T GO.

Q HAVE YOU EVER MET GLORYVEE PEREZ BLACKWELL?

A NO.

Q EVER SEEN HER?

A NO.

Q THANK YOU.

SOLICITOR BAILEY: THAT'S ALL I HAVE.

MR. SIMS: ONE OTHER QUESTION.

RECROSS EXAMINATION

BY BY MR. SIMS:

Q DO YOU KNOW WHAT THE CHARGE WAS THAT YOU STOOD THE BOND ON?

A SOMETHING ABOUT A CREDIT CARD, FRAUDULENT USE.

Q FRAUDULENT CREDIT CARD?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

MR. SIMS: THAT'S ALL I HAVE, YOUR HONOR.

SOLICITOR BAILEY: MAY SHE BE EXCUSED, YOUR HONOR?

THE COURT: YES. YOU MAY COME DOWN. I AM

GOING TO EXCUSE THIS WITNESS.

MR. STONE: YES, SIR.

SOLICITOR BAILEY: THE STATE CALLS TOM FRENCH

THOMAS J. FRENCH, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: BE SEATED. GIVE US YOUR FULL NAME AND SPELL YOUR LAST NAME, PLEASE.

THE WITNESS: THOMAS J. FRENCH, F-R-E-N-C-H.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. FRENCH, WHERE DO YOU LIVE?

A BUCKS COUNTY, PENNSYLVANIA.

Q AND HOW ARE YOU EMPLOYED THERE?

A I'M A DEPUTY SHERIFF AT BUCK COUNTY SHERIFF'S DEPARTMENT AND I ALSO OWN A FIREARM STORE.

Q HOW LONG HAVE YOU BEEN A DEPUTY SHERIFF?

A THREE AND A HALF YEARS.

THE COURT: HIS TESTIMONY IS SUBJECT TO PREVIOUS MOTION OF DEFENSE COUNSEL.

MR. STONE: YES, SIR.

Q YOU ARE CERTIFIED AS A LAW ENFORCEMENT OFFICER IN PENNSYLVANIA?

A YES, I AM.

Q YOU HAVE BEEN TRAINED IN THAT?
A YES.
Q AND YOU SAID YOU HAD A STORE OR SPORTING GOODS STORE IN ADDITION TO BEING A DEPUTY SHERIFF?
A THAT'S CORRECT.
Q THE NAME OF THAT STORE IS WHAT?
A TOM'S SPORTING GOODS.
Q WHAT DO YOU SELL THERE?
A HUNTING EQUIPMENT, FIREARMS, ARCHERY, FISHING.
Q AND DID YOU HAVE THAT STORE BACK IN OCTOBER OF LAST YEAR?
A YES, I DID.
Q AND DID YOU SELL HANDGUNS?
A YES, I DO.
Q WHAT IS THE PROCEDURE OR WHAT WAS THE PROCEDURE BACK IN OCTOBER OF LAST YEAR IN THE STATE OF PENNSYLVANIA IF SOMEBODY CAME IN THE STORE WANTING TO BUY A HANDGUN?
A THE FIRST IS THE PROPER IDENTIFICATION TO PURCHASE, TO MAKE THE PURCHASE; AND SECONDLY, THERE IS A BRADY BILL WHICH IS A WAITING PERIOD AND BACKGROUND CHECK, FIVE-DAY MINIMUM WAITING PERIOD.
Q SO SOMEBODY CAN'T WALK IN THE STORE AND BUY A GUN AND LEAVE THAT SAME DAY; IS THAT CORRECT?
A THAT'S CORRECT.

Q I WANT TO CALL YOUR ATTENTION TO OCTOBER 17, 1997, AND ASK WHETHER OR NOT SOMEBODY CAME INTO THE STORE TO INQUIRE ABOUT PURCHASING A PISTOL?
A YES.
Q AND DO YOU RECALL SPECIFICALLY WHO CAME IN THERE?
A YES, I DO.
Q WHAT WAS THE WOMAN'S NAME?
A YELENA BATKILINA.
Q DID MS. BATKILINA COME INTO THE STORE BY HERSELF?
A NO.
Q WHO WAS WITH HER?
A THE GENTLEMAN SITTING AT THE DEFENSE TABLE, MICHAEL PIVERO.
Q AND YOU REFER TO HIM AS MICHAEL PIVERO. IS THAT HOW HE INTRODUCED HIMSELF TO YOU ON OCTOBER 17TH?
A YES, HE DID.
Q ABOUT HOW LONG WERE MS. BATKILINA AND THE DEFENDANT BAYAN ALEKSEY IN YOUR STORE ON OCTOBER 17TH?
A ABOUT 45 MINUTES.
Q CAN YOU TELL THE JURY HOW THE LIGHTING WAS IN THE STORE, HOW BRIGHT IT WAS.
A I HAVE 16 EIGHT-FOOT FLUORESCENT LIGHTING

FIXTURES. THEY ARE ABOUT EIGHT FEET, SIX TO NINE FEET FROM THE FLOOR. IT'S A FAIRLY BRIGHT STORE.

Q WAS IT BUSY THAT DAY?

A THERE WERE A FEW PEOPLE IN AND OUT DURING THAT TIME PERIOD.

Q AND ABOUT HOW LONG WERE THEY IN YOUR STORE?

A I DON'T REMEMBER EXACTLY HOW LONG, MAYBE A FEW MINUTES FOR EACH PERSON. SOME PEOPLE JUST WALK IN AND BROWSE. SOME PEOPLE MAY ASK YOU A QUESTION AND THEN THEY WILL LEAVE.

Q AS FAR AS MR. ALEKSEY AND MS. BATKILINA, ABOUT HOW LONG WERE THEY IN THE STORE?

A ABOUT 45 MINUTES.

Q DID YOU HAVE ANY CONVERSATION WITH EITHER ONE OR BOTH OF THEM?

A WITH BOTH.

Q DO YOU RECALL JUST THE GENERAL NATURE OF THE CONVERSATION YOU HAD WITH MR. ALEKSEY?

A HE INTRODUCED HIMSELF TO ME AS MICHAEL PIVERO. AT THE SAME TIME IT WASN'T BASICALLY A CONVERSATION BACK AND FORTH. IT WAS SORT OF BITS AND PIECES HERE AND THERE. HE TOLD ME HE WAS EMPLOYED AS A NIGHT CLUB OWNER OR MANAGER IN THE CITY OF NEW YORK. BASICALLY JUST THE FACT -- I MENTIONED THE FACT THAT HE HAD A NICE TRUCK, AND HE TOLD ME WHAT IT WAS AND

SO FORTH.

Q IS THERE ANY QUESTION IN YOUR MIND THAT THIS MAN OVER HERE IN THE WHITE SHIRT, BAYAN ALEKSEY, IS THE PERSON THAT WAS IN THAT STORE WITH MS. BATKILINA?

A YES, SIR, I KNOW THAT'S HIM.

Q DID MS. BATKILINA PICK OUT A GUN?

A YES, SHE DID.

Q WAS SHE ABLE TO WALK OUT OF THE STORE WITH THE GUN THAT DAY?

A NO.

Q CALLING YOUR ATTENTION TO NOVEMBER THE 2ND, 1997, DID MS. BATKILINA RETURN TO YOUR STORE?

A YES, SHE DID.

Q ON THIS OCCASION WAS SHE BY HERSELF?

A NO.

Q WHO WAS WITH HER?

A MICHAEL PIVERO.

Q AND DURING THE TWO OCCASIONS WHEN MS. BATKILINA AND MR. PIVERO, AS YOU DESCRIBED IT, WERE IN THE STORE, WAS PAPERWORK FILLED OUT FOR THE PURCHASE OF THAT GUN?

A YES.

Q DID YOU OBTAIN IDENTIFICATION FROM MS. BATKILINA?

A YES, I DID.

Q LET ME ASK YOU TO TAKE A LOOK AT A COUPLE OF EXHIBITS HERE. THIS IS STATE'S EXHIBIT 3.

A YES.

Q TELL THE JURY, PLEASE, WHAT THAT IS.

A THIS IS WHAT IS CALLED THE RECORD OF SALE, WHICH MEANS THE TIME AND DATE THAT THE FIREARM WAS ACTUALLY TAKEN BY MS. BATKILINA IS ALL RECORDED ON THIS FORM. SHE SIGNS IT. EVERYTHING ELSE ABOUT HER, AS FAR AS SOCIAL SECURITY NUMBER, WHERE I HAVE GOTTEN THE I.D. FROM, THE NAME, THE MAKE, THE MODEL OF THE FIREARM, THE LENGTH OF THE BARREL AND THE SERIAL NUMBER IS ALL ON THIS FORM HERE.

Q WHAT DATE IS ON THAT?

A NOVEMBER 2, 1996 (SIC.)

Q I SHOW YOU STATE'S EXHIBIT 4 AND ASK YOU IF YOU CAN IDENTIFY THAT.

A THIS FORM IS A FEDERAL FIREARMS FORM WHICH GOES TO THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS. THIS FORM IS ALSO COMPLETED THE SAME DAY AS THE PURCHASE.

ON THIS FORM IT HAS BASICALLY THE SAME INFORMATION AND IT ALSO HAS HERE HER PENNSYLVANIA DRIVER'S LICENSE I.D. NUMBER WHICH PROVES THAT I HAVE TAKEN THE INFORMATION FROM HER.

I RECORDED THE SERIAL NUMBER AND THE EXPIRATION

DATE OF THE ACTUAL DRIVER'S LICENSE ITSELF. I SIGN IT, I DATE IT AND IT GOES INTO MY FILE WHICH I KEEP FOR 20 YEARS.

Q DOES THAT HAVE A DESCRIPTION OF THE PISTOL THAT MS. BATKILINA PURCHASED?

A YES, IT DOES. IT HAS THE TYPE OF FIRM, WHICH IS A PISTOL; THE MODEL, J-58; THE CALIBER IS NINE MILLIMETER; THE SERIAL NUMBER IS 749485 AND THE MANUFACTURER IS JENNINGS.

Q LOOK AT THE SERIAL NUMBER ON THAT FORM AND THE SERIAL NUMBER ON STATE'S EXHIBIT 5. TELL THE JURY, PLEASE, WHETHER OR NOT STATE'S EXHIBIT 5 IS THE PISTOL THAT YOU SOLD MS. BATKILINA IN THE DEFENDANT'S PRESENCE.

A THE NUMBER IS 749485, THE SAME NUMBER, THE SAME FIREARM.

Q I THINK WHEN I ASKED YOU ABOUT THE DATE YOU SAID NOVEMBER 2ND, '96. WAS IT '96 OR '97?

A '96.

Q WERE YOU MAILED A PHOTOGRAPH OR TWO PHOTOGRAPHS FOR IDENTIFICATION PURPOSES PRIOR TO YOUR TESTIMONY?

A YES.

Q AND WERE THOSE PHOTOGRAPHS PICTURES OF BAYAN ALEKSEY, THE DEFENDANT?

A YES, THEY WERE.

Q ARE YOU IDENTIFYING HIM HERE IN COURT BASED ON YOUR RECOLLECTION OF HIM BEING IN YOUR STORE ON THOSE TWO OCCASIONS OR ARE YOU IDENTIFYING HIM FROM THE PICTURES THAT YOU SAW?

A I CAN IDENTIFY HIM WITHOUT THE PHOTOGRAPHS. I CAN IDENTIFY HIM BY LOOKING AT HIM HERE AND ALSO FROM THE PHOTOGRAPHS.

Q ANY QUESTION IN YOUR MIND THAT BAYAN ALEKSEY IS THE PERSON WITH MS. BATKILINA WHEN THAT GUN WAS PURCHASED?

A THERE IS NO QUESTION.

Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY FOR YOU.

CROSS EXAMINATION

BY MR. SIMS:

Q MR. FRENCH, I JUST HAVE A FEW QUESTIONS FOR YOU. IN YOUR CONVERSATIONS WITH MS. BATKILINA, DO YOU RECALL WHY SHE SAID SHE WANTED A GUN?

A FOR PERSONAL PROTECTION.

Q FOR PERSONAL PROTECTION, MEANING THAT SHE WAS LOOKING FOR A GUN THAT A WOMAN COULD HANDLE; IS THAT CORRECT?

A THAT'S CORRECT.

Q AND NOW I AM ASSUMING THAT YOU DO HAVE A VARIETY OF GUNS THAT YOU CARRY IN YOUR STORE?

A THAT'S CORRECT.
Q SOME OF THEM BIGGER, FAR MORE POWERFUL?
A YES.
Q AND WOULD YOU AGREE THEN THAT THE GUN THAT YOU ULTIMATELY HAD THE OPPORTUNITY TO WORK WITH HER AND SHOW HER THE KINDS OF GUNS THAT YOU HAD, THAT GUN IS THE KIND OF GUN THAT A WOMAN COULD HANDLE?
A SHE SELECTED THAT PARTICULAR GUN.
Q BUT IN KNOWING THAT SHE WAS LOOKING FOR A GUN THAT A WOMAN COULD HANDLE, YOU WOULD NOT -- IF SHE HAD BOUGHT A BIGGER GUN, YOU PROBABLY WOULD HAVE TOLD HER THAT THAT'S NOT THE KIND THAT YOU CAN HANDLE VERY EASILY?
A MOST LIKELY, YES.
Q AND THIS KIND OF GUN, WHICH IS SMALL, SMALL HANDLED, CAN BE USED EFFECTIVELY BY A WOMAN; IS THAT CORRECT?
A OH, YES, YES.
Q I BELIEVE IN YOUR INITIAL EXAMINATION AND IN YOUR APPLICATION THERE, THERE IS SOME QUESTION ABOUT WHETHER OR NOT A PERSON IS BUYING A GUN FOR ANOTHER PERSON?
A ABSOLUTELY.
Q AND YOU MAKE PARTICULAR OR TAKE PARTICULAR ATTENTION OR PAY PARTICULAR ATTENTION TO THAT, DO YOU

NOT?

A YES, I DO.

Q YOU QUESTION THAT PERSON IN REGARDS TO THAT PERSON BUYING THE GUN FOR THEMSELVES AND NOT FOR ANYONE ELSE?

A ABSOLUTELY.

Q AND YOU MADE THAT INQUIRY IN THIS CASE; IS THAT CORRECT?

A YES, I DID.

Q YOU SPECIFICALLY TALKED WITH MS. BATKILINA ABOUT BUYING THAT WEAPON FOR ANOTHER PERSON?

A YES, I DID.

Q AND IF SHE HAD BOUGHT THAT WEAPON AND GIVEN IT TO HER MOTHER, THAT WOULD HAVE BEEN AGAINST THE LAW IN THE STATE OF PENNSYLVANIA; IS THAT CORRECT?

A ABSOLUTELY.

MR. SIMS: THAT'S ALL I HAVE, YOUR HONOR.

SOLICITOR BAILEY: A COUPLE ON REDIRECT, YOUR HONOR.

REDIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q ONCE YOU SELL A GUN TO SOMEBODY, DO YOU HAVE ANY CONTROL OVER WHAT THEY DO WITH IT OR WHO THEY GIVE IT TO AFTER THEY LEAVE YOUR STORE?

A NO, I DON'T.

Q ALL RIGHT, SIR.
A BUT JUST ON THE OTHER NOTE, A FIREARM THAT I SELL WITH THE ADDRESS THAT MS. BATKILINA HAD GIVEN TO ME, IF SHE RESIDES IN THAT PARTICULAR ADDRESS, WHICH I AM SURE SHE DOES AND HER MOTHER RESIDES THERE ALSO, THE LAW DOESN'T SEE IT AS THAT FIREARM BEING GIVEN TO THE MOTHER. IT'S STILL IN THE SAME RESIDENCE. SHE HAS CONTROL OVER IT. IT'S IN THAT PARTICULAR HOME.
Q MR. SIMS ASKED YOU ABOUT THE CALIBER OF THAT GUN, A NINE MILLIMETER. IS THAT A COMMON CALIBER?
A IT'S THE MOST COMMON.
Q A LAW ENFORCEMENT OFFICER IN PENNSYLVANIA, WHAT CALIBER GUNS DO Y'ALL CARRY?
A FORTY-CALIBER SMITH AND WESSON.
Q DO SOME POLICE AGENCIES HAVE NINE MILLIMETERS?
A YES.
Q DO MALE OFFICERS HAVE NINE MILLIMETER?
A OH, YES.
Q IS IT COMMON FOR A MALE POLICE OFFICER TO HAVE A GUN OF THAT SAME CALIBER?
A ABSOLUTELY. A LOT OF POLICE DEPARTMENTS HAVE NINE MILLIMETERS ALSO.
Q WITH RESPECT TO THE SIZE OF THAT GUN, DO

INVESTIGATORS, PLAIN CLOTHES DETECTIVES, OFTEN CARRY SMALLER WEAPONS OF THE SAME CALIBER THAN STREET POLICEMEN WOULD?

A YES.

Q HAVE YOU SOLD GUNS OF THAT TYPE TO MEN AND WOMEN?

A OH, YES, YES.

Q THANK YOU.

SOLICITOR BAILEY: THAT'S ALL I HAVE OF MR. FRENCH.

MR. SIMS: NOTHING.

THE COURT: YOU MAY COME DOWN. MAY THIS WITNESS NOW BE EXCUSED?

SOLICITOR BAILEY: YES, SIR. I MOVE THAT HE BE EXCUSED, YOUR HONOR.

MR. STONE: NO OBJECTION.

THE COURT: THANK YOU SO MUCH.

SOLICITOR BAILEY: THE STATE CALLS RONALD MOSELY.

RONALD MOSELY, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: HAVE A SEAT. GIVE US YOUR FULL NAME AND SPELL YOUR LAST NAME, PLEASE, SIR.

THE WITNESS: RONALD VINCENT MOSELY, M-O-S-E-L-Y.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. MOSELY, PLEASE TELL THE JURY WHERE YOU LIVE.

A HERE IN ORANGEBURG.

Q HAVE YOU LIVED HERE ALL YOUR LIFE?

A YES, SIR.

Q WHERE DO YOU WORK?

A FOR THE SOUTH CAROLINA HIGHWAY PATROL.

Q WHAT DO YOU DO FOR THE HIGHWAY PATROL?

A I DISPATCH.

Q WHERE DO Y'ALL DISPATCH OUT OF? WHERE DO YOU WORK?

A THE ORANGEBURG OFFICE.

Q WHERE IS THAT LOCATED?

A IT'S HERE IN ORANGEBURG ON 178.

Q WHAT GEOGRAPHICAL AREA DO YOU DISPATCH FROM FOR THE HIGHWAY PATROL?

A CALHOUN COUNTY, ORANGEBURG COUNTY, BAMBERG, BARNWELL, ALLENDALE AND HAMPTON.

Q HOW LONG HAVE YOU DONE THAT KIND OF WORK HERE IN THIS LOCATION?

A SIXTEEN YEARS.

Q AND ARE ALL OF THE CALLS TAPED, ALL THE DISPATCH CALLS, ANYTHING YOU SAY ON THE RADIO, ANYTHING SOMEONE SAYS TO YOU, ANY RADIO TRAFFIC, IS IT ALL

TAPED?

A YES, SIR.

Q WHAT IS -- IN YOUR 16 YEARS AS A DISPATCHER, WHEN A TROOPER STOPS A VEHICLE, WHAT DOES HE DO AS FAR AS THE RADIO IS CONCERNED?

A THEY CALL IN THE TAG, THE LOCATION AND THE DESCRIPTION OF THE VEHICLE.

Q AND DID YOU KNOW FIRST SERGEANT FRANKIE LINGARD?

A YES, SIR.

Q HAD YOU HEARD HIS VOICE OVER THE HIGHWAY PATROL RADIO ON NUMEROUS OCCASIONS?

A YES, SIR.

Q CAN YOU RECOGNIZE HIS VOICE WHEN YOU HEAR IT ON THE TAPE?

A YES, SIR.

Q WHAT WAS SERGEANT LINGARD'S BADGE NUMBER OR CALL NUMBER? HOW WOULD HE IDENTIFY HIMSELF?

A HE WAS G-8.

Q G-8?

A UH-HUH. (INDICATING AFFIRMATIVE RESPONSE.)

Q AND PRIOR TO THIS TRIAL, DID YOU LISTEN TO A PORTION OF THE DISPATCH TAPE FROM NEW YEAR'S EVE, 1997, GOING MAYBE INTO THE EARLY MORNING OF JANUARY THE 1ST?

A REPEAT THE QUESTION AGAIN.

Q DID YOU LISTEN TO A PORTION OF YOUR DISPATCH TAPE?
A YES, SIR.
Q STARTING AROUND 11:30 NEW YEAR'S EVE?
A YES, SIR.
Q OF THIS YEAR. I WILL HAND YOU A TAPE AND ASK IF THIS IS THE TAPE YOU PREVIOUSLY LISTENED TO AND DID YOU PUT YOUR INITIALS ON IT?
A YES, I DID.
SOLICITOR BAILEY: YOUR HONOR, I MOVE TO INTRODUCE THIS.
MR. STONE: NO OBJECTION.
(STATE'S EXHIBIT NUMBER 6, DISPATCH TAPE, IS RECEIVED INTO EVIDENCE.)
Q MR. MOSELY, IS THAT TAPE AN ACCURATE RECORDING OF WHAT ACTUALLY TRANSPIRED OVER THE RADIO? DO YOU RECOGNIZE YOUR VOICE ON IT?
A YES, SIR.
Q AND SERGEANT LINGARD'S VOICE?
A YES, SIR.
Q AND HIS CALL SIGN G-8?
A YES, SIR.
SOLICITOR BAILEY: YOUR HONOR, AT THIS POINT I WOULD LIKE TO INTRODUCE THE TAPE.
THE COURT: HAS A COPY OF THIS TAPE BEEN

PROVIDED TO THE DEFENSE?

MR. STONE: YES, SIR.

THE COURT: YOU MAY PROCEED TO DO SO.

SOLICITOR BAILEY: YES, SIR. I WOULD LIKE TO PUBLISH THAT TO THE JURY BY PLAYING THE TAPE.

THE COURT: YOU MAY DO SO.

MR. STONE: MAY WE APPROACH BRIEFLY?

THE COURT: ONE MOMENT. HOLD ON.

MR. STONE: MAY WE APPROACH BRIEFLY?

THE COURT: SURE.

(THE FOLLOWING BENCH CONFERENCE WAS REPORTED.)

MR. STONE: WE DON'T HAVE ANY OBJECTION TO THE TAPE. I KNOW THE FAMILY IS GOING TO BE VERY EMOTIONAL ABOUT THIS. THEY HAVE BEEN EMOTIONAL THROUGH MOST OF TRIAL.

THE COURT: HE SAID THEY WOULD BE ALL RIGHT.

MR. STONE: BUT IF THEY CAN'T HANDLE IT, IT'S JUST TOO PREJUDICIAL.

THE COURT: LET HIM HANDLE IT.

MR. STONE: THAT'S FINE.

(THE BENCH CONFERENCE WAS CONCLUDED.)

THE COURT: PROCEED TO PLAY THE TAPE.

(STATE'S EXHIBIT NUMBER 6, DISPATCH TAPE,

IS PLAYED FOR THE JURY.)

(DURING THE PLAYING OF THE TAPE, THE FOLLOWING WAS REPORTED.)

Q IS THAT SERGEANT LINGARD?

A YES, SIR.

(THE TAPE WAS CONTINUED TO BE PLAYED FOR THE JURY.)

THE COURT: WE WILL STOP AT THIS TIME. WE NEED TO TAKE A BREAK. I WILL LET YOU GO TO THE JURY ROOM. WELL, I THINK PROBABLY THIS IS AN APPROPRIATE TIME TO BREAK FOR LUNCH. WE WILL BREAK FOR LUNCH AND RETURN AT TWO O'CLOCK.

MR. STONE: YES, SIR.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: WE WILL BE IN RECESS UNTIL TWO O'CLOCK.

(WHEREUPON THERE WAS A LUNCHEON RECESS.)

THE COURT: LET'S SWEAR THAT LAST AGENT. PLEASE SWEAR MY BAILIFF FOR ME.

(THE BAILIFF IS SWORN.)

THE COURT: IS THE STATE READY TO PROCEED?

SOLICITOR BAILEY: THE STATE IS READY.

THE COURT: DEFENDANT READY?

MR. STONE: YES, SIR.

THE COURT: BRING THE JURY IN, PLEASE.

(THE JURY RETURNS TO THE COURTROOM AT 2:20 P.M..)

THE COURT: THE JURY IS PRESENT.

SOLICITOR BAILEY: YOUR HONOR, I THINK WE ALMOST FINISHED THE TAPE. I WOULD LIKE TO TURN THAT BACK ON.

THE COURT: ALL RIGHT, SIR. THE WITNESS IS STILL UNDER OATH.

(STATE'S EXHIBIT NUMBER 6, DISPATCH TAPE, WAS RESUMED PLAYING.)

SOLICITOR BAILEY: YOUR HONOR, THAT'S ALL THE TAPE THAT I WANTED TO INTRODUCE AT THIS TIME.

THE COURT: YOU MAY PROCEED.

SOLICITOR BAILEY: NO FURTHER QUESTIONS.

THE COURT: YOU MAY CROSS EXAMINE.

MR. STONE: THANK YOU, YOUR HONOR.

CROSS EXAMINATION

BY MR. STONE:

Q IS IT MR. MOSELY OR OFFICER MOSELY?

A MISTER.

Q YOU DON'T HAVE ANY ACADEMY EXPERIENCE? YOU ARE NOT A LAW ENFORCEMENT OFFICER?

A NO, SIR.

Q YOU ARE A DISPATCHER. HOW LONG HAVE YOU BEEN A DISPATCHER?

A SIXTEEN YEARS.
Q IN THOSE 16 YEARS, HAS IT ALWAYS BEEN FOR THE HIGHWAY PATROL?
A YES, SIR.
Q AS A DISPATCHER AS I UNDERSTAND IT, YOU RECEIVE INFORMATION AND YOU PUT IT BACK OUT ON THE RADIO IMMEDIATELY; IS THAT CORRECT?
A YES, SIR.
Q AND THE PURPOSE OF THAT IS TO PROVIDE THE OFFICERS IN THE FIELD AS MUCH INFORMATION AS HUMANLY POSSIBLE?
A YES, SIR.
Q NOW, THROUGH YOUR -- WAS IT 16 YEARS?
A YES, SIR.
Q THROUGH YOUR 16 YEARS AS A DISPATCHER, IT'S CERTAINLY NOT UNUSUAL FOR YOU TO CONVEY DESCRIPTIONS OF THE SUSPECTS THAT YOU ARE LOOKING FOR; IS THAT CORRECT?
A YES, SIR.
Q IN OTHER WORDS, OFFICERS IN THE FIELD ON A REGULAR BASIS GIVE YOU AS MUCH INFORMATION AS THEY HAVE AT THAT TIME AND YOU MAKE A NOTE OF IT AND YOU SEND IT OUT ON THE RADIO; IS THAT RIGHT?
A YES.
Q IN THIS CASE -- WELL, LET ME ASK YOU THIS.

MR. STONE: I'D LIKE TO MARK THIS AS DEFENSE EXHIBIT 1.

THE COURT: HAS THE STATE SEEN THAT EXHIBIT?

MR. STONE: YES, SIR, BUT I WILL SHOW IT TO HIM AGAIN, JUDGE.

(ATTORNEYS CONFER.)

SOLICITOR BAILEY: NO OBJECTION, YOUR HONOR.

THE COURT: WITHOUT OBJECTION.

(DEFENDANT'S EXHIBIT NUMBER 1, HIGHWAY PATROL RADIO LOG, IS RECEIVED INTO EVIDENCE.)

Q LET ME SHOW YOU DEFENDANT'S EXHIBIT NUMBER 1. IS THAT YOUR LOG, SIR?

A YES, SIR.

Q THAT IS THE OFFICIAL HIGHWAY PATROL LOG THAT YOU KEEP AT THE SAME TIME THAT THE CALLS COME IN AND THAT YOU SEND MESSAGES OUT; IS THAT CORRECT?

A YES, SIR.

Q ON THIS LOG IT INDICATES THAT YOU GOT A CALL FROM 341, AND I WILL SHOW YOU THIS. THIS IS THE THIRD PAGE OF THE REPORT. THAT INDICATES THAT YOU GOT A CALL FROM 341. WHO IS 341?

A IT WAS THE -- I BELIEVE IT WAS THE DEPUTY THAT WAS WITH HIM. I'M NOT QUITE SURE BUT IT WAS THE

DEPUTY THAT WAS WITH HIM.

Q THE DEPUTY WHO WAS WITH FIRST SERGEANT LINGARD?

A YES.

Q WAS THAT LIN SHIRER OR DO YOU RECALL?

A YES, SIR.

Q DO YOU RECOGNIZE LIN SHIRER'S VOICE ON THE TAPE THAT YOU JUST HEARD?

A YES, SIR.

Q NOW, THAT INDICATES, THAT LOG INDICATES, THAT THAT CALL CAME IN SOMETIME BEFORE 11 AND -- EXCUSE ME -- BETWEEN 11:36--

A YES, SIR.

Q -- AND 11:38; IS THAT CORRECT?

A YES, SIR.

Q AND THAT WOULD BE ACCURATE?

A YES, SIR.

Q AND IN THAT DESCRIPTION, MR. SHIRER, OFFICER SHIRER, DIDN'T GIVE YOU ANY DESCRIPTION AS TO WHO DID THE SHOOTING; DID HE?

A NO, SIR.

Q IS THERE ANY INDICATION ON THAT OR DID YOU RECEIVE ANY INDICATION BY THE RADIO WHETHER OR NOT THE SHOOTER WAS A MAN OR A WOMAN?

A NO, SIR.

Q AND YOU DIDN'T RECEIVE ANY OTHER DESCRIPTION,

OTHER THAN THE DESCRIPTION OF THE CAR ITSELF; IS THAT RIGHT?

A YES, SIR.

Q THE NEXT ENTRY -- AND I WILL LET YOU HOLD ONTO THAT. I THINK IT'S THE NEXT COUPLE OF PAGES OVER. THE NEXT ENTRY THAT MAKES REFERENCE TO SEEING THE MUSTANG IS I BELIEVE AT THE BOTTOM OF THAT PAGE INDICATING THAT AT 11:49 THE MUSTANG IS SPOTTED IN HOLLY HILL; IS THAT CORRECT?

A YES, SIR.

Q APPROXIMATELY TEN OR ELEVEN MINUTES AFTER HE IS FIRST -- THE ANNOUNCEMENT THAT COMES THAT TROOPER LINGARD HAS BEEN SHOT; IS THAT CORRECT?

A YES, SIR.

Q ARE YOU FAMILIAR WITH THE HIGHWAY SYSTEM AND THE HOLLY HILL AREA AND THE INTERSTATE SECTIONS?

A SOMEWHAT, YES.

Q IN FACT, YOU HAVE TO BE SOMEWHAT FAMILIAR WITH THEM IN ORDER TO DO YOUR JOB; DON'T YOU?

A YES, SIR.

(ATTORNEYS CONFER.)

MR. STONE: IF YOU WOULD MARK THIS FOR IDENTIFICATION.

(DEFENDANT'S EXHIBIT NUMBER 2, MAP, IS MARKED FOR IDENTIFICATION.)

Q MR. MOSELY, IF YOU CAN KEEP YOUR VOICE UP, CAN I GET YOU TO COME DOWN HERE JUST A SECOND.

A (WITNESS LEAVES THE WITNESS STAND.)

Q STAND WHERE THE JURY CAN SEE. CAN YOU IDENTIFY THIS AS A FAIR AND ACCURATE DEPICTION OF THE HIGHWAYS AND THE ROADS LEADING FROM AROUND INTERSTATE 95 INTO HOLLY HILL AND SUMMERVILLE AND VARIOUS PLACES LIKE THAT? I WILL LET YOU REVIEW THAT. I KNOW YOU HAVEN'T SEEN THAT.

A YES, IT IS.

Q IS THAT A FAIR AND ACCURATE DEPICTION AS YOU KNOW IT?

A YES, SIR.

MR. STONE: YOUR HONOR, AT THIS TIME WE MOVE THAT INTO EVIDENCE. I HAVE SHOWN THAT TO THE SOLICITOR.

THE COURT: WHAT SAYS THE STATE?

SOLICITOR BAILEY: NO OBJECTION.

THE COURT: WITHOUT OBJECTION.

(DEFENDANT'S EXHIBIT NUMBER 2, MAP, IS RECEIVED INTO EVIDENCE.)

Q INTERSTATE 95, COULD YOU INDICATE ON HERE, IF YOU CAN SEE, IS THIS EXHIBIT 97 HERE (INDICATING)?

A YES, SIR, THAT'S EXHIBIT 97 RIGHT THERE.

Q THIS (INDICATING) IS INTERSTATE 95; IS THAT

CORRECT?

A YES, SIR.

Q AT EXIT 97 THIS IS WHEN YOU GOT THE FIRST CALL IN THAT TROOPER LINGARD WAS DOWN AND THAT WAS APPROXIMATELY 11:37, BETWEEN 11:36 AND 11:38; IS THAT RIGHT?

A YES, I BELIEVE THAT IS WHAT IS ON THE LOG. I DON'T REMEMBER EXACTLY BUT I BELIEVE IT'S 97. I KNOW IT WAS 97 OR 98.

Q THE MILE MARKER, ONE WAY OR THE OTHER?

A YES, SIR.

Q AND AT THAT TIME IT WAS BETWEEN 11:36 AND 11:38?

A YES, SIR.

MR. STONE: UNLESS THERE IS SOME OBJECTION FROM THE SOLICITOR, YOUR HONOR, I WILL ASK HIM TO MARK THAT AT THE TIME.

SOLICITOR BAILEY: NO OBJECTION.

THE COURT: WITHOUT OBJECTION.

Q IF YOU WOULD PUT BETWEEN 11:36 AND 11:38 AT THAT SPOT THERE.

A (WITNESS COMPLIES.)

Q THIS IS WHEN THE SHOOTING TOOK PLACE; IS THAT CORRECT?

A YES, SIR.

Q CAN YOU LOCATE ON THAT MAP WHERE HOLLY HILL IS.

A YES, SIR. HOLLY HILL IS RIGHT HERE (INDICATING.)

Q IF I CAN GET YOU, UNLESS THERE IS SOME OBJECTION, IF YOU WILL CIRCLE THAT AS WELL.

A (WITNESS COMPLIES.)

Q AND THE TIME THAT YOU RECEIVED WORD THAT THE CAR WAS SPOTTED IN HOLLY HILL WAS APPROXIMATELY TEN, ELEVEN MINUTES AFTER THAT; IS THAT CORRECT?

A YES, SIR.

Q DO YOU NEED TO LOOK AT YOUR NOTES AGAIN?

A YES, SIR.

Q THAT WOULD BE FINE. AT THE VERY BOTTOM IS 11:49.

A OKAY.

Q IS THAT CORRECT?

A YES, SIR.

Q IF YOU WILL PUT 11:49 AND IF YOU WOULD DRAW IT OUT HERE WHERE WE MIGHT COULD SEE IT.

A (WITNESS COMPLIES.)

Q AGAIN, AT SOME TIME BETWEEN 11:36 AND 11:38 WHEN YOU FIRST GOT THAT CALL, YOU DID NOT RECEIVE ANY INFORMATION AS TO WHO THE SHOOTER WAS; IS THAT CORRECT?

A NO, SIR.

Q ONLY A DESCRIPTION OF THE CAR; IS THAT CORRECT?

A YES.
Q I THINK I HEARD YOUR TAPE RIGHT AND I HAVE REVIEWED THIS AND YOU ARE WELCOME TO REVIEW IT AGAIN, BUT DURING THE TIME BETWEEN 11:36 AND 11:38 AND 11:49, NO POLICE OFFICER MADE CONTACT WITH THAT CAR; IS THAT CORRECT?
A NO, SIR, NOT TO MY KNOWLEDGE.
Q AND YOU WOULD HAVE KNOWN THAT HAD THEY HAD CONTACT WITH THEM, WOULD YOU NOT?
A IF THEY HAD TOLD ME.
Q THANK YOU.
A (WITNESS RESUMES THE WITNESS STAND.)
MR. STONE: NOTHING ELSE, YOUR HONOR. THANK YOU.
SOLICITOR BAILEY: A COUPLE MORE, YOUR HONOR.
REDIRECT EXAMINATION
BY SOLICITOR BAILEY:
Q MR. MOSELY, THE RADIO SYSTEM YOU HAVE GOT, IS THAT THE SAME RADIO SYSTEM THAT THE HOLLY HILL POLICE DEPARTMENT DISPATCH IS ON?
A NO, SIR.
Q WHERE DO THEY DISPATCH?
A THE HOLLY HILL DISPATCH TO MY KNOWLEDGE DISPATCHES THROUGH THE SHERIFF'S DEPARTMENT OR EITHER

THEY MAY HAVE THEIR OWN SYSTEM WITH THE COUNTY SYSTEM.

Q SO WHATEVER YOU DETERMINED FROM YOUR RADIO WOULDN'T HAVE BEEN DIRECTLY FROM THE HOLLY HILL OFFICERS, IT WOULD HAVE BEEN SOMEBODY PICKING THAT UP ON ANOTHER FREQUENCY?

A YES, SIR.

Q AND RELAYING THAT TO YOU; IS THAT CORRECT?

A YES, SIR.

Q SO YOU CAN'T TELL FROM YOUR LOG AND YOUR RADIO DISPATCH WHEN THE STOP WAS MADE IN HOLLY HILL, CAN YOU?

A NOT EXACTLY, NO, SIR.

Q THE TIME MR. DUFFIE ASKED YOU ABOUT WAS WHEN THAT WAS RELAYED THROUGH SOME DIFFERENT CONVERSATIONS TO YOU; IS THAT CORRECT?

A YES, SIR, OR EITHER WE OVERHEARD THEM TALKING ABOUT IT.

Q YOU DON'T KNOW WHEN IN RELATION TO THE ACTUAL STOP OR SIGHTING THAT THE HOLLY HILL POLICE OFFICERS RADIOED THAT INTO THEIR DISPATCHER, DO YOU?

A NO, SIR.

Q LOOKING AT THE LOG THAT I THINK IS IN EVIDENCE IN FRONT OF YOU THERE, YOUR LOG, LOOKING AT THE PAGE AND THE TIME STARTING AT 11:38 AND ENDING WITH 11:49,

THE THIRD LINE FROM THE BOTTOM IT LOOKS LIKE IT SAYS 82 AND THEN HOLLY HILL. WHAT IS THAT ABBREVIATION FOR?

A EIGHTY-TWO IS THE MILE MARKER.

Q OKAY.

A AND I'M NOT EXACTLY SURE WHY I PUT HOLLY HILL THERE BUT IT WAS SOME REASON, EITHER SOMETHING I HEARD.

Q DOES IT INDICATE ON THERE WHERE YOU HEARD THE CALL THROUGH YOUR RADIO THAT THE CAR HAD BEEN STOPPED IN HOLLY HILL OR SIGHTED IN HOLLY HILL?

A REPEAT THAT AGAIN.

Q WHERE DOES IT INDICATE ON YOUR LOG WHEN YOU DETERMINED OR WHEN YOU HEARD THAT THE CAR HAD BEEN STOPPED IN HOLLY HILL OR DOES IT INDICATE THAT?

A (NO RESPONSE.)

Q AFTER 11:47 IT SAYS SOMETHING ABOUT HOLLY HILL IN ONE IT LOOKS LIKE. THE NEXT LINE IS 11:48. IT SAYS C.B. 3 AND AT THE BOTTOM LINE IT SAYS SOMETHING ABOUT 176 TOWARD CHARLESTON.

A THE 11:49 WAS -- EITHER THEY HAD THEM ON 176 SPOTTED HEADED TOWARD CHARLESTON OR EITHER HAD THEM STOPPED. I BELIEVE THEY SPOTTED THEM ON 176 OR SOMEONE TOLD US THAT HE WAS ON 176 HEADED TOWARD CHARLESTON.

Q AND 176 EXTENDS FROM I-95 ALL THE WAY IN THROUGH GOOSE CREEK?

A YES, SIR.

Q THANK YOU.

SOLICITOR BAILEY: THAT'S ALL I HAVE.

MR. STONE: NOTHING ELSE.

THE COURT: YOU MAY COME DOWN.

SOLICITOR BAILEY: MAY HE BE EXCUSED, YOUR HONOR?

THE COURT: YES, SIR. THIS WITNESS IS EXCUSED.

SOLICITOR BAILEY: THE STATE CALLS LIN SHIRER.

LIN SHIRER, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: GIVE US YOUR FULL NAME AND SPELL YOUR LAST, PLEASE.

THE WITNESS: LIN SHIRER, S-H-I-R-E-R.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. SHIRER, TELL THE JURY A LITTLE BIT OF BACKGROUND. FIRST OF ALL, YOUR AGE?

A TWENTY-FOUR.

Q WHERE DO YOU LIVE?

A SAINT MATTHEWS.

Q HAVE YOU LIVED THERE ALL YOUR LIFE?
A YES, SIR.
Q WHERE DO YOU WORK?
A I WORK FOR THE CALHOUN COUNTY SHERIFF'S OFFICE.
Q ARE YOU A SWORN DEPUTY SHERIFF?
A YES, SIR.
Q HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?
A ABOUT THREE YEARS.
Q WHAT KIND OF WORK ARE YOU ASSIGNED TO NOW?
A I AM ASSIGNED TO THE NARCOTICS TASK FORCE IN ORANGEBURG.
Q IF YOU WOULD, PLEASE, MOVE YOUR CHAIR JUST A LITTLE BIT OR LEAN FORWARD AND TALK A LITTLE BIT LOUDER SO EVERYBODY CAN HEAR YOU. WERE YOU ASSIGNED THAT WAY BACK ON NEW YEAR'S EVE?
A YES, SIR.
Q BASICALLY YOU ARE NOT A UNIFORMED OFFICER?
A NO, SIR.
Q YOU ARE A SWORN OFFICER BUT YOU DO NARCOTICS WORK?
A YES, SIR.
Q ARE YOU PART OF A TASK FORCE?
A YES, SIR, ORANGEBURG, CALHOUN, BAMBERG AND BARNWELL.
Q WOULD YOU STATE WHETHER OR NOT Y'ALL WORK WITH

THE HIGHWAY PATROL?

A SOMETIMES, YES, SIR.

Q BACK ON -- LET ME ASK YOU THIS FIRST. WHAT TRAINING HAVE YOU HAD IN LAW ENFORCEMENT?

A I HAVE BEEN TO NUMEROUS TWO- AND THREE-DAY SEMINARS ON NARCOTICS INVESTIGATIONS, I HAVE BEEN TO A WEEK LONG D.E.A. NARCOTICS SCHOOL AND I WENT TO A WEEK LONG SCHOOL IN VIRGINIA FOR NARCOTICS HIGHWAY INTERDICTION.

Q WERE YOU DOING THIS KIND OF WORK BACK IN NOVEMBER -- EXCUSE ME -- DECEMBER 31, 1997?

A YES, SIR.

Q WERE YOU ASSIGNED TO WORK WITH ANY PARTICULAR HIGHWAY PATROL OFFICER BACK THEN?

A YES, SIR, FIRST SERGEANT FRANKIE LINGARD.

Q AND HOW LONG HAD YOU BEEN WORKING WITH MR. LINGARD, RIDING WITH HIM?

A APPROXIMATELY PROBABLY ABOUT AN HOUR, I GUESS.

Q HAD YOU WORKED WITH HIM ON OTHER DAYS?

A NO, SIR, NOT HIM PARTICULARLY BUT WITH THE HIGHWAY PATROL.

Q THAT NEW YEAR'S EVE YOU WERE WORKING WITH HIM?

A YES, SIR.

Q WHAT PART OF ORANGEBURG COUNTY WERE Y'ALL PATROLLING?

A SANTEE.
Q AND THAT'S OFF OF 95?
A YES, SIR.
Q WHOSE CAR WERE Y'ALL IN?
A HIS.
Q WAS IT A MARKED POLICE CAR?
A NO, SIR.
Q AND CALLING YOUR ATTENTION TO SOMEWHERE ROUGHLY AROUND 11:30 P.M. ON NEW YEAR'S EVE, WHERE WERE Y'ALL LOCATED?
A WE WERE LOCATED RIGHT THERE AT THE EXIT OF NUMBER 6 ONTO I-95.
Q AND WHO WAS DRIVING THE CAR?
A FIRST SERGEANT.
Q AND WHERE WERE YOU SITTING?
A I WAS IN THE PASSENGER SEAT.
Q WHAT, IF ANYTHING, OCCURRED WHILE Y'ALL WERE AT THE INTERSECTION OF HIGHWAY 6 AND I-95 IN SANTEE?
A HE WAS RUNNING RADAR ON THE NORTHBOUND LANE GOING TOWARDS GEORGIA.
Q IT WOULD BE SOUTH, GOING TOWARDS SOUTH?
A SOUTH, EXCUSE ME, SOUTHBOUND.
Q ALL RIGHT, SIR.
A HE CLOCKED THE WHITE MUSTANG AT 80 MILES AN HOUR.

Q WHAT IS THE SPEED LIMIT ALONG THAT STRETCH OF I-95?
A SIXTY-FIVE.
Q AND DID YOU OBSERVE THE RADAR?
A YES, SIR.
Q DID YOU OBSERVE THE CAR GOING 80 MILES AN HOUR ALSO?
A YES, SIR.
Q AND THE SPEED LIMIT -- THAT'S IN EXCESS OF THE SPEED LIMIT. WHAT, IF ANYTHING, DID Y'ALL DO?
A AT THAT TIME HE PROCEEDED TO STOP THE VEHICLE.
Q AS FAR AS A DESCRIPTION OF THE CAR, WHAT KIND OF CAR WAS IT?
A IT WAS A WHITE MUSTANG G.T.
Q COULD YOU SEE INTO THE CAR AS IT PASSED YOU?
A NO, SIR.
Q AND HOW DID SERGEANT LINGARD GO ABOUT ATTEMPTING TO STOP THE MUSTANG? DID HE PUT THE BLUE LIGHTS ON?
A YES, SIR.
Q DID HE ACTIVATE HIS SIREN OR JUST THE BLUE LIGHTS, IF YOU REMEMBER?
A I CAN'T RECALL.
Q DID THE MUSTANG STOP?
A YES, SIR.
Q WHERE DID IT STOP?

A IT STOPPED RIGHT THERE WHERE YOU GET OFF ONTO 301 OFF OF I-95, THE EXIT.

Q THAT'S SOUTHBOUND ON 95?

A YES, SIR.

Q DO YOU KNOW WHERE THE 97 MILE MARKER IS?

A YES, SIR.

Q WHERE IS THAT IN RELATION TO THE 301 EXIT? IS IT RIGHT AT THE SAME SPOT?

A YES, SIR, I BELIEVE IT'S RIGHT THERE.

Q LET ME GET YOU TO TAKE A LOOK AT THIS MAP HERE FOR A FEW MINUTES AND KIND OF GET ORIENTED. ARE YOU FAMILIAR WITH IT?

A YES, SIR.

Q IS THAT A PORTION OF THE SOUTH CAROLINA --

A YES, SIR.

Q -- HIGHWAY SYSTEM?

A YES, SIR.

Q IF YOU WOULD I WILL LAY THIS THING RIGHT UP HERE AND IF YOU WOULD PUT AN X. UP THERE WHERE THAT MUSTANG STOPPED.

A (WITNESS LEAVES THE WITNESS STAND.)

Q FIRST OF ALL, GO AHEAD AND SHOW THE JURY WHERE 95 COMES IN.

A THIS IS 95 RIGHT HERE (INDICATING.) THIS IS SANTEE AND 301 RIGHT HERE (INDICATING.)

Q GO AHEAD AND PUT AN X. RIGHT THERE WHERE THAT CAR STOPPED.

A (WITNESS COMPLIES.)

Q YOU CAN HAVE A SEAT.

A (WITNESS RESUMES THE WITNESS STAND.)

SOLICITOR BAILEY: ANY OBJECTION?

MR. STONE: NO OBJECTION.

SOLICITOR BAILEY: I MOVE TO INTRODUCE THIS.

THE COURT: WITHOUT OBJECTION.

(STATE'S EXHIBIT NUMBER 7, MAP, IS RECEIVED INTO EVIDENCE.)

Q ABOUT HOW FAR BEHIND THE MUSTANG DID SERGEANT LINGARD PARK HIS CAR?

A ABOUT A CAR LENGTH.

Q THAT PLACE WHERE YOU'VE GOT THAT X. ON THE MAP, WHICH IS THE STATE'S LAST EXHIBIT PUT INTO EVIDENCE, IS THAT IN ORANGEBURG COUNTY?

A YES, SIR.

Q LET ME SHOW YOU A PICTURE AND ASK IF THAT APPEARS TO BE A PICTURE OF THE MUSTANG THAT Y'ALL OBSERVED AND SERGEANT LINGARD STOPPED.

THE COURT: HAVE YOU SEEN THIS PICTURE?

MR. STONE: YES, SIR.

A YES, SIR.

Q THIS CAR IS IN A WRECKED CONDITION. WAS IT IN THAT CONDITION AT THAT TIME?

A NOT WHEN WE STOPPED IT.

Q BUT OTHER THAN THE WRECKED CONDITION DOES THAT APPEAR TO BE THE CAR?

A YES, SIR.

SOLICITOR BAILEY: YOUR HONOR, I WOULD MOVE TO INTRODUCE THIS.

MR. STONE: NO OBJECTION.

(STATE'S EXHIBIT NUMBER 8, PHOTOGRAPH OF MUSTANG, IS RECEIVED INTO EVIDENCE.)

SOLICITOR BAILEY: YOUR HONOR, IF I MAY, I WILL PUBLISH IT TO THE JURY BY USING THE DISPLAY.

THE COURT: YOU MAY DO SO.

Q DEPUTY, IF YOU WOULD PLEASE TELL THE JURY WHAT THE CONDITION OF THE WINDOW WAS IN THE CAR AS FAR AS TINTING.

A THEY WERE VERY BLACK TINTED, VERY BLACK.

Q AND DUE TO THE TINTING, COULD YOU SEE INTO THE CAR AT ANY POINT?

A NO, SIR.

Q LET ME SHOW YOU ANOTHER PHOTOGRAPH AND ASK IF THAT APPEARS TO BE A PICTURE OF THE REAR OF THE MUSTANG SHOWING A DELAWARE TAG?

A YES, SIR.

Q DID YOU OBSERVE A DELAWARE TAG?
A YES, SIR.
SOLICITOR BAILEY: MOVE THIS INTO EVIDENCE.
MR. STONE: NO OBJECTION.
(STATE'S EXHIBIT NUMBER 9, PHOTOGRAPH OF LICENSE, IS RECEIVED INTO EVIDENCE.)
Q MR. SHIRER, IF YOU WOULD JUST LOOK UP THERE AND JUST FOR THE RECORD READ THAT DELAWARE TAG NUMBER INTO THE RECORD.
A 982722.
Q NOW, YOU HAVE GOT THE MUSTANG STOPPED. SERGEANT LINGARD IS PARKED ABOUT A CAR LENGTH BEHIND THE MUSTANG. WERE YOU PRESENT WHEN HE RADIOED THAT STOP IN?
A YES, SIR.
Q RADIOED THE TAG NUMBER?
A YES, SIR.
Q HAVE YOU PREVIOUSLY LISTENED TO THE DISPATCH TAPE THAT THE JURY JUST HEARD?
A YES, SIR.
Q IS YOUR VOICE ON THAT TAPE LATER ON CALLING FOR AN AMBULANCE?
A YES, SIR.
Q WHAT HAPPENED? WHAT DID YOU DO WHEN SERGEANT LINGARD STOPPED HIS POLICE CAR?

A I GOT OUT AND WALKED UP RIGHT BEHIND THE HEADLIGHTS OF HIS PATROL CAR.

Q WHEN YOU SAY HIS PATROL CAR, YOU ARE TALKING ABOUT SERGEANT LINGARD'S CAR?

A YES, SIR, SERGEANT LINGARD'S CAR.

Q WERE YOU TO THE RIGHT OR TO THE LEFT OF SERGEANT LINGARD'S CAR?

A ON THE PASSENGER SIDE, THE RIGHT-HAND SIDE.

Q UP NEAR THE FRONT ON THE RIGHT-HAND SIDE?

A YES, SIR, ALL THE WAY TO THE FRONT OF HIS CAR.

Q WHAT DIRECTION WAS YOUR ATTENTION FOCUSED? WHERE WERE YOU LOOKING WHEN YOU WALKED UP THERE?

A I WAS LOOKING AT HIM AND THE CAR TOGETHER.

Q WHEN YOU SAY HIM, YOU ARE TALKING ABOUT?

A MR. LINGARD.

Q WHAT DID SERGEANT LINGARD DO?

A HE GOT OUT OF HIS VEHICLE AND APPROACHED THE CAR. AS SOON AS HE GOT TO THE WINDOW OF THE CAR, THAT'S WHEN I HEARD THE GUNFIRE AND SAW HIM FALL.

Q GO AHEAD AND TELL THE JURY, FIRST OF ALL, WHAT YOU HEARD.

A SIR, I HEARD APPROXIMATELY, I GUESS, FOUR SHOTS COME FROM THE DRIVER'S SIDE OF THE CAR AND MR. LINGARD FELL TO THE GROUND.

Q WHAT DID YOU SEE? YOU HAVE ALREADY SAID YOU

COULDN'T SEE INTO THE CAR. WHAT DID YOU SEE?

A ALL I SAW WAS THE FIRE COME FROM THE GUN. THAT'S ALL I SAW.

Q WHAT PART OF THE CAR DID THE FIRE COME FROM THE MUZZLE FLASH?

A THE DRIVER'S SIDE.

Q ARE YOU SURE OF THAT?

A YES, SIR.

Q DID YOU OBSERVE SERGEANT LINGARD?

A I OBSERVED HIM FALL TO THE GROUND.

Q WHERE DID HE FALL, WHAT PART?

A HE FELL -- HE FELL INTO THE LANE OF TRAFFIC.

Q AT THE TIME THAT SERGEANT LINGARD APPROACHED THE MUSTANG, WAS THE ENGINE RUNNING IN THE MUSTANG?

A YES, SIR.

Q WAS THE ENGINE RUNNING ON Y'ALL'S CAR?

A YES, SIR.

Q COULD YOU HEAR ANYTHING?

A NO, SIR.

Q HOW LOUD WAS THE SOUND OF THE ENGINE FROM THE MUSTANG?

A REAL LOUD. I MEAN, IT WAS MUFFLED, REAL MUFFLED SOUND.

Q SO YOU COULD HEAR NO VOICES?

A NO, SIR, I HEARD NO VOICES.

Q BUT YOU TESTIFIED YOU HEARD APPROXIMATELY FOUR GUNSHOTS?
A APPROXIMATELY.
Q AND YOU SAW MUZZLE FLASH FROM THE DRIVER'S SIDE?
A YES, SIR.
Q DO YOU RECALL THE SEQUENCE OF THE SHOTS, HOW FAST THEY WERE?
A THEY WERE ALL TOGETHER, I MEAN, IN SEQUENCE, ONE AFTER THE OTHER.
Q ANY HESITATION THAT YOU HEARD AT ANY POINT?
A NO, SIR.
Q IN THE SEQUENCE?
A NO, SIR.
Q WHEN SERGEANT LINGARD FELL TO THE PAVEMENT, WHAT DID YOU DO? WHAT IS THE FIRST THING YOU RECALL DOING?
A I MOVED SERGEANT LINGARD OUT OF THE ROADWAY SO HE WOULDN'T GET HIT.
Q DID YOU FIRE YOUR GUN?
A OH, YES, SIR.
Q WHAT OCCURRED FIRST AFTER YOU REALIZED THAT SERGEANT LINGARD HAD BEEN SHOT?
A AFTER I REALIZED HE WAS SHOT, I FIRED MY WEAPON AT THAT TIME.
Q DO YOU RECALL HOW MANY TIMES YOU FIRED?

A NO, SIR.
Q WHAT IS THE NEXT THING YOU DID?
A THAT'S WHEN I MOVED SERGEANT LINGARD OUT OF THE ROAD UP TO HIS PATROL CAR.
Q WHEN YOU APPROACHED SERGEANT LINGARD IN THE ROAD TO MOVE HIM, WAS HE FACE UP OR FACE DOWN IF YOU RECALL?
A I CAN'T RECALL HOW HE WAS FACING.
Q HOW FAR DID YOU MOVE HIM?
A I MOVED HIM -- IT WASN'T REAL FAR. I KNOW I MOVED HIM TO THE FRONT OF HIS CAR, TOWARDS THE FRONT OF HIS CAR, AND I SAW HIM WHEN I MOVED HIM.
Q WHAT DO YOU MEAN YOU SAW HIM?
A I MEAN, I JUST PULLED HIM TO THE CAR.
Q WHY DID YOU PULL HIM FROM ONE SPOT TO ANOTHER?
A BECAUSE HE WAS IN THE ROAD.
Q IN THE PAVED LANE OF TRAFFIC?
A YES, SIR, HE WAS IN THE RIGHT-HAND LANE OF TRAFFIC.
Q WHAT CALIBER PISTOL WERE YOU FIRING TOWARD THE MUSTANG?
A A 40-CALIBER.
Q THAT WAS A SEMIAUTOMATIC?
A YES, SIR.
Q LET ME HAND YOU ANOTHER PICTURE AND ASK IF YOU

CAN IDENTIFY THIS.

A YES, SIR, THAT'S THE FIRST SERGEANT'S VEHICLE.

Q DOES THAT APPEAR TO BE THE PLACE WHERE HE PARKED HIS CAR THAT NIGHT?

A YES, SIR.

(ATTORNEYS CONFER.)

MR. STONE: NO OBJECTION, YOUR HONOR.

SOLICITOR BAILEY: WE OFFER IT INTO EVIDENCE, JUDGE.

THE COURT: YOU MAY PUBLISH.

(STATE'S EXHIBIT NUMBER 10, PHOTOGRAPH OF THE SCENE WITH MARKERS, IS RECEIVED INTO EVIDENCE.)

Q MR. SHIRER, JUST TO MAKE SURE THAT WE ARE REAL CLEAR ON WHERE YOU WERE STANDING WHEN THIS HAPPENED, GO AHEAD AND POINT OUT TO THE JURY, WALK UP TO THE PICTURE UP THERE ON THE SCREEN AND SHOW THEM WHERE YOU WERE STANDING.

A I WAS STANDING ABOUT RIGHT HERE (INDICATING.)

Q NEAR THE RIGHT FRONT WHEEL OF TROOPER LINGARD'S CAR; IS THAT CORRECT?

A YES, SIR.

Q AND WAS THAT THE SAME PLACE YOU WERE STANDING WHEN YOU FIRED IN THE DIRECTION OF THE MUSTANG IN FRONT OF YOU?

A YES, SIR.

Q YOUR PARTICULAR SERVICE PISTOL, IS THE EJECTION PORT TO THE RIGHT OF THAT GUN?
A YES, SIR.
Q SO YOUR EMPTY SHELL CASINGS WOULD HAVE BEEN EJECTED TO YOUR RIGHT?
A YES, SIR.
Q CAN YOU IDENTIFY THIS, THE ENTIRE PICTURE?
A YES, SIR.

(ATTORNEYS CONFER.)

MR. STONE: NO OBJECTION.

THE COURT: WITHOUT OBJECTION.

SOLICITOR BAILEY: WE OFFER IT INTO EVIDENCE, YOUR HONOR.

(STATE'S EXHIBIT NUMBER 11, PHOTOGRAPH OF THE CAR AND VICTIM, IS RECEIVED INTO EVIDENCE.)

Q MR. SHIRER, AGAIN REFERRING TO STATE'S 11 UP HERE, IS THAT THE FRONT OF TROOPER LINGARD'S CAR?
A YES, SIR.
Q IS THAT HIS BODY IN FRONT OF THE CAR?
A YES, SIR.
Q WAS IT LATER COVERED BY A BLANKET?
A YES, SIR.
Q BY OTHER PEOPLE. SO AT THE TIME YOU PULLED HIM OUT OF THERE, IS THAT THE LOCATION YOU PULLED HIM TO?
A YES, SIR.

Q SO THAT PICTURE WOULD BE WHERE YOU PULLED HIM WITH EXCEPTION OF THE BLANKET; IS THAT CORRECT?
A YES, SIR.
Q AS FAR AS THE FLASHLIGHT AND THE HAT ON TOP OF THE CAR, WAS THAT PLACED THERE LATER?
A YES, SIR.
Q LET ME SHOW YOU ONE FINAL PICTURE HERE, MR. SHIRER, AND I WILL ASK IF YOU CAN IDENTIFY THAT AS BEING A PHOTOGRAPH OF SERGEANT LINGARD.
A YES, SIR.

(ATTORNEYS CONFER.)

MR. STONE: NO OBJECTION.

SOLICITOR BAILEY: WE OFFER THAT, YOUR HONOR.

(STATE'S EXHIBIT NUMBER 12, PHOTOGRAPH OF THE VICTIM, IS RECEIVED INTO EVIDENCE.)

Q MR. SHIRER, REFERRING TO STATE'S 12, THAT'S A PHOTOGRAPH OF SERGEANT LINGARD; IS THAT CORRECT?
A YES, SIR.
Q THAT SHOWS HIS HOLSTER?
A YES, SIR.
Q AND HIS GUN IN THE HOLSTER?
A YES, SIR.
Q WHEN YOU PULLED SERGEANT LINGARD OUT OF THE ROAD, WAS HIS GUN IN THE HOLSTER WITH THE HOLSTER

SNAPPED UP AS SHOWN IN THAT PICTURE?

A YES, SIR.

Q DID YOU AT ANY TIME SEE SERGEANT LINGARD REACH FOR HIS GUN OR MAKE ANY THREATENING GESTURE OR DO ANYTHING AGGRESSIVE TOWARD WHOEVER WAS IN THAT CAR?

A NO, SIR.

Q WHAT OBSERVATIONS DID YOU MAKE OF SERGEANT LINGARD WHEN YOU PULLED HIM OFF THE ROAD?

A HE NEVER SAID ANYTHING. HE WAS JUST LIMP.

Q DID HE SHOW ANY SIGNS OF LIFE?

A NO, SIR.

Q DID OTHER LAW ENFORCEMENT OFFICERS ARRIVE AFTER YOU CALLED IN ON YOUR RADIO?

A YES, SIR.

Q DO YOU KNOW ABOUT HOW LONG IT TOOK THE FIRST LAW ENFORCEMENT TO GET TO THE SCENE OUT THERE ON I-95?

A A FEW MINUTES.

Q WHO WERE THE FIRST PEOPLE THAT ARRIVED THAT YOU CAN RECALL?

A DETECTIVE MARTY JOURNEY, DETECTIVE CASEY GALLUP AND LIN STACK.

Q LIN STACK, HE IS A TROOPER; IS THAT RIGHT?

A YES, SIR.

Q MRS. GALLUP IS AN ORANGEBURG COUNTY DEPUTY?

A YES, SIR, SHE WORKS THERE.

Q DID THEY RIDE TOGETHER?
A YES, SIR.
Q HOW MUCH TIME DO YOU THINK ELAPSED FROM THE TIME OF THE SHOOTING AND THE TIME THEY SHOWED UP?
A ROUGHLY FIVE MINUTES, THREE MINUTES.
Q FIVE MINUTES TO THREE MINUTES?
A THREE TO FIVE MINUTES, NOT LONG, A FEW MINUTES.
Q HOW LONG WERE THEY AT THE SCENE BEFORE THEY LEFT?
A LIN AND CASEY?
Q YES, SIR.
A THEY WEREN'T THERE LONG AT ALL.
Q DID THEY PURSUE GOING SOUTH ON 95?
A YES, SIR.
Q DETECTIVE JOURNEY, WHEN DID HE ARRIVE IN RELATION TO TROOPER STACK AND MRS. GALLUP?
A IT WAS ABOUT THE SAME TIME.
Q WAS KIND OF VEHICLE WAS HE DRIVING?
A HE WAS DRIVING AN S-10 BLAZER.
Q DID HE GO IN PURSUIT OR DID HE STAY THERE?
A YES, SIR, HE LEFT TOO.
Q MR. SHIRER, JUST TO MAKE SURE THAT WE ARE 100 PERCENT CLEAR AND UP FRONT ON THIS, YOU COULDN'T SEE WHO FIRED THE SHOT?
A NO, SIR.

Q BECAUSE OF THE DARKENED WINDOWS?
A NO, SIR, I COULDN'T SEE IN THE CAR.
Q YOU COULDN'T HEAR THE VOICES BECAUSE OF THE LOUD MUFFLER; IS THAT CORRECT?
A NO, SIR, I DIDN'T HEAR ANY VOICES.
Q BUT YOU OBSERVED THE MUZZLE FLASH AND HEARD THE SHOTS AND SAW THAT FROM THE DRIVER'S SIDE?
A YES, SIR.
Q PLEASE ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE.

CROSS EXAMINATION

BY MR. STONE:

Q LET ME CALL YOUR ATTENTION TO STATE'S EXHIBIT 11. I DON'T KNOW IF I CAN FOCUS THIS WELL. WHEN YOU WENT AND GOT SERGEANT LINGARD'S BODY OUT OF THE ROAD, DID YOU PULL IT STRAIGHT BACK ONTO THE ROAD, OFF THE ROAD? IN OTHER WORDS, LET ME ASK YOU. WAS HIS BODY LOCATED HERE (INDICATING) ORIGINALLY AND THEN YOU PULLED IT OVER HERE (INDICATING) TO THE SIDE?
A YES, SIR, I PULLED HIM INTO THE EMERGENCY LANE. HE WASN'T COMPLETELY IN THE LANE OF TRAFFIC, BUT HIS BODY WAS SOMEWHAT IN THE LANE OF TRAFFIC WHEN HE FELL.
Q AND DIRECTLY OVER TO THE SIDE; IS THAT CORRECT?
A YES, SIR, I JUST PULLED HIM.

Q THIS (INDICATING) IS WHERE THE TROOPER'S CAR WAS LOCATED, TROOPER LINGARD'S CAR WAS LOCATED?
A YES, SIR.
Q THIS IS STATE'S EXHIBIT 10; IS THAT CORRECT? YOU RECOGNIZE THIS AS WHAT YOU WERE SHOWING US EARLIER?
A YES, SIR.
Q DO YOU KNOW IF THESE CONES HERE INDICATE WHERE THE SHELLS FROM THE MUSTANG LANDED DOWN, IF THAT IS WHAT THESE ARE HERE (INDICATING)?
A YES, SIR, I IMAGINE THAT IS WHAT THAT IS.
Q THESE (INDICATING) ARE WHERE YOUR SHELLS LANDED; IS THAT CORRECT?
A YES, SIR.
Q SO FROM USING BOTH OF THOSE, THE DISTANCE BETWEEN THE FRONT OF TROOPER LINGARD'S CAR AND THE BODY OR ACTUALLY WHERE TROOPER LINGARD WAS STANDING WHEN HE WAS SHOT WAS PROBABLY THE DISTANCE BETWEEN HERE (INDICATING) AND THIS CORNER OF THIS TABLE (INDICATING); IS THAT FAIR?
A I DON'T KNOW.
Q BUT YOU WOULD AGREE THAT THESE ARE MARKED PROPERLY?
A I WOULD IMAGINE THAT'S THE WAY IT WAS.
Q AND YET YOU DIDN'T HEAR ANYTHING, DID YOU?

A NO, SIR.

MR. STONE: LET ME MARK THESE.

(DEFENDANT'S EXHIBIT NUMBER 3, PHOTOGRAPH OF BACK OF CAR AND LICENSE; AND NUMBER 4, PHOTOGRAPH OF MUSTANG, ARE MARKED FOR IDENTIFICATION.)

Q LET ME SHOW YOU DEFENDANT'S EXHIBITS 3 AND 4. IS THIS ALSO A FAIR AND ACCURATE DEPICTION OF THE MUSTANG THAT YOU SAW THAT NIGHT?

A THAT ONE RIGHT THERE IS.

Q THAT IS NOT A FAIR AND ACCURATE DEPICTION?

A YES, SIR, THAT'S THE WHITE MUSTANG.

Q AND THIS IS AS WELL?

A YES, SIR.

Q IN FACT, THESE ARE ACTUALLY THE VIEWPOINTS THAT YOU HAD; IS THAT CORRECT?

A YES, SIR.

MR. STONE: IF THERE IS NO OBJECTION FROM THE SOLICITOR, YOUR HONOR, WE MOVE THESE INTO EVIDENCE.

SOLICITOR BAILEY: NO OBJECTION.

THE COURT: WITHOUT OBJECTION.

(DEFENDANT'S EXHIBIT NUMBER 3, PHOTOGRAPH OF BACK OF CAR AND LICENSE; AND NUMBER 4, PHOTOGRAPH OF MUSTANG, ARE RECEIVED INTO EVIDENCE.)

Q THAT IS THE VIEW OF THE BACK WINDOW, IS THAT

CORRECT, THAT YOU HAD?

A YES, SIR.

Q THIS WOULD ACTUALLY BE AN ACCURATE DEPICTION OF YOUR VIEW, THE VIEW WHERE YOU WERE STANDING, COMPARED TO THE MUSTANG?

A YES, SIR, I WAS A LITTLE BIT BEHIND OF IT. I COULD SEE THE SIDE AND THE BACK.

Q YOU ARE -- I HAVE GOT YOUR ACADEMY RECORDS HERE. YOU WERE TRAINED BY THE ACADEMY; IS THAT CORRECT?

A YES, SIR.

Q YOU WERE TRAINED IN BASIC LAW ENFORCEMENT; IS THAT CORRECT?

A YES, SIR.

Q THAT INCLUDED NARCOTICS AS WELL, IS THAT RIGHT, BASIC LAW ENFORCEMENT? DID YOU LEARN ANYTHING ABOUT NARCOTICS AT THE ACADEMY?

A YES, SIR.

Q YOU WERE ALSO TRAINED IN DOMESTIC DRUG INTERDICTION; IS THAT CORRECT?

A YES, SIR.

Q ALSO TRAINED IN DRUG ENFORCEMENT AND INVESTIGATION OF DRUG RELATED VIOLENT CRIME?

A YES, SIR.

Q AND ALSO FOR ILLEGAL TRAFFICKING OF FIREARMS; IS THAT CORRECT?

A YES, SIR.
Q ALSO TRAINED IN NARCO-TERRORISM, IS THAT NARCOTICS TERRORISM?
A YES, SIR.
Q THESE ARE YOUR DIPLOMAS; IS THAT CORRECT?
A YES, SIR.
SOLICITOR BAILEY: NO OBJECTION.
MR. STONE: MOVE THESE INTO EVIDENCE AS WELL, YOUR HONOR.
(DEFENDANT'S EXHIBIT NUMBER 5, SIX CERTIFICATES OF SHIRER, IS RECEIVED INTO EVIDENCE.)
Q IN FACT, THAT NIGHT WHEN YOU MADE A CALL IN, YOU USED YOUR -- I BELIEVE YOU REFERRED TO IT AS YOUR NARCOTICS RADIO; IS THAT RIGHT?
A I CALLED IN ON THE HIGHWAY PATROL RADIO FIRST.
Q AND THEN YOU USED YOUR NARCOTICS RADIO?
A YEAH. IT'S JUST A RADIO BETWEEN ME AND PEOPLE THAT WORK WITH ME.
Q I UNDERSTAND, SIR. YOU DID THAT IMMEDIATELY? YOU DID THAT AS QUICKLY AS YOU COULD; IS THAT CORRECT?
A YES, SIR.
Q AND THAT WAS PRETTY QUICKLY AFTER THE TIME THAT TROOPER LINGARD GOT SHOT?
A YES, SIR.

Q NOW, THE TRAINING THAT YOU RECEIVED IN NARCOTICS WAS THE REASON YOU WERE OUT THERE THAT NIGHT; IS THAT CORRECT?

A WE WERE OUT THERE TO ASSIST THE HIGHWAY PATROL AND THE CITY OF SANTEE.

Q I THINK YOU HAD MENTIONED EARLIER YOU WERE ON A JOINT NARCOTICS PROGRAM, SOMETHING LIKE THAT?

A NARCOTICS AND VIOLENT CRIMES.

Q SO YOU WERE OUT THERE THAT NIGHT NOT MAKING TRAFFIC STOPS, YOU WERE OUT THERE INVESTIGATING THE NARCOTIC TRADE; IS THAT CORRECT?

A YES, SIR, I WAS ASSISTING HIM.

Q AND YOU HAVE GOT A PRETTY GOOD EXPERIENCE IN NARCOTICS, DO YOU NOT?

A A COUPLE YEARS.

Q HOW MANY?

A I HAVE BEEN ON THE TASK FORCE ABOUT A YEAR AND A HALF.

Q BUT YOU HAVE GOT PRETTY EXTENSIVE TRAINING; IS THAT RIGHT?

A YES, SIR.

Q AND YOU KNOW, DO YOU NOT, THAT INTERSTATE 95 IS PRETTY FAMOUS FOR DRUG TRAFFICKING; DO YOU NOT?

A YES, SIR.

Q YOU ARE OUT THERE. Y'ALL ARE MAKING STOPS ON

THE INTERSTATE. OBVIOUSLY THAT IS A CORRIDOR, IS IT NOT, AND A CORRIDOR FOR ILLEGAL DRUGS?

A YES, SIR.

Q AND DO YOU ALSO KNOW, SIR, WHAT TYPE OF DRUGS GO ON INTERSTATE 95?

A YES, SIR.

Q AND IS IT FAIR TO SAY THAT GENERALLY COCAINE TRAVELS FROM NORTH TO SOUTH?

SOLICITOR BAILEY: YOUR HONOR, I DON'T SEE WHERE THIS IS RELEVANT TO ANYTHING.

MR. STONE: I APPRECIATE THE SOLICITOR'S POSITION, YOUR HONOR. IT IS QUITE RELEVANT.

THE COURT: THIS IS CROSS EXAMINATION. YOU ARE PERMITTED SOME LATITUDE.

MR. STONE: THANK YOU, YOUR HONOR. I WILL BE BRIEF.

Q IT'S FAIR TO SAY THAT COCAINE TRAVELS ALONG INTERSTATE 95 SOUTH TO NORTH; IS THAT CORRECT?

A I WOULDN'T KNOW WHICH WAY IT WENT.

Q WOULD IT BE FAIR TO SAY THAT HEROIN INSTEAD TRAVELS FROM NORTH TO SOUTH?

A I DON'T KNOW.

Q YOU DON'T KNOW?

A NO.

Q BUT YOU DO KNOW THAT BOTH OF THOSE SUBSTANCES

TRAVEL A GOOD BIT ON INTERSTATE 95?

A I IMAGINE SO.

Q AGAIN, JUST TO MAKE SURE I UNDERSTOOD YOU, YOU DIDN'T SEE OR HEAR ANYTHING THAT NIGHT AS TO WHO SHOT TROOPER LINGARD; DID YOU?

A I DIDN'T HEAR NO ONE TALKING. I DID HEAR THE GUNSHOTS.

Q THE GUNSHOTS, YES, SIR. THANK YOU.

MR. STONE: NOTHING ELSE, YOUR HONOR.

SOLICITOR BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU MAY COME DOWN.

SOLICITOR BAILEY: MAY HE BE EXCUSED ALSO, YOUR HONOR?

MR. STONE: YES, SIR.

THE COURT: YES, SIR.

SOLICITOR BAILEY: SERGEANT WATFORD.

WILLIAM ANTHONY WATFORD, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: WHEN YOU SIT DOWN, GIVE US YOUR FULL NAME AND SPELL YOUR LAST, PLEASE.

THE WITNESS: MY NAME IS WILLIAM ANTHONY WATFORD, W-A-T-F-O-R-D.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. WATFORD, WHERE ARE YOU FROM?

A I LIVE IN MONCKS CORNER.
Q ARE YOU EMPLOYED?
A YES, SIR.
Q WHAT IS YOUR REGULAR FULL-TIME JOB?
A I'M AN INDUSTRIAL PIPE FITTER.
Q AND ARE YOU ALSO A RESERVE POLICE OFFICER FOR THE TOWN OF HOLLY HILL?
A YES, SIR.
Q AND WHAT IS YOUR RANK WITH THE RESERVE POLICE DEPARTMENT?
A RESERVE SERGEANT.
Q AND TO BE A RESERVE OFFICER, DO YOU HAVE TO BE TRAINED?
A YES, SIR.
Q WHAT TRAINING HAVE YOU HAD AS A RESERVE OFFICER?
A YOU HAVE TO HAVE SEVERAL HOURS ON THE ROAD. YOU HAVE TO -- YOUR CHIEF AND YOUR LIEUTENANT HAVE TO MAKE SURE THAT YOU ARE SAFE ENOUGH WITH YOU ON THE ROAD BY YOURSELF TO PERFORM THE DUTIES SUCH AS AN OFFICER BY HIS SELF AS A REGULAR OFFICER.
Q AND HOW LONG HAVE YOU BEEN INVOLVED IN THE RESERVE PROGRAM?
A THREE YEARS.
Q AND YOU ARE A SERGEANT NOW?
A YES, SIR, RESERVE SERGEANT.

Q HOW MUCH OF YOUR TIME DID YOU SPEND ACTUALLY WORKING WITH THE POLICE?

A MOST OF MY WEEKENDS I WILL PUT IN ANYWHERE FROM TEN, TWELVE, TWENTY-FOUR HOURS SOMETIMES.

Q AND DO YOU HAVE YOUR OWN CAR THAT YOU DRIVE WHEN YOU ARE ON DUTY OR DO YOU TEAM UP WITH SOMEBODY ELSE?

A I USUALLY HAVE ANOTHER CAR THAT I DRIVE BY MYSELF.

Q ALL RIGHT, SIR. I WANT TO CALL YOUR ATTENTION TO NEW YEAR'S EVE LATE THAT NIGHT, 11, 11:30, THAT TIME FRAME BEFORE MIDNIGHT. WERE YOU ON DUTY AS A RESERVE OFFICER?

A YES, SIR.

Q IN THE TOWN OF HOLLY HILL. WHAT KIND OF CAR WERE YOU DRIVING?

A I WAS DRIVING A BLACK AND WHITE MARKED HOLLY HILL POLICE CAR.

Q WERE YOU THE ONLY ONE IN THE CAR?

A YES, SIR.

Q AND DID YOUR CAR HAVE ALL THE REGULAR EQUIPMENT THAT YOU HAVE GOT IN A POLICE CAR, BLUE LIGHTS, SIREN, THAT KIND OF THING?

A YES, SIR.

Q AND WHAT KIND OF RADIO SYSTEM DID YOU HAVE IN YOUR CAR?

A WELL, I HAD A WALKIE-TALKIE ON MY SIDE, ALONG WITH THE CAR RADIO WHICH IS CONNECTED TO THE SHERIFF'S DEPARTMENT AND ALSO TO THE PATROL OFFICERS IN MY TOWN.

Q IS THE RADIO SYSTEM THAT HAVE YOU GOT THE SAME AS THE HIGHWAY PATROL USES?

A NO, SIR.

Q THEY HAVE A DIFFERENT DISPATCHER?

A YES, SIR. THEY ARE ON A DIFFERENT BAND.

Q CAN YOU HEAR THEM AND THEY HEAR YOU?

A NO, SIR.

Q YOU HAVE TO GET SECOND-HAND THROUGH THEM?

A YES, SIR.

Q NOW, AROUND SHORTLY AFTER 11:30 THAT EVENING, DID YOU HEAR ANYTHING OVER YOUR POLICE BAND RADIO?

A YES, SIR.

Q WHAT DID YOU HEAR?

A I HEARD IT COME OVER THE RADIO THAT AN OFFICER WAS DOWN ON THE 97 MILE MARKER.

Q DID YOU HEAR ANY DESCRIPTION ABOUT THE KIND OF CAR THAT WAS BEING SOUGHT?

A YES, SIR, IT WAS A WHITE MUSTANG G.T.

Q ANYTHING ELSE THAT YOU RECALL ABOUT THE CAR?

A DARK-TINTED WINDOWS. THE LETTERS MUSTANG G.T. WERE IN BLACK ON THE BUMPER. THAT WAS THE ONLY OTHER

THING I HEARD.

Q AND WHERE WERE YOU WHEN YOU HEARD THAT OVER THE RADIO THAT THE OFFICER WAS DOWN AND THEY WERE LOOKING FOR THIS WHITE MUSTANG?

A I WAS SITTING OVER ON 310 NEAR THE SCHOOL, SCHOOL PROPERTY.

Q HOW ABOUT TAKE A LOOK AT THAT MAP THAT IS UP THERE AT THE PODIUM. THAT IS STATE'S EXHIBIT NUMBER 7. I WILL GIVE YOU A SECOND UNTIL YOU GET ORIENTED TO THAT MAP THERE. DO YOU SEE HOLLY HILL?

A (WITNESS LEAVES THE WITNESS STAND.) YES, SIR.

Q HOW ABOUT JUST GO AHEAD AND PUT AN X. UP THERE WHERE 310 AND 176 INTERSECT.

A (WITNESS COMPLIES.)

Q GO AHEAD AND HAVE A SEAT.

A (WITNESS RESUMES THE WITNESS STAND.)

Q YOU HEARD THAT ON THE RADIO AND YOU ARE SITTING THERE AT 310 AND 176?

A YES, SIR.

Q WHAT, IF ANYTHING, DID YOU OBSERVE?

A WELL, I WAS LISTENING TO WHAT WAS GOING ON ON THE RADIO. I OBSERVED A COUPLE OF CARS COMING DOWN THE ROAD. WHEN ONE VEHICLE PASSED THE OTHER VEHICLE COMING TOWARD ME AT 310 AND 176, THE WHITE MUSTANG PASSED ME; AND THEN I GOT BEHIND THE WHITE MUSTANG.

Q GET UP THERE AND SHOW THE JURY WHAT DIRECTION THAT WHITE MUSTANG WAS COMING FROM.
A (WITNESS LEAVES THE WITNESS STAND.)
Q YOU NEED TO STAND WAY TO THE SIDE WHERE ALL OF THEM CAN SEE YOU.
A THIS WAY (INDICATING.)
Q COMING FROM 95 TOWARDS YOU?
A YES, SIR, COMING BACK INTO THE TOWN OF HOLLY HILL.
Q OKAY.
A (WITNESS RESUMES THE WITNESS STAND.)
Q WHAT WAS THE APPROXIMATE SPEED THE MUSTANG WAS TRAVELING AS IT APPROACHED 310 WHERE YOU WERE?
A I WAS BEHIND THE MUSTANG AND WE WERE RUNNING ABOUT 60 MILES AN HOUR.
Q LET ME BACK UP A MINUTE. WHEN YOU FIRST SAW THE CAR COMING TOWARDS YOU, THE MUSTANG, WHAT WAS THE APPROXIMATE SPEED BEFORE YOU GOT BEHIND IT?
A I WASN'T RUNNING THE RADAR AND DID NOT HAVE THE RADAR TOWARD FACING HIM.
Q WHAT HAPPENED AS IT PASSED YOU COMING DOWN 176?
A I CUT ON MY BLUE LIGHTS AND GOT BEHIND IT AND TRIED TO EFFECT A CAR STOP.
Q WHEN YOU GOT BEHIND IT, HOW FAST WAS IT RUNNING?
A I WAS RUNNING RIGHT AT 60 MILES AN HOUR BEHIND

IT.

Q DID YOU DO ANYTHING TO TRY TO STOP THE CAR?

A YES, SIR, I DID.

Q WHAT DID YOU DO?

A I PUT MY BLUE LIGHTS ON AND WAS TRYING TO RADIO THE TAG OVER THE AIR TO OUR ORANGEBURG DISPATCH.

Q DO YOU RECALL WHAT STATE TAG IT WAS?

A NO, SIR. I CAN TELL YOU THAT THE TAG WAS BLUE AND YELLOW.

Q DID IT HAVE NUMBERS OR LETTERS ON IT?

A NUMBERS.

Q ANY LETTERS ON IT TO YOUR RECOLLECTION OR JUST NUMBERS?

A NOT THAT I CAN REMEMBER.

Q YOU SAW A BLUE TAG ON THE BACK OF IT? IT WAS NOT A SOUTH CAROLINA TAG?

A NO, SIR.

Q AND AS YOU PROCEEDED ON FROM 310, YOU SAID IT WAS DOING WHAT, 60, 65?

A ABOUT 60, 65.

Q DID THE SPEED CHANGE AT ANY POINT AS YOU PURSUED IT?

A WE SLOWED DOWN ABOUT THE MIDDLE OF TOWN AND THAT'S WHEN WE WERE STARTING TO STOP.

Q DID THE CAR STOP?

A YES, SIR, IT DID STOP.
Q WHERE DID IT STOP?
A IT STOPPED ABOUT THE CENTER OF TOWN AT WAY TIRE.
Q IS WAY TIRE -- IF YOU ARE COMING DOWN 176 COMING TOWARDS HOLLY HILL, IS THAT ON THE RIGHT OR LEFT?
A THAT WOULD BE ON THE RIGHT-HAND SIDE.
Q CAN YOU GO UP THERE AND PUT ANOTHER X. AT THE APPROXIMATE LOCATION OF THE WAY TIRE COMPANY WHERE THE MUSTANG STOPPED.
A (WITNESS LEAVES THE WITNESS STAND.) GIVE ME JUST A MINUTE.
Q YES, SIR.
A (WITNESS COMPLIES.)
Q THANK YOU.
A (WITNESS RESUMES THE WITNESS STAND.)
Q THE CAR STOPPED. WHAT DID YOU DO?
A I OPENED THE DOOR --
Q WAIT A MINUTE. WHAT DID YOU DO? DID YOU STOP YOUR CAR?
A YES, SIR, I STOPPED MY CAR.
Q WHERE DID YOU STOP YOUR CAR IN RELATION TO WHERE THE MUSTANG STOPPED?
A I WAS HALF IN THE DRIVEWAY AND HALF IN THE STREET.
Q AND AS FAR AS THE ALIGNMENT OF THE CARS?

A HE WAS SITTING LIKE THIS HERE (INDICATING) AND I WAS LIKE THIS (INDICATING.)

Q WERE Y'ALL BOTH PARALLEL TO THE ROAD?

A ABOUT LIKE THAT (INDICATING.)

Q YOU PULLED IN BEHIND HIM?

A YES, SIR.

Q ABOUT HOW FAR BEHIND HIM DID YOU STOP?

A ABOUT HERE TO THAT COLUMN THERE BEHIND YOU.

Q AT THE TIME YOU STOPPED THE MUSTANG, WERE ANY OTHER OFFICERS FROM HOLLY HILL INVOLVED AT THE SCENE?

A YES, SIR, OFFICER MYERS, SERGEANT MYERS. HE WAS COMING UP AND STOPPED AND GOT OUT OF HIS VEHICLE.

Q BEFORE YOU TALK ABOUT HIM GETTING OUT, WHERE DID HE STOP?

A HE STOPPED SIDEWAYS WITH THE DRIVER'S WINDOW.

Q WHAT I WANT YOU TO DO HERE -- LET ME GET A PIECE OF PAPER OUT HERE. I WILL HOLD THIS UP HERE. IF YOU COULD COME DOWN.

A (WITNESS LEAVES THE WITNESS STAND.)

Q SHOW THE JURY -- FIRST OF ALL, JUST DRAW THE MUSTANG.

A AT WHAT LOCATION WHERE WE STOPPED?

Q I WANT YOU TO GET THEM TO SEE HOW Y'ALL WERE LINED UP TOGETHER.

A (WITNESS COMPLIES.)

Q PUT AN M. ON THERE FOR MUSTANG.
A (WITNESS COMPLIES.)
Q HOW WAS YOUR CAR?
A (WITNESS DRAWS.)
Q PUT A W. FOR WATFORD.
A (WITNESS COMPLIES.)
Q WHERE WAS SERGEANT MYERS' CAR IN RELATION TO THOSE?
A (WITNESS DRAWS.)
Q PUT AN M.Y. UP THERE.
A (WITNESS COMPLIES.)
Q WHAT WAS THE FRONT OF THE MUSTANG DOING?
A IF I MAY, CAME I MAKE A COUPLE OF SCRIBBLES. THERE WAS NOTHING IN THE DIRECT WAY BUT YOU WOULD HAVE TO COME OUT AND GO ACROSS THE TRACK AND HEAD THROUGH TOWN.
Q BUT NOTHING WAS BLOCKING HIM IN THE FRONT?
A NO, SIR.
Q GO AHEAD AND HAVE A SEAT.
A (WITNESS RESUMES THE WITNESS STAND.)
Q SO WE HAVE GOT THE MUSTANG STOPPED WITH THE TWO CARS IN THE CONFIGURATION YOU JUST INDICATED?
A YES, SIR.
Q WHAT DID YOU DO WHEN THE CAR WAS STOPPED?
A AFTER WE WERE STOPPED, I OPENED MY DOOR. I

BEGAN GIVING THE COMMAND TO GET OUT OF THE CAR.

Q WHERE WERE YOU STANDING WHEN YOU GAVE THOSE COMMANDS?

A IN THE APEX OF MY CAR.

Q WHAT DO YOU MEAN BY THAT?

A YOU OPEN THE DRIVER'S DOOR, YOU STAND OUT WITH THE DOOR AND THE CAR RIGHT IN THE JAMB OF THAT. THAT GIVES YOU THE PROTECTION OF THE VEHICLE IF YOU NEED IT.

Q DID YOU HAVE A WEAPON WITH YOU?

A YES, SIR, I DID.

Q DID YOU HAVE YOUR GUN OUT?

A YES, SIR, I DID.

Q WHAT KIND OF WEAPON DID YOU HAVE?

A IT WAS A SMITH AND WESSON NINE MILLIMETER.

Q COULD YOU SEE INTO THE MUSTANG?

A NO, SIR, I COULDN'T.

Q WHY NOT?

A BECAUSE IT HAD DARK TINTED WINDOWS.

Q WHILE YOU WERE DOING THAT, WHAT, IF ANYTHING, WAS SERGEANT MYERS DOING?

A HE WAS ON THE OTHER SIDE GIVING COMMANDS TO THE MAN BECAUSE AT THIS TIME THE WINDOW WAS COMING DOWN, THE DRIVER'S WINDOW WAS COMING DOWN. HE WAS GIVING COMMANDS AND I WAS GIVING COMMANDS AT THE SAME TIME.

Q WHAT COMMANDS WERE YOU GIVING?
A "GET OUT OF THE CAR."
Q AND WHAT COMMANDS, IF ANY, DID YOU HEAR SERGEANT MYERS GIVING?
A THE ONLY THING I DID HEAR HIM SAY IS THAT HE HAD A GUN.
Q YOU HEARD SERGEANT MYERS SAY, "HE'S GOT A GUN"?
A YES, SIR.
Q AND WHAT IS THE NEXT THING THAT YOU RECALL HAPPENING AS FAR AS THAT CAR IS CONCERNED?
A THE WOMAN COMPLIED AND GOT OUT OF THE CAR ON THE PASSENGER SIDE.
Q THIS IS THE MUSTANG, RIGHT?
A YES, SIR.
Q HAS IT GOT DOORS IN THE BACK OR JUST THE FRONT?
A IT'S A TWO-DOOR VEHICLE.
Q WHAT DOOR DID SHE GET OUT OF?
A THE PASSENGER'S DOOR.
Q WHEN SHE GOT OUT, DID YOU HEAR HER SAY -- WHAT DID SHE DO?
A SHE GOT OUT AND IT WAS KIND OF FUNNY BECAUSE SHE HAD THE BABY IN HER ARMS. I HOLLERED AT HER AGAIN TO GET OUT OF THE CAR, GET AWAY FROM THE CAR. SHE DIDN'T WANT TO GET AWAY FROM THE CAR AT FIRST. THEN I WAS WATCHING HER, GIVING THE COMMANDS AT THE SAME

TIME, WHEN I SEEN A LITTLE CHILD GET OUT OF THE CAR ALSO.

Q WHERE DID THAT CHILD COME FROM?

A FROM THE BACK SEAT AREA.

Q NOW, WHILE YOU WERE LOOKING AT THE WOMAN AND THE BABY AND THE CHILD, WHAT, IF ANYTHING, WAS GOING ON WITH SERGEANT MYERS AND THE DRIVER OF THE CAR?

A ONCE THEY GOT OUT OF THE VEHICLE, THEN OFFICER MYERS WAS GIVING COMMANDS AT THE SAME TIME. ONCE THE CHILD CLEARED THE CAR, THE CAR HAD TAKEN OFF.

Q WHAT WAS THE DEMEANOR OF THIS WOMAN WHEN SHE GOT OUT OF THE CAR? HOW WAS SHE ACTING?

A SHE WAS SCREAMING AND SAYING, "OH, MY GOD," AND REAL -- I GUESS FRANTIC WOULD BE THE WORD, REAL, YOU KNOW, UPSET.

Q SHE HAD A BABY IN HER HANDS?

A YES, SIR.

Q IN HER ARMS?

A YES, SIR.

Q WHAT ABOUT THE LITTLE GIRL? WHAT, IF ANYTHING, WAS SHE DOING?

A THE MAIN THING I WAS TRYING TO OBSERVE WAS THE WOMAN. THE CHILD WAS WITH THE WOMAN BUT I WANTED TO MAKE SURE -- I KNEW THE CHILD COULDN'T NECESSARILY HURT ME. I WAS MORE WORRIED ABOUT THE WOMAN AT THE

TIME.

Q OKAY. WHEN THE MUSTANG PULLED OUT, WHAT, IF ANYTHING, DID YOU DO? DID YOU FOLLOW THE MUSTANG?

A NO, SIR, I DIDN'T.

Q WHY NOT?

A BECAUSE OF THE LADY AND THE CHILDREN. I KNEW IF ANYTHING WITH THIS SITUATION WE HAD SOMEBODY THAT COULD POSSIBLY ANSWER QUESTIONS.

Q WHAT HAPPENED AS FAR AS SERGEANT MYERS GOES AND THE MUSTANG? WHAT HAPPENED THERE?

A THEY HAD TAKEN OFF THROUGH TOWN GOING TOWARD CHARLESTON.

Q WHEN YOU SAY THEY HAD, YOU HAVE ALREADY TESTIFIED THE MUSTANG TOOK OFF --

A RIGHT, THE MUSTANG AND SERGEANT MYERS.

Q SERGEANT MYERS WENT OFF AFTER IT?

A YES, SIR.

Q WHAT DID YOU DO WITH THE WOMAN AND CHILDREN THEN?

A I PUT THEM IN THE BACK OF MY PATROL CAR.

Q DID YOU LATER LEARN THAT THAT WOMAN WAS GLORYVEE BLACKWELL?

A LATER I HEARD THAT IT WAS.

Q WHERE DID YOU TAKE MRS. BLACKWELL AND THE KIDS?

A TO THE STATION.

Q THAT'S THE HOLLY HILL POLICE STATION?
A YES, SIR.
Q WHAT DID YOU DO THERE AT THE POLICE STATION?
A ONCE I GOT THERE, I GOT OUT OF MY VEHICLE AND LEFT THEM IN THE CAR. I DIDN'T WANT TO OPEN THE DOORS IN ANY WAY BECAUSE I DIDN'T KNOW IF SHE MAY DO ANYTHING TO ME OR HARM ME. SO THE BEST SITUATION WAS TO LEAVE HER IN THE VEHICLE.
Q DID SHE THREATEN YOU OR DO ANYTHING?
A OH, NO, SIR. NO, SIR. SHE SEEMED TOO UPSET FOR THAT.
Q DID YOU TURN HER OVER TO SOME OTHER LAW ENFORCEMENT OFFICER?
A YES, SIR, I DID.
Q WHO WAS THAT?
A THAT WAS CORPORAL MELANIE ANDERSON.
Q SHE IS WITH THE HIGHWAY PATROL?
A YES, STATE TROOPERS.
Q MR. WATFORD, ANSWER ANY QUESTIONS THE DEFENSE MAY HAVE FOR YOU, PLEASE.

CROSS EXAMINATION

BY MR. STONE:

Q HELLO, SERGEANT.
A HOW ARE YOU DOING?
Q WHEN CORPORAL ANDERSON GOT THERE, DO YOU KNOW

HOW LONG AFTER YOU ARRIVED AT THE STATION THAT CORPORAL ANDERSON GOT THERE?

A I DIDN'T TIME IT.

Q I UNDERSTAND. WAS SHE THERE WHEN YOU GOT TO THE STATION?

A NO, SIR.

Q FIVE, TEN, FIFTEEN, TWENTY, THIRTY MINUTES LATER?

A I'D SAY MAYBE TEN OR FIFTEEN MINUTES.

Q IN THOSE TEN MINUTES WHEN CORPORAL ANDERSON GOT THERE, DID SHE GO STRAIGHT TO YOUR POLICE CAR OR DID SHE GO INTO THE STATION?

A SHE CAME TO THE POLICE CAR.

Q AND WERE YOU BY YOURSELF THAT NIGHT?

A YES, I WAS BY MYSELF IN MY VEHICLE; BUT AS FAR AS ON DUTY, OFFICER MYERS WAS WORKING AND OFFICER CORLEY HUBERT WAS WORKING.

Q BUT IN YOUR POLICE CAR WHEN YOU WERE AT THE SCENE, IT WAS JUST YOU?

A AT THE SCENE IT WAS MYSELF AND SERGEANT MYERS.

Q BUT HE HAD HIS OWN CAR?

A CORRECT.

Q SO IN YOUR CAR IT WAS YOU, GLORYVEE PEREZ BLACKWELL AND HER CHILD, HER EIGHT-YEAR-OLD CHILD, AS WELL AS HER BABY; IS THAT CORRECT?

A AND ANOTHER SUBJECT. THERE WERE FOUR PEOPLE IN THE VEHICLE.
Q IN YOUR CAR?
A NO.
Q LET ME REPHRASE THAT BECAUSE I DON'T WANT TO CONFUSE YOU. IN YOUR POLICE CAR --
A RIGHT.
Q -- YOU PULLED UP TO THE SCENE. YOU TOOK MRS. PEREZ, HER CHILD AND HER EIGHT-YEAR-OLD CHILD AND PUT THEM IN THE BACK OF YOUR PATROL CAR; IS THAT RIGHT?
A YES, SIR.
Q THEN YOU DROVE THAT PATROL CAR TO YOUR STATION; IS THAT CORRECT?
A CORRECT.
Q AND NOBODY ELSE WAS IN THE CAR WITH YOU AT THAT TIME?
A NO, SIR.
Q YOU GOT OUT OF THE CAR AT THE STATION AND BY YOUR TESTIMONY THERE WAS SOME AT LEAST TEN MINUTES BEFORE CORPORAL ANDERSON GOT THERE; IS THAT CORRECT?
A THAT'S CORRECT.
Q AND DURING THOSE TEN MINUTES, GLORYVEE PEREZ BLACKWELL WAS ALONE WITH HER CHILD IN THE BACK OF YOUR PATROL CAR; IS THAT CORRECT?

A YES, SIR. I WILL SAY TO YOUR QUESTION --
Q WHICH QUESTION?
A THIS LAST QUESTION.
Q YES.
A LIEUTENANT KINSEY HAD CAME UP TO ASSIST ME FROM EUTAWVILLE. HE WAS THERE PRESENT WITH ME AT THE SAME TIME BEFORE CORPORAL ANDERSON GOT THERE.
Q INSIDE THE CAR OR OUTSIDE THE CAR?
A INSIDE THE CAR.
Q WHEN DID HE GET THERE?
A I WOULD SAY MAYBE SIX, SEVEN MINUTES AFTER.
Q AFTER YOU ARRIVED AT THE STATION?
A AFTER I ARRIVED AT THE STATION.
Q SO FOR SIX OR SEVEN MINUTES SHE IS IN THE BACK OF YOUR PATROL CAR WITH HER EIGHT-YEAR-OLD CHILD?
A YES, SIR.
Q BY HERSELF, NO POLICE OFFICER OR ANYBODY ELSE?
A I WAS AT THE CAR.
Q I UNDERSTAND. NOW, LET ME SHOW YOU WHAT HAS BEEN MARKED AS DEFENDANT'S EXHIBIT 2. I ASK YOU TO COME DOWN FROM THE STAND.
A (WITNESS LEAVES THE WITNESS STAND.)
Q WHEN YOU FIRST NOTICED THE MUSTANG -- I WILL GIVE YOU A LITTLE BIT OF TIME TO ORIENT YOURSELF. I KNOW THIS MAP IS A LITTLE BIT MORE FOCUSED. THIS IS

95 HERE (INDICATING), 15 (INDICATING), 176 (INDICATING.) HAVE YOU GOT IT?

A YES, SIR.

Q WHERE WERE YOU ON THIS MAP? WHERE WERE YOU WHEN YOU FIRST NOTICED THE MUSTANG?

A RIGHT HERE (INDICATING.)

Q RIGHT THERE?

A AT THE INTERSECTION OF 176 AND HIGHWAY 310.

Q AND YOU ARE FAMILIAR WITH THIS AREA OBVIOUSLY; IS THAT CORRECT?

A YES, SIR, AS FAR AS MY TOWN.

Q YES, SIR, I UNDERSTAND. YOU ARE FAMILIAR WITH EXIT 97, IS THAT CORRECT, ON INTERSTATE 95?

A I HAVE TRAVELED IT A COUPLE OF TIMES.

Q IN THE COUPLE OF TIMES YOU HAVE TRAVELED IT, HAVE YOU EVER TRAVELED FROM 95 TO 176 AND DOWN INTO HOLLY HILL?

A YES, SIR.

Q IS IT FAIR TO SAY THAT IS ABOUT 14 MILES OF DISTANCE HERE BETWEEN MILE MARKER 97 OR EXIT 97 AND WHERE YOU SPOTTED THE MUSTANG ON 176?

A I REALLY DON'T KNOW. I WOULD BE GUESSING IF I GAVE YOU AN ANSWER.

Q DOES THAT SOUND CLOSE?

A I WOULD BE GUESSING IF I GAVE YOU AN ANSWER.

Q THAT'S FAIR. THANK YOU.

A (WITNESS RESUMES THE WITNESS STAND.)

Q TO YOUR KNOWLEDGE YOU ARE THE FIRST PERSON WHO HAD CONTACT WITH THE MUSTANG AFTER THE SHOOTING?

A AS FAR AS I KNOW, SIR.

MR. STONE: EXCUSE ME JUST A MOMENT, YOUR HONOR.

THE COURT: YES, SIR.

(PAUSE.)

MR. STONE: NO QUESTIONS. THANK YOU.

SOLICITOR BAILEY: NO REDIRECT, YOUR HONOR.

THE COURT: YOU MAY COME DOWN.

SOLICITOR BAILEY: MAY HE BE EXCUSED, YOUR HONOR?

THE COURT: YES, SIR. IT'S MID-AFTERNOON. I WILL LET THE JURY TAKE A SHORT BREAK AND STRETCH FOR A FEW MINUTES. I WILL LET YOU GO TO THE JURY ROOM AND I WILL BE CALLING YOU BACK VERY SHORTLY.

(THE JURY RETIRES TO THE JURY ROOM.)

THE COURT: WE ARE IN RECESS.

(WHEREUPON THERE WAS A RECESS.)

THE COURT: ARE WE READY TO PROCEED, GENTLEMEN?

MR. SIMS: YES, SIR.

THE COURT: BRING THE DEFENDANT IN, PLEASE.

MR. SIMS: HE'S COMING IN.

SOLICITOR BAILEY: JUDGE, CAN WE APPROACH VERY BRIEFLY?

THE COURT: YES, SIR.

COURT REPORTER: DO YOU NEED THIS ON THE RECORD?

SOLICITOR BAILEY: NO.

(WHEREUPON THERE WAS A BENCH CONFERENCE OFF THE RECORD.)

THE COURT: HOLD THE JURY A MINUTE. CALL YOUR WITNESS, PLEASE.

SOLICITOR BAILEY: SERGEANT MYERS.

THE COURT: THIS WILL BE AN IN CAMERA PROCEEDING OUTSIDE THE PRESENCE OF THE JURY.

ANDREW D. MYERS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: GIVE US YOUR FULL NAME AND SPELL YOUR LAST.

THE WITNESS: MY NAME IS ANDREW D. MYERS, JR. THE LAST NAME IS M-Y-E-R-S.

SOLICITOR BAILEY: JUDGE, IF YOU DON'T MIND AND THE DEFENSE DOESN'T MIND, JUST TO EXPEDITE THIS, I WILL LEAD HIM A LITTLE BIT TO GET DOWN TO WHAT WE ARE DOING HERE.

THE COURT: YES, SIR. GO AHEAD.

(THE FOLLOWING TESTIMONY WAS REPORTED IN CAMERA.)

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q SERGEANT MYERS, YOU ARE A SERGEANT, FULL-TIME SERGEANT, WITH THE TOWN OF HOLLY HILL POLICE DEPARTMENT; IS THAT CORRECT?

A YES, SIR, I AM.

Q I WANT TO CALL YOUR ATTENTION TO NEW YEAR'S EVE, THIS PAST NEW YEAR'S EVE. WERE YOU ON DUTY THAT NIGHT?

A YES, SIR, I WAS.

Q SHORTLY BEFORE MIDNIGHT WERE YOU IN A MARKED POLICE CAR IN THE TOWN OF HOLLY HILL?

A YES, SIR, I WAS.

Q WOULD YOU STATE WHETHER OR NOT YOU HEARD ON YOUR POLICE BAND RADIO ABOUT AN OFFICER DOWN ON HIGHWAY 95 NEAR SANTEE?

A YES, SIR.

Q DID YOU GET A DESCRIPTION OF THE CAR THAT WAS BEING SOUGHT IN CONNECTION WITH THAT INCIDENT?

A IT WAS A WHITE MUSTANG.

Q WHAT, IF ANYTHING, DID YOU DO? WHERE DID YOU POSITION YOURSELF WHEN YOU HEARD THE WHITE MUSTANG LEFT THE SCENE OF THIS SHOOTING OR LEFT THE SCENE

WHERE THE OFFICER WAS DOWN?
A I WENT FROM WHERE I WAS AT IN TOWN TOWARDS THE INTERSECTION WHERE THIS CAR POSSIBLY COULD BE COMING INTO. I NEVER REACHED THAT DESTINATION. I MET THE VEHICLE ABOUT HALFWAY GOING OUT OF TOWN.
Q YOU SAID YOU MET THE VEHICLE. YOU ARE REFERRING TO THE MUSTANG?
A YES, SIR, THE MUSTANG.
Q WAS THERE ANOTHER OFFICER IN PURSUIT WHEN YOU SAW THE CAR?
A YES, SIR.
Q WAS THAT OFFICER WATFORD?
A OFFICER WATFORD.
Q DID THE MUSTANG EVENTUALLY STOP?
A YES, SIR, PROBABLY MAYBE A HALF MILE FROM WHERE I FIRST SAW HIM AT.
Q DID YOU APPROACH THE MUSTANG IN YOUR CAR AFTER IT STOPPED?
A YES, SIR, I STOPPED WITH THAT CAR.
Q DID THE OTHER OFFICER ALSO STOP?
A YES, SIR.
Q DID YOU GET OUT OF YOUR CAR?
A YES, SIR, I DID.
Q COULD YOU SEE INTO THE CAR THROUGH THE WINDOWS?
A THE WINDOW ON THE DRIVER'S SIDE WAS DOWN. ALL I

COULD SEE WAS THE DRIVER.
Q HOW CLOSE DID YOU GET TO THE DRIVER?
A PROBABLY, 20, 25 FEET.
Q I SEE YOU ARE WEARING GLASSES?
A YES, SIR.
Q WERE YOU WEARING GLASSES THAT EVENING?
A YES, SIR.
Q HOW IS YOUR VISION WITH YOUR GLASSES?
A TWENTY-TWENTY.
Q TWENTY-TWENTY, CORRECT?
A YES, SIR.
Q CAN YOU DESCRIBE GENERALLY -- I REALIZE THIS IS ROUGHLY MIDNIGHT -- THE LIGHTING AROUND THIS TIRE STORE WHERE Y'ALL HAD THE MUSTANG PULLED.
A IT WAS STREET LIGHTS AND THE LIGHTS FROM THE BUSINESS. YOU COULD SEE FAIRLY WELL. IT WASN'T DARK BUT IT WASN'T LIKE DAYLIGHT.
Q ALL RIGHT. YOU WERE ROUGHLY 20 FEET AWAY?
A YES, SIR.
Q DID YOU GET OUT OF YOUR CAR?
A YES, SIR.
Q WERE YOU ARMED?
A YES, SIR.
Q GO AHEAD AND TELL THE COURT WHAT YOU OBSERVED IN THE MUSTANG.

A I OBSERVED A MALE SUBJECT, LOOKED TO BE OF SPANISH ORIGIN, DARK HAIR, DRIVING THE VEHICLE, THE MUSTANG, WHITE MUSTANG. AS I STOPPED AND GOT OUT OF THE CAR, HE INDICATED HIS SELF THAT HE WOULD KILL HIS SELF. HE WAS HOLDING A PISTOL IN HIS HAND AGAINST THE LEFT SIDE OF HIS HEAD.

Q IN WHAT DIRECTION WAS HIS HEAD FACING? WHAT DIRECTION WAS HIS FACE LOOKING AT?

A TOWARDS ME WHICH WOULD HAVE BEEN OUT OF THE DRIVER'S SIDE WINDOW.

Q AND WHERE WERE YOU FOCUSED? WHAT WERE YOU LOOKING AT?

A THE PISTOL.

Q THE PISTOL WAS WHERE?

A IN HIS HAND POINTING TO THE LEFT SIDE OF HIS HEAD.

Q GO AHEAD AND INDICATE WITH YOUR HAND.

A IT WAS POINTED UP TOWARD HIS HEAD (INDICATING.)

Q AND APPROXIMATELY HOW LONG DID YOU HAVE THIS PERSON IN VIEW FROM APPROXIMATELY 20 FEET?

A IT WAS JUST A MATTER OF A FEW SECONDS, PROBABLY NO MORE THAN A MINUTE ANYWAY.

Q AFTER THAT WHAT OCCURRED? WHAT IS THE NEXT THING THAT HAPPENED?

A THE CAR SPED OFF AND HEADED EAST TOWARD

CHARLESTON, AND I GOT BACK IN MY PATROL CAR AND PURSUED HIM.

Q AND HOW FAR DID YOU GO IN YOUR PURSUIT?

A ABOUT 40 MILES.

Q DID YOU END UP GOING TO SUMMERVILLE?

A YES, SIR.

Q AND WHAT WAS GOING ON WHEN YOU GOT TO SUMMERVILLE AT THE PARKING LOT?

A I FOUND THE MUSTANG HAD HAD AN ACCIDENT. I DON'T KNOW WHAT IT HIT BUT IT HIT SOMETHING IN THE PARKING LOT APPARENTLY. THE SUSPECT OF THE SAME DESCRIPTION WAS LAYING ON THE GROUND. I THINK HE WAS ON THE STRETCHER I BELIEVE.

Q HOW CLOSE DID YOU GET TO HIM AT THE K-MART PARKING LOT?

A PROBABLY NO MORE THAN TEN OR FIFTEEN FEET BECAUSE I DIDN'T GO UP TO HIM. EVERYBODY WAS STANDING BACK AWAY FROM THIS PERSON.

Q WAS ANYTHING COVERING HIS FACE OR OBSTRUCTING YOUR VIEW OF HIS FACE?

A NO, SIR.

Q WERE YOU EVER SHOWN ANY LINEUPS OR PHOTO DISPLAYS OR ANYTHING OF THAT NATURE?

A NO, SIR.

Q HAVE YOU EVER BEEN ASKED TO GO TO A BOND HEARING

OR PRELIMINARY HEARING OR ANYTHING WHERE YOU WOULD HAVE ANY KIND OF A CONFRONTATION, A SHOW-UP WITH THE DEFENDANT IN THIS CASE?

A NO, SIR.

Q DO YOU RECOGNIZE THE PERSON THAT YOU SAW IN THE PARKING LOT, THE K-MART PARKING LOT?

A THE PERSON I SAW IN THE PARKING LOT IS THE GENTLEMAN SITTING AT THE DEFENDANT'S TABLE.

Q FOR THE RECORD SINCE THERE ARE THREE GENTLEMEN THERE, CAN YOU INDICATE --

A IN THE WHITE SHIRT AND BLUE TIE.

Q IS THAT THE SAME PERSON YOU SAW IN HOLLY HILL WITH THE GUN TO HIS HEAD?

A YES, SIR.

Q ARE YOU POSITIVE OF THAT IDENTIFICATION?

A YES, SIR.

Q ANSWER ANY QUESTIONS THEY MAY HAVE.

CROSS EXAMINATION

BY BY MR. STONE:

Q HOW FAR DISTANCE WISE -- PUT ME BETWEEN YOU AND WHEN YOU SAW THIS INDIVIDUAL IN THE CAR WITH THE GUN ON HIS HEAD.

A PROBABLY LIKE THAT POST BACK THERE WHERE THAT GENTLEMAN IS SITTING WITH THE STRIPED SHIRT.

Q BACK HERE (INDICATING)?

A PROBABLY THAT DISTANCE.
Q THIS DISTANCE HERE. THIS IS BETWEEN ME AND YOU WHERE HE WAS?
A SOMEWHERE IN THAT NEIGHBORHOOD, YES, SIR. I WILL NOT SAY EXACTLY WHERE IT WAS BUT IT WAS PROBABLY 20, 25 FOOT.
Q TWENTY OR 25 FEET?
A YES, SIR.
Q AND HOW LONG DID THIS CONFRONTATION LAST? HOW LONG DID YOU SEE HIM?
A PROBABLY NO MORE THAN MAYBE A MINUTE.
Q AND YOU ARRIVED AT THE SAME TIME HE STOPPED THE CAR?
A YES, SIR.
Q THEN YOU SAW HIM AGAIN AT THE K-MART SHOPPING CENTER?
A YES, SIR.
Q HOW LONG DID THAT TAKE?
A I WAS THERE JUST A FEW MINUTES AND THE MEDICAL PEOPLE LOADED THE GENTLEMAN UP, AND THAT WAS THE LAST TIME I SEEN HIM.
MR. STONE: NOTHING ELSE. THANK YOU, YOUR HONOR.
THE COURT: LET THE RECORD REFLECT THAT I HAVE HELD AN IN CAMERA HEARING RELATIVE TO THE

IDENTIFICATION ISSUE HERE. I FIND BEYOND ANY REASONABLE DOUBT THAT THIS TESTIMONY PROFFERED IS ADMISSIBLE FOR THE JURY'S CONSIDERATION UPON A PROPER CHARGE TO THE JURY.

I FIND NO SUBSTANTIAL LIKELIHOOD OF MISIDENTIFICATION. THERE IS NO EVIDENCE WHATSOEVER THAT HIS IDENTIFICATION WAS TAINTED IN ANY WAY BY PHOTOS OR CONTACTS. SO I CONCLUDE IT'S PROPERLY ADMISSIBLE.

MR. STONE: THANK YOU.

THE COURT: ARE WE NOW READY FOR THE JURY?

MR. STONE: YOUR HONOR, JUST FOR THE RECORD THAT WAS ON MY MOTION UP AT THE BENCH. I KNOW WE DIDN'T MAKE A RECORD OF THAT, BUT I ASKED YOU TO HAVE THAT HEARING AS TO IDENTIFICATION.

THE COURT: YES, SIR. THE RECORD WILL ACKNOWLEDGE THAT. I RESPECTFULLY OVERRULE IT. LET'S NOW RESWEAR THIS WITNESS IN THE PRESENCE OF THE JURY. BRING THE JURY.

(THE JURY RETURNS TO THE COURTROOM.)

THE COURT: THE JURY IS PRESENT. SWEAR YOUR NEXT WITNESS.

SOLICITOR BAILEY: CALL SERGEANT ANDREW MYERS.

THE COURT: SERGEANT MYERS.

ANDREW D. MYERS, JR., BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: IF YOU WOULD GIVE US YOUR NAME AND SPELL YOUR LAST, PLEASE.

THE WITNESS: MY NAME IS ANDREW D. MYERS, JR. THE LAST NAME IS SPELLED M-Y-E-R-S.

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. MYERS, YOU OBVIOUSLY ARE A LAW ENFORCEMENT OFFICER. WOULD YOU TELL THE JURY WHAT AGENCY YOU WORK FOR AND WHAT YOUR PRESENT RANK IS.

A I WORK FOR THE HOLLY HILL POLICE DEPARTMENT IN HOLLY HILL, SOUTH CAROLINA AND I AM A SERGEANT.

Q AND HOW LONG HAVE YOU BEEN IN LAW ENFORCEMENT?

A ABOUT 22 YEARS.

Q HOW MUCH OF THAT TIME WITH THE CITY OF HOLLY HILL?

A MOST ALL OF IT.

Q AND, OF COURSE, YOU HAVE BEEN TO THE ACADEMY AND ARE CERTIFIED; IS THAT CORRECT?

A YES, SIR.

Q I WANT TO CALL YOUR ATTENTION TO NEW YEAR'S EVE, THE PAST NEW YEAR'S EVE, DECEMBER 31, 1997, SHORTLY BEFORE MIDNIGHT AND ASK WHETHER OR NOT YOU WERE ON DUTY THAT NIGHT IN HOLLY HILL.

A YES, SIR, I WAS.
Q WERE YOU IN A MARKED POLICE CRUISER?
A YES, SIR.
Q WERE YOU BY YOURSELF IN THAT CAR?
A YES, SIR.
Q AND IS YOUR CAR A STANDARD EQUIPPED CAR WITH POLICE RADIO, BLUE LIGHT AND SIREN AND SO FORTH?
A YES, SIR.
Q DID YOU HEAR SOMETHING OVER YOUR POLICE BAND RADIO THAT EVENING?
A YES, SIR, I DID.
Q TELL THE JURY TO THE BEST OF YOUR RECOLLECTION WHAT YOU HEARD AND WHERE YOU WERE WHEN YOU HEARD IT.
A I WAS ASSISTING ANOTHER OFFICER INVESTIGATE AN ACCIDENT, AND THE CALL CAME OVER THE RADIO THAT AN OFFICER HAD BEEN HURT AT SANTEE ON 95, AND POSSIBLY A WHITE MUSTANG WAS BEING INVOLVED AND IT WAS HEADING SOUTH ON 95.
Q WHERE DID YOU GO WHEN YOU HEARD THAT?
A I WENT UP TO THE INTERSECTION, WHICH WOULD BE IN AN EASTERLY DIRECTION GOING TOWARDS 95 TO THE END OF TOWN. OUR MAIN STREET IS HIGHWAY 176 WHICH GOES TO THE INTERSTATE, JUST IN CASE THE VEHICLE WAS TO GET OFF THE INTERSTATE AND COME TOWARDS US.
Q WERE THERE OTHER OFFICERS WORKING THAT NIGHT IN

OTHER CARS IN HOLLY HILL?
A YES, SIR.
Q WHO ELSE WAS ON DUTY?
A SERGEANT WATFORD AND OFFICER CORLEY HUBERT.
Q DID YOU OBSERVE ANYTHING FROM THAT LOCATION THAT YOU HAVE DESCRIBED?
A YES, SIR. I WAS GOING TO MEET WITH SERGEANT WATFORD AT THE INTERSECTION. I MET HIM COMING BEHIND A WHITE MUSTANG.
Q WHEN YOU OBSERVED THE MUSTANG AND SERGEANT WATFORD HEADING IN YOUR DIRECTION, WHAT DID YOU DO?
A I TURNED AROUND AND PROCEEDED WITH THEM. WE WENT APPROXIMATELY A HALF MILE, AND THE MUSTANG PULLED OFF THE ROAD TO THE RIGHT IN A PARKING AREA.
Q IS THERE ANY LANDMARK OR SOMETHING IN HOLLY HILL WHERE YOU PULLED OVER?
A IT'S A TIRE STORE RIGHT ACROSS THE STREET FROM HARDEE'S.
Q WHEN YOU STOPPED YOUR CAR, WHAT ANGLE WAS YOUR CAR AT COMPARED TO THE MUSTANG AND SERGEANT WATFORD'S POLICE CRUISER?
A I STAYED ON THE MAIN ROAD, POINTED THE FRONT END OF MY CAR TOWARDS THE DRIVER'S DOOR OF THE MUSTANG.
Q HOW WERE YOU ARMED THAT NIGHT?
A I WAS ARMED WITH A DUTY WEAPON AND A DUTY

SHOTGUN.

Q AND DID YOU GET OUT OF YOUR VEHICLE?

A YES, SIR, I DID.

Q AND ABOUT HOW CLOSE DID YOU GET TO THE MUSTANG, SERGEANT MYERS?

A PROBABLY 20, 25 FEET.

Q CAN YOU DESCRIBE TO THE JURY THE LIGHTING, REALIZING THIS IS ROUGHLY GETTING CLOSE TO MIDNIGHT, AS FAR AS STREET LIGHTS, STORE LIGHTS, THAT KIND OF STUFF. WHAT WAS THE LIGHTING LIKE?

A EACH ONE OF THE STORES HAD LIGHTS ON THE OUTSIDE PLUS THE STREET LIGHTS IN VARIOUS CORNERS. IT WAS LIT, NOT LIKE DAYLIGHT, BUT IT WAS LIT UP PRETTY GOOD.

Q DID YOU HAVE ANY TROUBLE SEEING YOUR IMMEDIATE SURROUNDINGS?

A NO, SIR.

Q YOU ARE OBVIOUSLY WEARING GLASSES. WHAT IS YOUR CORRECTED VISION?

A TWENTY-TWENTY.

Q WERE YOU WEARING GLASSES THAT NIGHT?

A YES, SIR.

Q YOU SAY YOU GOT OUT OF THE CAR; IS THAT CORRECT?

A YES, SIR.

Q DID YOU TAKE THE SHOTGUN WITH YOU?

A YES, SIR.
Q TELL THE JURY WHETHER OR NOT THE DRIVER'S SIDE WINDOW ON THE MUSTANG WAS UP OR DOWN.
A DOWN.
Q AND WHAT DIRECTION WERE YOU LOOKING AT WHEN YOU GOT OUT OF YOUR CAR WITH THE SHOTGUN?
A LOOKING RIGHT IN THE WINDOW OF THE MUSTANG.
Q ALL RIGHT, SIR. TELL THE JURY PLEASE WHAT YOU OBSERVED.
A I OBSERVED A MALE SUBJECT, DARK HAIR, LOOKED TO BE SPANISH DESCENT, LOOKING AT ME AND HOLDING A WEAPON TO THE SIDE OF HIS HEAD.
Q WOULD YOU DEMONSTRATE TO THE JURY HOW HE WAS HOLDING THIS WEAPON TO THE SIDE OF HIS HEAD.
A LOOKING AT ME AND HOLDING THE WEAPON TO THE SIDE OF HIS HEAD (INDICATING.)
Q ALL RIGHT, SIR.
A SHOUTING THAT HE WOULD KILL HIS SELF.
Q WHAT KIND OF WEAPON WAS IT?
A IT LOOKED TO BE AN AUTOMATIC PISTOL.
Q DO YOU RECALL WHAT COLOR IT WAS?
A LIKE CHROME PLATED. IT WAS A SHINY WEAPON SIMILAR TO THE ONE THAT I CARRY.
Q I WILL SHOW YOU STATE'S EXHIBIT'S 5 AND ASK IF YOU WILL TAKE A LOOK AT THAT.

A YES, SIR, IT WAS A WEAPON ON THIS ORDER.
Q APPEARED SIMILAR TO THAT?
A YES, SIR.
Q YOU SAY THAT IS SIMILAR TO YOUR SERVICE WEAPON?
A YES, SIR. AT THAT TIME I CARRIED A WEAPON ALMOST LIKE THAT.
Q WAS THAT THE SAME SIZE, SAME CALIBER?
A THE WEAPON I CARRIED WAS A SMITH AND WESSON NINE MILLIMETER.
Q THE SAME CALIBER AS THIS?
A THE SAME TYPE AS THAT.
Q AGAIN, WHAT DID THIS MAN SAY WITH THE GUN TO HIS HEAD?
A HE THREATENED TO KILL HIS SELF. IF I CAME CLOSER TO HIM, HE WOULD KILL HIS SELF.
Q WHAT DIRECTION WAS HE LOOKING AT?
A HE WAS LOOKING AT ME TOWARD THAT DIRECTION, WHICH WOULD HAVE BEEN OUT OF THE DRIVER'S SIDE WINDOW.
Q COULD YOU SEE ANYBODY ELSE IN THE CAR?
A NO, SIR, COULDN'T SEE ANYBODY ELSE IN THE CAR.
Q COULD YOU SEE INTO THE CAR THROUGH ANY OF THE OTHER WINDOWS BESIDES THE ROLLED-DOWN WINDOW ON THE DRIVER'S SIDE?
A NO, SIR.

Q THAT MUSTANG WAS A TWO-DOOR CAR; IS THAT CORRECT?
A YES, SIR.
Q SERGEANT MYERS, CAN YOU IDENTIFY HERE IN COURT THE PERSON YOU SAW SITTING BEHIND THE WHEEL OF THAT MUSTANG IN HOLLY HILL WITH THE GUN TO HIS HEAD?
A YES, SIR, THE GENTLEMAN IN THE WHITE SHIRT AND BLUE TIE AT THE DEFENDANT'S TABLE.
Q ARE YOU POSITIVE OF THAT IDENTIFICATION?
A YES, SIR.
Q DID YOU HAVE ANY PERSONAL KNOWLEDGE WHAT WAS OCCURRING ON THE OTHER SIDE OF THE CAR AS FAR AS SERGEANT WATFORD IS CONCERNED?
A THE ONLY THING THAT I SAW WAS A LADY GET OUT OF THE PASSENGER SIDE OF THE VEHICLE.
Q YOUR ATTENTION WAS FOCUSED MAINLY ON THE GUY WITH THE GUN; IS THAT RIGHT?
A YES, SIR.
Q WHY WAS YOUR ATTENTION -- THIS IS A SILLY QUESTION -- WHY WAS IT SO? -- WHY WERE YOU SO FOCUSED ON THIS GUY WITH THE GUN?
A THE GUN WAS THE ONLY THING THAT COULD HURT ME.
Q DO YOU RECALL ANYTHING ABOUT THIS WOMAN'S DEMEANOR AS SHE GOT OUT OF THE CAR? DID YOU HEAR ANYTHING?

A SHE WAS SCREAMING LOUDLY AND HOLDING WHAT APPEARED TO BE A CHILD TO HER CHEST. I DIDN'T SEE ANYBODY ELSE, AND THAT WAS ONLY FOR A SECOND OR TWO.

Q WHAT, IF ANYTHING, OCCURRED AFTER THE WOMAN GOT OUT OF THE CAR WITH THE BABY?

A THE CAR SPED AWAY HEADED EAST ON 176 TOWARD CHARLESTON.

Q WHAT DID YOU DO WHEN THE MUSTANG TOOK OFF?

A I GOT BACK IN MY PATROL CAR AND PROCEEDED AFTER IT.

Q THERE IS A MAP UP HERE AT THE PODIUM. TAKE A LOOK AT THAT.

A (WITNESS LEAVES THE WITNESS STAND.)

Q I WILL GIVE YOU A SECOND TO GET ORIENTED ON IT. IF YOU WOULD TRY TO STAND TO THE SIDE WHERE THE JURY CAN SEE. THIS (INDICATING) IS THE TOWN OF HOLLY HILL?

A YES, SIR.

Q IS THAT CORRECT?

A YES, SIR.

Q I-95 (INDICATING) AND 176 (INDICATING)?

A YES, SIR.

Q USING THIS PINK MARKER HERE, GO AHEAD AND TELL THE JURY WHAT YOU DID AS FAR AS YOUR PURSUIT OF THE MUSTANG.

A I PURSUED THE VEHICLE FROM HOLLY HILL IN AN EASTERLY FASHION TOWARDS THE BERKELEY COUNTY LINE.
Q WHERE IS THE BERKELEY COUNTY LINE ROUGHLY?
A PROBABLY SOMEWHERE RIGHT ALONG IN HERE (INDICATING.)
Q WHERE THE 176 MARKER IS?
A YES -- NO, IT'S A LITTLE FURTHER BACK, RIGHT HERE (INDICATING.)
Q IF YOU COULD, JUST DRAW THAT IN A LITTLE HEAVIER TO SHOW WHERE YOU WENT.
A I PURSUED ON DOWN THROUGH HERE (INDICATING) AND WENT ALL THE WAY INTO GOOSE CREEK WHERE I MET OTHER OFFICERS.
Q ALL RIGHT, SIR. IF YOU WOULD GO AHEAD AND HAVE A SEAT UP THERE.
A (WITNESS RESUMES THE WITNESS STAND.)
Q GOOSE CREEK IS DOWN HERE (INDICATING.) HOW FAR DID YOU GO AGAIN?
A I WENT ALL THE WAY IN AND ALL THE WAY AROUND BACK TO SUMMERVILLE. I ACTUALLY WAS IN PURSUIT BY PROBABLY ABOUT 35 OR 40 MILES.
Q DID YOU LOSE THE MUSTANG AT ANY POINT?
A YES, SIR. AFTER PROBABLY ABOUT TEN MILES, I LOST SIGHT OF IT.
Q I TELL YOU WHAT LET'S DO. STEP BACK UP HERE

AGAIN AND DRAW AN X. AT THE APPROXIMATE LOCATION WHERE YOU LOST THE MUSTANG.

A (WITNESS LEAVES THE WITNESS STAND.) PROBABLY SOMEWHERE DOWN IN THIS AREA RIGHT HERE (INDICATING.)

Q THANK YOU.

A (WITNESS RESUMES THE WITNESS STAND.)

Q HOW DID YOU HAPPEN TO LOSE THE MUSTANG IN THAT AREA?

A HE WAS SO FAR AHEAD OF ME AND, OF COURSE, AT NIGHT AND THE ROAD STARTED CURVING, A LOT OF CURVES GOT IN THE WAY AFTER WE GOT DOWN OUT OF ORANGEBURG COUNTY AND I LOST SIGHT OF IT.

Q WHEN YOU PURSUED THE MUSTANG, WERE THE MUSTANG'S LIGHTS ON OR OFF?

A IT STARTED OFF THEY WERE ON. I GOT DOWN THE ROAD SEVERAL MILES AND I THOUGHT I HAD LOST IT ALREADY, AND I REALIZED THE LIGHTS WAS OFF ON THE CAR.

Q WHAT DID YOU DO WHEN YOU GOT TO GOOSE CREEK?

A I STOPPED AND TALKED WITH GOOSE CREEK OFFICERS TO TRY AND FIND OUT WHAT --

Q DON'T TELL ME WHAT THEY SAID. BASED ON INFORMATION YOU GOT FROM GOOSE CREEK OFFICERS, WHERE DID YOU GO NEXT?

A ONTO SUMMERVILLE. THEY TOLD ME THAT --

Q DON'T TOLD ME WHAT THEY TOLD YOU. BASED ON WHAT THEY TOLD YOU, YOU WENT TO SUMMERVILLE?
A YES, SIR.
Q WHAT PART OF SUMMERVILLE DID YOU GO TO?
A IT WAS ON HIGHWAY 78 AND I THINK IT WAS A BIG SHOPPING CENTER. I'M NOT EXACTLY SURE BUT IT WAS INSIDE THE CITY LIMITS.
Q WHAT DID YOU OBSERVE WHEN YOU GOT TO THE SHOPPING CENTER?
A I OBSERVED A WHITE MUSTANG THAT WAS BENT UP IN THE FRONT END AND A SUBJECT LAYING ON THE GROUND.
Q LET ME SHOW YOU WHAT HAS BEEN MARKED PREVIOUSLY AS STATE'S NUMBER 8 AND ASK IF THAT APPEARS TO BE THE MUSTANG.
A YES, SIR.
Q NOW, DID YOU APPROACH -- DID YOU SEE THE PERSON IN THE PARKING LOT?
A YES, SIR.
Q THE DEFENDANT. HOW CLOSE DID YOU GET TO HIM AT THAT TIME?
A PROBABLY TEN OR FIFTEEN FEET.
Q DID YOU RECOGNIZE HIM AS BEING THE SAME PERSON YOU HAD SEEN WITH THE GUN TO HIS HEAD?
A YES, SIR.
Q SHORTLY AFTER THE MURDER OF SERGEANT LINGARD?

A YES, SIR.
Q WHAT WAS GOING ON WITH HIM AT THAT TIME?
A HE WAS CUFFED AND I THINK ON A BACK BOARD, AND THEN HE WAS LOADED IN THE AMBULANCE SHORTLY AFTER THAT.
Q THE MUSTANG THAT I JUST SHOWED YOU A PICTURE OF, DOES THAT APPEAR TO BE THE SAME MUSTANG THAT YOU WERE PURSUING?
A YES, SIR.
Q DID YOU LOOK INSIDE THE MUSTANG AT ANY POINT?
A YES, SIR.
Q WHAT, IF ANYTHING, DID YOU OBSERVE?
A WHAT I OBSERVED WAS THE WEAPON THAT YOU SHOWED ME EARLIER.
Q ALL RIGHT. AND FOR THE RECORD YOU ARE REFERRING TO THIS, STATE'S 5, IS THAT CORRECT, A NINE MILLIMETER SEMIAUTOMATIC PISTOL?
A YES.
Q DID YOU SEE IT ON THE DRIVER'S SIDE FLOORBOARD?
A YES, IT WAS LYING ON THE DRIVER'S SIDE ON THE FLOORBOARD RIGHT TO THE LEFT OF THE BRAKE PEDDLE.
Q DID YOU MAKE ANY OTHER OBSERVATIONS OF THE GUN THAT YOU CAN RECALL?
A THE ONLY THING I KNOW WAS THAT THE GUN WAS BREACHED BACK IN A -- IN LIKE AN UNLOADED TYPE

POSITION WHERE IT WAS FIXING TO FIRE.

Q I MAY NOT HAVE ASKED THE OTHER OFFICER THIS OR NOT, BUT THE POLICE RADIO Y'ALL HAVE, DID Y'ALL DISPATCH ON THE SAME BAND AS THE HIGHWAY PATROL DOES?

A NO, SIR, ON THE COUNTY.

Q YOU USE THE SAME DISPATCHER OR A DIFFERENT DISPATCHER?

A NO, DIFFERENT.

Q THERE IS NO DIRECT COMMUNICATION?

A NO, SIR.

SOLICITOR BAILEY: BEAR WITH ME ONE SECOND, PLEASE.

(PAUSE.)

Q THAT'S ALL I HAVE, SERGEANT. PLEASE ANSWER ANY QUESTIONS MR. STONE MAY HAVE.

CROSS EXAMINATION.

BY MR. STONE:

Q WHEN YOU SAW MR. ALEKSEY IN THE CAR, IN THE WHITE MUSTANG THE FIRST TIME, THE ENGINE WASN'T TOO LOUD FOR YOU TO HEAR HIM SAY HE WAS GOING TO KILL HIMSELF; WAS IT?

A NO, SIR.

Q YOU COULD HEAR HIM AND YOU WERE STANDING 20, 25 FEET AWAY; IS THAT RIGHT?

A YES, SIR.

Q AND YOU HAD A SHOTGUN I KNOW, BUT AT NO POINT DID YOU POINT THAT SHOTGUN AT MR. ALEKSEY; DID YOU?
A NO, SIR.
Q IN FACT, YOU KEPT IT DOWN HERE (INDICATING) AND I BELIEVE THE CAR WAS IN FRONT OF YOU; IS THAT RIGHT?
A YES, SIR.
Q YOU DIDN'T HAVE YOUR BLUE LIGHTS ON, DID YOU?
A I DON'T KNOW WHETHER I DID OR NOT.
Q DIDN'T HAVE YOUR TAKE-DOWN LIGHTS ON, DID YOU?
A NO, SIR.
Q FOR THE PURPOSE OF THE JURY, THE TAKE-DOWN LIGHTS, THESE ARE THE TOP LIGHTS THAT REALLY THE PURPOSE IS TO SHINE DOWN ON A CAR AND BASICALLY BLIND THE DRIVER?
A YES, SIR.
Q YOU DIDN'T HAVE THOSE LIGHTS ON, DID YOU?
A NO, SIR.
Q BASICALLY YOU WERE IN FRONT BEHIND YOUR CAR, BUT YOU COULD SEE MR. ALEKSEY; COULD YOU NOT?
A YES, SIR.
Q ANYTHING BETWEEN YOU AND MR. ALEKSEY OTHER THAN YOUR CAR?
A NO, SIR.
Q ANYTHING BETWEEN -- THE CAR IS ABOUT THIS TALL (INDICATING)?

A PROBABLY.
Q SO BASICALLY FROM MID CHEST UP YOU WERE EXPOSED; IS THAT RIGHT?
A YES, SIR.
Q DID YOU SAY EARLIER -- IF I CAN HOLD THE GUN -- THIS WAS BREACHED READY TO FIRE?
A NO, SIR. I SAID IT WAS BREACHED WHERE YOU COULD LOAD IT TO FIRE.
Q DID HE AT ANY POINT IN TIME EVER POINT THIS GUN AT YOU?
A NO, SIR.
Q JUST AT HIMSELF?
A YES, SIR.
Q THIS IS THE SAME GUN; IS THAT RIGHT?
A YES, SIR.
Q YOU PICKED HIM UP -- AND I'M SORRY, YOUR CAR WAS RUNNING?
A YES, SIR.
Q AND HIS CAR WAS RUNNING?
A YES, SIR.
Q WHEN YOU PICKED HIM UP, YOU FIRST SAW HIM RIGHT OUTSIDE OF HOLLY HILL; IS THAT RIGHT?
A WHEN I SAW HIM, HE WAS IN HOLLY HILL.
Q IN HOLLY HILL. CAN I GET YOU TO COME DOWN HERE, PLEASE.

A (WITNESS LEAVES THE WITNESS STAND.)
Q THIS IS A DIFFERENT MAP. I WANT YOU TO TAKE A LOOK AT IT AND MAKE SURE YOU ARE ORIENTED TO IT. DO YOU RECOGNIZE THIS -- I AM REFERRING TO DEFENDANT'S EXHIBIT NUMBER 2. THIS IS INTERSTATE 95 HERE (INDICATING) AND 176 IS ALONG IN THIS DIRECTION (INDICATING.)
A OKAY.
Q ARE YOU ORIENTED TO THAT?
A YES.
Q WHEN YOU FIRST PICKED HIM UP, HE WAS ACTUALLY IN THE CITY OF HOLLY HILL; IS THAT CORRECT?
A YES, SIR.
Q AND IN WHAT PLACE, DO YOU KNOW? CAN YOU TELL FROM THIS MAP? LET ME GIVE YOU ONE YOU CAN SEE. HERE IS A BLACK ONE.
A PROBABLY RIGHT ALONG IN HERE (INDICATING) WHEN I SAW HIM.
Q WHEN YOU SAW HIM. AND HE WAS FOLLOWED PRETTY CLOSE BEHIND BY SERGEANT WATFORD?
A SERGEANT WATFORD, YES, SIR.
Q DO YOU KNOW HOW LONG HE HAD BEEN FOLLOWING HIM?
A THIS IS WHERE OUR TOWN LIMITS START RIGHT HERE (INDICATING.)
Q THIS (INDICATING) IS 310; IS THAT CORRECT?

A YES, SIR.
Q THAT'S WHERE HE PICKED HIM UP; IS THAT RIGHT?
A YES, SIR.
Q DO YOU KNOW FROM APPROXIMATELY THIS SPOT HERE (INDICATING), 310, THE INTERSECTION OF 310 AND 176, TO EXIT 97 GOING DOWN THE INTERSTATE AND ACROSS, IS THAT APPROXIMATELY 12, 14 MILES, SOMETHING LIKE THAT?
A SOMETHING LIKE THAT. I THINK IT'S 15 OR SO TO SANTEE. SO I THINK THAT IS ABOUT RIGHT.
Q AND YOU DON'T KNOW WHAT TOOK PLACE BETWEEN THIS SPOT HERE (INDICATING) WHERE THE MUSTANG WAS PICKED UP AND 12, 14 MILES UP HERE (INDICATING) AT THIS INTERSECTION?
A NO, SIR.
Q ALL RIGHT, SIR.
A (WITNESS RESUMES THE WITNESS STAND.)
Q YOU DIDN'T BLOCK HIM IN WHEN THE MUSTANG CAME INTO HOLLY HILL, DID YOU?
A NO, SIR.
Q IN FACT, HE PULLED OVER ON HIS OWN?
A HE PULLED OVER ON HIS OWN, YES, SIR.
MR. STONE: NOTHING ELSE, YOUR HONOR.
SOLICITOR BAILEY: VERY BRIEFLY, YOUR HONOR.

REDIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q MR. STONE ASKED YOU ABOUT THE TAKE-DOWN LIGHTS AND THE BLUE LIGHTS AND ALL THIS KIND OF STUFF?

A YES, SIR.

Q DID YOU HAVE YOUR HEADLIGHTS POINTED TOWARD THE MUSTANG?

A MY HEADLIGHTS WAS ON, YES, SIR.

Q HIGH BEAM OR LOW BEAM?

A LOW BEAM.

Q THANK YOU.

SOLICITOR BAILEY: THAT'S ALL I HAVE.

MR. STONE: NOTHING ELSE.

THE COURT: YOU MAY COME DOWN. THANK YOU. MAY THIS OFFICER BE EXCUSED?

MR. STONE: YES, SIR.

SOLICITOR BAILEY: YES, SIR. YOUR HONOR, I AM INFORMED THAT DR. SEXTON IS HERE. I NEED TO GET AN EXHIBIT UPSTAIRS -- IT WILL BE HERE IN A SECOND FOR HIS TESTIMONY -- BUT WE CAN START NOW.

THE COURT: HAVE HIM COME IN PLEASE. ARE YOU CALLING FOR THE EXHIBIT?

SOLICITOR BAILEY: YES, SIR.

THE COURT: WE CAN GO AHEAD AND START NOW.

MR. STONE: WILL THIS BE THE PATHOLOGIST?

SOLICITOR BAILEY: YES.

MR. STONE: YOUR HONOR, WE WOULD STIPULATE TO THE CAUSE OF DEATH IN THIS CASE AND ANYTHING THE PATHOLOGIST HAS TO TESTIFY TO.

SOLICITOR BAILEY: I GREATLY APPRECIATE THAT, YOUR HONOR, BUT I WOULD LIKE TO GO AHEAD AND TRY MY OWN CASE.

THE COURT: YOU ARE ENTITLED TO DO THAT. THANK YOU.

SOLICITOR BAILEY: YOUR HONOR, THE STATE CALLS DR. JOEL SEXTON.

JOEL STEVEN SEXTON, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

CLERK: GIVE US YOUR FULL NAME AND SPELL YOUR LAST, PLEASE.

THE WITNESS: DR. JOEL STEVEN SEXTON, S-E-X-T-O-N.

SOLICITOR BAILEY: ONE SECOND, PLEASE, YOUR HONOR.

(PAUSE.)

DIRECT EXAMINATION

BY SOLICITOR BAILEY:

Q YOU ARE DR. JOEL SEXTON?

A YES, THAT'S CORRECT.

Q DOCTOR, WOULD YOU BRIEFLY FOR THE JURY GIVE YOUR

EDUCATIONAL BACKGROUND.

A I GRADUATED FROM THE UNIVERSITY OF VIRGINIA, SERVED FOR THREE YEARS IN THE U.S. NAVY BEFORE ENTERING GRADUATE SCHOOL, AFTER THEN THE MEDICAL COLLEGE OF SOUTH CAROLINA IN CHARLESTON WHERE I RECEIVED A MASTER'S IN CHEMISTRY. I THEN ENTERED THE MEDICAL SCHOOL AND GRADUATED IN 1968 WITH A M.D. DEGREE.

I THEN STUDIED AT THE MEDICAL UNIVERSITY IN CHARLESTON FOR AN ADDITIONAL FOUR YEARS TO BECOME A PATHOLOGIST AND RECEIVED TRAINING IN ANATOMIC PATHOLOGY, CLINICAL PATHOLOGY AND FORENSIC PATHOLOGY AND BECAME NATIONALLY BOARD CERTIFIED IN THOSE THREE AREAS IN 1972.

I THEN SERVED ON THE FACULTY AT THE MEDICAL UNIVERSITY UNTIL 1983, TEACHING IN THE AREA OF PATHOLOGY FOR NURSES, FOR MEDICAL STUDENTS, FOR RESIDENTS WHO WERE PHYSICIANS THAT WERE GETTING ADDITIONAL TRAINING.

I MOVED IN 1983 TO NEWBERRY, SOUTH CAROLINA WHERE I AM FUNCTIONING NOW AS THE LABORATORY DIRECTORY FOR NEWBERRY COUNTY HOSPITAL. IN ADDITION I AM A CONSULTING FORENSIC PATHOLOGIST FOR APPROXIMATELY 30 OF THE 46 COUNTY CORONERS.

WHEN I WAS IN CHARLESTON, I WAS THE COUNTY

MEDICAL EXAMINER FOR CHARLESTON COUNTY AND WAS IN CHARGE OF EXAMINING OR HAVING EXAMINED THE FIVE- OR 600 CASES A YEAR THAT WERE DEATHS IN CHARLESTON COUNTY THAT WERE NOT DEATHS UNDER THE CARE OF A PHYSICIAN OR WERE VIOLENT DEATHS.

I ALSO WAS A CONSULTING PATHOLOGIST AT THAT TIME. THE SECTION I WAS OVER WAS THE FORENSIC SECTION AND WAS IN CHARGE OF EXAMINING ABOUT 500 CASES AND AUTOPSYING FOR THE 46 COUNTY CORONERS AT THAT TIME. CURRENTLY I DO ABOUT 500 CASES IN NEWBERRY FOR THE APPROXIMATELY 30 COUNTY CORONERS THAT I COVER IN THE STATE.

Q DOCTOR, APPROXIMATELY HOW MANY AUTOPSIES HAVE YOU DONE IN YOUR CAREER?

A OVER 10,000.

Q AND HAVE YOU TESTIFIED IN THE PAST AS AN EXPERT IN THE FIELD OF FORENSIC PATHOLOGY?

A I HAVE, OVER 600 TIMES.

SOLICITOR BAILEY: YOUR HONOR, I WOULD TENDER DR. SEXTON AS AN EXPERT IN THE FIELD OF MEDICAL PATHOLOGY.

MR. STONE: WE AGREE.

THE COURT: THE QUALIFICATIONS ARE ADMITTED OF DR. SEXTON AS A FORENSIC PATHOLOGIST.

Q DR. SEXTON, PLEASE JUST FOR THE JURY TELL THEM

WHAT A PATHOLOGIST IS.

A A PATHOLOGIST IS A PHYSICIAN WHO SPECIALIZES IN DIAGNOSING DISEASE AND ILLNESS FROM TISSUE, SO THAT A HOSPITAL PATHOLOGIST IS A PERSON THAT SEES TISSUE REMOVED AT SURGERY TO DETERMINE IF YOU HAVE CANCER OR SOME OTHER CONDITION AND TO WHAT EXTENT YOU HAVE IT SO YOUR PHYSICIAN CAN BETTER TREAT YOU.

THE PATHOLOGIST ALSO SUPERVISES A LABORATORY WHERE VARIOUS BODY FLUIDS ARE EXAMINED AND ANALYZED AND MAKES SURE THAT THESE TESTS ARE DONE PROPERLY AND HELPS YOUR PHYSICIAN INTERPRET THE RESULTS OF THOSE TESTS.

FORENSIC PATHOLOGISTS HAVE ADDITIONAL TRAINING IN UNDERSTANDING WHAT CAUSES VARIOUS TRAUMA, HOW TO RECOGNIZE WHAT GUNSHOT WOUNDS, STAB WOUNDS, BLUNT FORCE INJURY LOOKS LIKE AND ALSO TO RECOGNIZE FACTS AT A SCENE OF DEATH THAT MAY HELP UNDERSTAND THE CIRCUMSTANCES SURROUNDING THE DEATH, IN OTHER WORDS, WHAT HAPPENED ON OR ABOUT THE TIME OF DEATH.

THESE INCLUDE INTERPRETING BLOOD SPATTER RESULTS AT A SCENE, EVALUATING THE POSITION OF THE BODY. WE ARE ALSO TAUGHT HOW TO RECOGNIZE VARIOUS EFFECTS OF DRUG AND CHEMICALS ON THE BODY, WHICH IS CALL TOXICOLOGY.

SO A FORENSIC PATHOLOGIST IS A PHYSICIAN TRAINED

IN UNDERSTANDING NATURAL DISEASE, AS WELL AS TRAUMATIC DISEASE AND ILLNESS, AND THE EFFECTS OF DRUG AND CHEMICALS AND HOW TO INTERPRET SCENES OF DEATH TO DETERMINE NOT ONLY CAUSE OF DEATH BUT THE CIRCUMSTANCES SURROUNDING THAT DEATH.

Q DOCTOR, WHEN DO YOU DO AN AUTOPSY?

A I BEG YOUR PARDON?

Q WHAT PROMPTS YOU TO DO AN AUTOPSY? WHAT IS THE SEQUENCE?

A I AM IN PRIVATE PRACTICE SO THE ONLY TIME I DO AN AUTOPSY IS WHEN I AM APPROACHED EITHER BY A PRIVATE INDIVIDUAL OR BY A CORONER WITH AUTHORIZATION TO DO THAT AUTOPSY.

Q I WANT TO CALL YOUR ATTENTION TO JANUARY 1ST OF THIS YEAR AND ASK WHETHER OR NOT THE ORANGEBURG CORONER REQUESTED THAT YOU PERFORM AN AUTOPSY OF THE BODY OF A BLACK MALE IDENTIFIED TO YOU AS FRANKIE LINGARD?

A YES, THAT'S TRUE. CORONER MARSHALL CONTACTED ME ABOUT DOING AN AUTOPSY ON JANUARY 1ST, 1997.

Q AND WAS THAT DONE IN NEWBERRY?

A THAT'S CORRECT.

Q AND WOULD YOU STATE WHETHER OR NOT, AND PLEASE FEEL FREE TO LOOK AT YOUR NOTES IF YOU NEED TO, WAS BRETT BAKER OF S.L.E.D. PRESENT DURING THE