

ORIGINAL

VOLUME THREE OF NINE

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Dorchester County

Perry M. Buckner, Circuit Court Judge

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S.C. SUPREME COURT

JOHN EDWARD WEIK,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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VOLUME THREE
PAGES 1001-1500

INDEX

INDEX.....	i
TRIAL TRANSCRIPT.....	1
APPLICATION FOR POST-CONVICTION RELIEF.....	2222
RETURN	2229
AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2274
RETURN TO AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2279
SECOND AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2365
MOTION TO FILE A THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF OR IN THE ALTERNATIVE TO AMEND THE APPLICATION FOR POST CONVICTION RELIEF TO CONFORM TO THE EVIDENCE	2373
THIRD AMENDED APPLICATION FOR POST-CONVICTION RELIEF	2376
APPLICANT'S MOTION TO AMEND HIS PETITION A FIFTH TIME	2385
POST-CONVICTION RELIEF HEARING TRANSCRIPT	2392
DEPOSITION OF MARVA HARDEE-THOMAS DATED AUGUST 17, 2006	3149
DEPOSITION EXHIBIT 1 (PETITIONER) (CERTIFICATE).....	3328
DEPOSITION EXHIBIT 2 (PETITIONER) (LETTER FROM RICKBORN INVESTIGATORS)	3329
DEPOSITION EXHIBIT 3 (PETITIONER) (LETTER TO PATTI RICKBORN DATED APRIL 30, 1999).....	3331
DEPOSITION EXHIBIT 4 (PETITIONER) (LETTER FROM PATTI RICKBORN	3333
DEPOSITION EXHIBIT 5 (PETITIONER) (LETTER TO PATTI RICKBORN).....	3337

DEPOSITION OF GEOFFREY R. MCKEE DATED OCTOBER 3, 2006	3347
DEPOSITION EXHIBIT 1 (APPLICANT) (AFFIDAVIT OF DR. MCKEE)	3391
DEPOSITION EXHIBIT 2 (APPLICANT) (DR. MCKEE'S NOTES)	3394
DEPOSITION EXHIBIT 3 (APPLICANT) (DR. MCKEE'S NOTES)	3395
DEPOSITION EXHIBIT 4 (APPLICANT) (DR. CRAWFORD'S EVALUATION)	3396
DEPOSITION EXHIBIT 1 (RESPONDENT) (DR. MCKEE'S BILL)	3401
DEPOSITION OF PATRICIA D. RICKBORN DATED OCTOBER 3, 2006	3402
DEPOSITION EXHIBIT 1 (PETITIONER) (LETTER FROM PATRICIA RICKBORN DATED MARCH 1, 1999)	3463
DEPOSITION EXHIBIT 2 ((PETITIONER) (NOTES FROM PATRICIA RICKBORN'S FILE)	3464
DEPOSITION EXHIBIT 3 (PETITIONER) (LETTER FROM MARVA-HARDEE THOMAS TO PATRICIA RICKBORN DATED APRIL 30, 1999)	3497

EXHIBITS FROM POST-CONVICTION RELIEF HEARING

PLAINTIFF'S EXHIBIT 1 (POTENTIAL WITNESS LIST)	3499
PLAINTIFF'S EXHIBIT 2 (DR. CRAWFORD'S REPORT DATED MAY 13, 1999)	3515
PLAINTIFF'S EXHIBIT 3 (INTERVIEW OF LILLIE VARNER FERRER WEIK)	3519
PLAINTIFF'S EXHIBIT 4 (INTERVIEW OF RUSSELL CHRISTOPHER WEIK)	3524
PLAINTIFF'S EXHIBIT 5 (INTERVIEW OF RUSSELL CHRISTOPHER WEIK)	3530
PLAINTIFF'S EXHIBIT 6 (INTERVIEW OF MAGDALENA AND JOHN GUNTER)	3533
PLAINTIFF'S EXHIBIT 7 (ARMED FORCES REPORT OF TRANSFER OR DISCHARGE - RUSSELL CHRISTOPHER WEIK)	3535
PLAINTIFF'S EXHIBIT 8 (HISTORY OF ASSIGNMENTS)	3536
PLAINTIFF'S EXHIBIT 9 (LETTER TO MICHAEL O'CONNELL FROM THE DEPARTMENT OF THE NAVY)	3537

PLAINTIFF'S EXHIBIT 10 (LETTER TO RUSSELL CHRISTOPHER WEIK FROM THE DEPARTMENT OF VETERANS AFFAIRS).....	3564
PLAINTIFF'S EXHIBIT 11 (PHYSICIAN'S ORDERS).....	3565
PLAINTIFF'S EXHIBIT 12 (IDENTIFICATION CARDS)	3566
PLAINTIFF'S EXHIBIT 13 (CONFIDENTIAL ATTORNEY WORK REPORT)	3585
PLAINTIFF'S EXHIBIT 14 (WEIK FAMILY TREE).....	3619
PLAINTIFF'S EXHIBIT 15 (AFFIDAVIT OF RAMONDA FERRER-KLOCEK)	3620
PLAINTIFF'S EXHIBIT 16 (AFFIDAVIT OF EDWIN WEIK, JR.).....	3625
PLAINTIFF'S EXHIBIT 17 (ORDER OF APPOINTMENT OF LEGAL COUNSEL).....	3628
PLAINTIFF'S EXHIBIT 18 (NOTES FROM PATRICIA RICKBORN'S FILE)	3629
PLAINTIFF'S EXHIBIT 19 (ORDER OF APPOINTMENT OF LEGAL COUNSEL).....	3669
RESPONDENT'S EXHIBIT 1 (BILL FROM PRIVATE INVESTIGATOR)	3670
RESPONDENT'S EXHIBIT 2 (NOTES FROM PRIVATE INVESTIGATOR).....	3671
RESPONDENT'S EXHIBIT 3 (BILL FROM DR. DONALD MORGAN).....	3674
RESPONDENT'S EXHIBIT 4 (INVOICE BJ JOHNS INVESTIGATIVE SERVICES).....	3675
RESPONDENT'S EXHIBIT 5 (QUESTION CHECKLIST).....	3676
RESPONDENT'S EXHIBIT 6 (RATING SYSTEM)	3680
RESPONDENT'S EXHIBIT 7 (REVERSE-BATSON GENDER/RACE NEUTRAL REASONS).....	3682
RESPONDENT'S EXHIBIT 8 (MEMO FROM JEFF BLOOM).....	3685
RESPONDENT'S EXHIBIT 9 (DR. CRAWFORD'S REPORT DATED MAY 13, 1999).....	3692
RESPONDENT'S EXHIBIT 10 (PSYCHOLOGICAL EVALUATION)	3698
RESPONDENT'S EXHIBIT 11 (MEDICAL RECORDS FOR WEIK – ADMISSION DATE APRIL 30, 1999).....	3701
RESPONDENT'S EXHIBIT 12 (MEDICAL RECORDS FOR WEIK – ADMISSION	

DATE SEPTEMBER 28, 1998).....	3768
RESPONDENT'S EXHIBIT 13 (BILL FROM DR. RODGERS)	3837
RESPONDENT'S EXHIBIT 14 (BILL FROM PERRY BEAU FORD, P.A.).....	3838
RESPONDENT'S EXHIBIT 15 (MEMO FROM RICKBORN INVESTIGATIONS).....	3855
RESPONDENT'S EXHIBIT 18 (LETTER TO LT. ARNOLD PASTER DATED FEBRUARY 19, 1999)	3858
RESPONDENT'S EXHIBIT 19 (LETTER TO DR. WILLIAM BRANNON DATED FEBRUARY 19, 1999)	3859
RESPONDENT'S EXHIBIT 20 (LETTER TO MR. JAMES A. SPRINGS, JR. DATED MARCH 2, 1999)	3860
RESPONDENT'S EXHIBIT 21 (LETTER TO MR. JAMES A. SPRINGS, JR.)	3861
RESPONDENT'S EXHIBIT 22 (LETTER TO MR. BOBBY L. MINTER)	3862
RESPONDENT'S EXHIBIT 23 (LETTER TO DR. DONNA SWARTZ-WATTS).....	3863
RESPONDENT'S EXHIBIT 24 (LETTER TO DR. WILLIAM BRANNON)	3864
RESPONDENT'S EXHIBIT 25 (LETTER TO DR. GEOFFREY R. MCKEE)	3865
RESPONDENT'S EXHIBIT 26 (LETTER TO MS. PATTI RICKBURN)	3866
RESPONDENT'S EXHIBIT 27 (LETTER TO DR. DONNA SWARTZ WATTS DATED APRIL 12, 1999).....	3867
RESPONDENT'S EXHIBIT 28 (LETTER TO PERCY BEAU FORD, P.A. DATED DATED AUGUST 17, 1998).....	3868
RESPONDENT'S EXHIBIT 29 (LETTER TO MS. PATTI RICKBORN DATED APRIL 19, 1999).....	3869
RESPONDENT'S EXHIBIT 30 (MEMO TO DORCHESTER COUNTY DETENTION CENTER DATED APRIL 26, 1999).....	3870
RESPONDENT'S EXHIBIT 31 (LETTER TO DR. DONALD MORGAN DATED APRIL 26, 1999).....	3871
RESPONDENT'S EXHIBIT 32 (MEMO TO PERCY BEAU FORD DATED MAY 6, 1999).....	3872

RESPONDENT’S EXHIBIT 33 (MEMO REGARDING PRIVATE INVESTIGATOR).....	3873
RESPONDENT’S EXHIBIT 34 (AFFIDAVIT OF MR. B.J. JOHNS).....	3874
RESPONDENT’S EXHIBIT 35 (LETTER TO MR. JOHN E. WEIK DATED MAY 14, 1999).....	3875
APPLICANT’S PROPOSED FINAL ORDER	3876
PROPOSED ORDER OF DISMISSAL BY RESPONDENTS.....	3945
ORDER OF DISMISSAL	4023
APPLICANT’S 59(e) MOTION.....	4103
ORDER DENYING RULE 59(e) MOTION.....	4111

EXAMINATION

BY MR. BEAUFORD:

Q. Mr. Matthews, my name is Percy Beauford just a few other questions. What is your opinion about the death penalty?

A. Like I say, I would have to hear the facts and all. And if I felt like he committed it and he did it and, you know, was guilty of the crime I would vote for it.

Q. And you said that in the second phase it's already -- you already voted that he did commit the murder.

A. Right.

Q. And then you have to vote for either death or life.

A. Right.

Q. Would you consider other factors in deciding death or life that has nothing to do with the crime itself, would you be able to consider that in determining whether to be able to vote for death or life?

A. Yeah. I would hear the facts, yeah.

Q. Okay. We're not talking about facts of the case. Other factors that has nothing to do with the case.

1 A. Right. That's what I meant, other
2 factors you were talking about.

3 Q. How long have you held that opinion that
4 you have about the death penalty?

5 A. Well, I've never been on a jury, but, you
6 know, I've always felt the same way I feel now.

7 Q. Have you read articles, religious belief?

8 A. No, I haven't been reading anything.

9 Q. Any religious belief that causes you to
10 feel that way?

11 A. No, not religious belief.

12 Q. And you understand in South Carolina life
13 means life without parole?

14 A. Right.

15 Q. You understand that?

16 A. Uh-huh (affirmative response).

17 Q. You also understand in South Carolina
18 murder is the intentional killing with malice and is
19 not manslaughter, it's not by accident -- it's not by
20 accident. Do you understand the definition of murder
21 here in South Carolina?

22 A. Now I don't know what you're saying. You
23 mean do I understand --

24 Q. Do you know that murder is the
25 intentional killing of someone with malice and it's

1 not by accident?

2 A. Yeah, I understand that.

3 Q. Knowing that's murder, would that change
4 your opinion in the guilt phase of whether you would
5 always vote for -- and you didn't say this, always
6 vote for the death penalty, always vote for life, or
7 you would still have to weigh the factors?

8 A. I believe I would have to weigh the
9 factors.

10 Q. Okay. If you were on a jury and the
11 majority voted one way and you wanted to vote another
12 way, would you change your view just to get the case
13 over with?

14 A. No.

15 Q. Would you respect the votes of the other
16 jurors?

17 A. I would respect them, but I got my own
18 opinion.

19 Q. So then you -- thank you.

20 THE COURT: All right, sir.

21 Mr. Matthews, let me ask you to step out in
22 the hall just one moment and I'll bring you
23 right back, sir.

24 (Whereupon, the prospective juror leaves
25 the courtroom.)

1 MR. BAILEY: Qualified.

2 MR. BEAUFORD: Qualified.

3 THE COURT: He's qualified.

4 (Whereupon, the prospective juror returns
5 to the courtroom.)

6 THE COURT: Mr. Matthews, this phone
7 number you've given us here, still correct?

8 THE JUROR: Yes, sir.

9 THE COURT: What I'm going to do is have
10 the clerk call you, if you don't mind, later
11 on this afternoon or night.

12 THE JUROR: Right.

13 THE COURT: We've got the rest of the day
14 to do what we've been doing today the whole
15 time.

16 THE JUROR: Right.

17 THE COURT: What I intend to do is try to
18 get 35 jurors, a pool from which I can get the
19 14, 12 and two alternates.

20 THE JUROR: Right.

21 THE COURT: So the point of it is I don't
22 want to tell you to come back here at ten
23 o'clock in the morning and make you wait on us
24 and not have 35, so I thought late this
25 afternoon I might can call you and tell you

1 what time to come back.

2 THE JUROR: Right. Okay.

3 THE COURT: That's not to say that you'
4 going to serve.

5 THE JUROR: Right.

6 THE COURT: It's just I would like for
7 you to be in that pool of the 35.

8 THE JUROR: Okay.

9 THE COURT: What I would ask you, please
10 sir, is not to discuss. I know you've got to
11 tell your wife and so forth, you've got to
12 come back and might be serving.

13 THE JUROR: Right.

14 THE COURT: Don't get into any facts of
15 the case or even any discussion about the
16 death penalty itself, just try to avoid -- I
17 won't say try to a void, just avoid any
18 discussion of the -- you know, the death
19 penalty itself.

20 THE JUROR: Right.

21 THE COURT: All right, sir. Thank you
22 very much. We'll call late, probably late
23 this afternoon or early night.

24 THE JUROR: And if I don't hear from you
25 all?

1 THE COURT: You'll hear from us.

2 THE JUROR: Okay.

3 THE COURT: We're going to call you.

4 THE JUROR: I didn't know.

5 THE COURT: We're going to call you.

6 THE JUROR: Okay.

7 THE COURT: Yes, sir.

8 THE JUROR: Thank you.

9 THE COURT: Thank you.

10 (Whereupon, the prospective juror leaves
11 the courtroom.)

12 THE COURT: The next one is Scott S.
13 Atcherson, he has called, his car is broken
14 down in Summerville and I have sent the
15 sheriff or somebody to go pick him up, deputy
16 He called earlier and Mr. Moultrie is handling
17 that one so I guess we go to the next fellow.
18 And I cannot pronounce his name.

19 (Teodoro L. Encarnacion, Jr., called as a
20 potential juror, having first been duly
21 sworn, is examined as follows:)

22 THE COURT: Good morning. Is it
23 Encarnacion?

24 THE JUROR: Encarnacion, yes.

25 THE COURT: Well, that's easy enough. I

1 looks more difficult than it is.

2 You grew up there in Charleston --

3 THE JUROR: Yes, sir.

4 THE COURT: -- apparently?

5 THE JUROR: Yes, I did.

6 THE COURT: And Ling Industrial?

7 THE JUROR: Yes.

8 THE COURT: Tell me what you exactly do
9 as a mechanic there.

10 THE JUROR: I work in the maintenance
11 department, so I fix.

12 THE COURT: Anything that breaks?

13 THE JUROR: Anything, pipes or chains,
14 gears, anything.

15 THE COURT: The fact that your father wa
16 in the Navy and served as a military police
17 officer, would that affect your ability to be
18 fair and impartial in a criminal trial?

19 THE JUROR: No.

20 THE COURT: Have you served as a juror
21 before, sir?

22 THE JUROR: Never.

23 THE COURT: All right, sir. Tell me
24 about this business, this thing that you read
25 back there. Where do you think you fall on

1 that?

2 THE JUROR: I would fall between two and
3 three.

4 THE COURT: Two and three?

5 THE JUROR: Yes.

6 THE COURT: And as I read that thing --
7 All right. As I read it, number two says that
8 if a juror convicted someone of murder that
9 that juror could never under any circumstances
10 give a death sentence, it's just that they --
11 basically they just don't believe that a death
12 sentence is appropriate in any kind of case
13 and they would just never give a death
14 sentence, they always would give a life
15 sentence.

16 Number three says I could give a
17 death sentence or I could give a life
18 sentence, but I would have to listen to all
19 the circumstances before I did so. And you
20 say you think you fall --

21 THE JUROR: Well, what I mean is --

22 THE COURT: Let me stop and tell you
23 this.

24 THE JUROR: Okay.

25 THE COURT: There aren't any right or

1 wrong answers.

2 THE JUROR: I understand.

3 THE COURT: Anything you say is fine.

4 mean, what you think is what you think.

5 Nobody's going to have a problem with anything

6 you say or how you feel. The only problem

7 we're going to have is when you don't tell us

8 truly how you feel. We just want to know from

9 your heart how you feel about it.

10 THE JUROR: I believe in the death

11 penalty, I believe in punishment, I believe

12 I've never disagreed with it or protested

13 against it. It's just that I've never had to

14 decide myself.

15 THE COURT: Exactly.

16 THE JUROR: And, I mean, I might have

17 said things watching a movie, but here to me

18 for a death penalty for me to decide that way

19 I would have to be convinced.

20 THE COURT: What you're -- what I think

21 you're saying is that you believe in the death

22 penalty, but it would be awfully hard to give

23 it. And I'm not trying to put words in your

24 mouth.

25 THE JUROR: It would be real hard.

1 THE COURT: You could do it, it would
2 depend on the circumstances and that you would
3 have to be sure, I suppose, thoroughly
4 convinced that that would be the thing to do,
5 otherwise you couldn't do it. Is that a
6 fair -- I mean, I'm not trying to put words in
7 your mouth.

8 THE JUROR: Yes. I believe in
9 punishment, I've never spoken out against it,
10 it's just I've never had to decide.

11 THE COURT: Make that decision.

12 And you understand that if you were
13 serving on the jury, that actually the jury if
14 they found the defendant, not just this
15 defendant but in any case like this, if they
16 found a defendant guilty that the jury does
17 have to make the decision on the punishment
18 and it's not up to the judge. Whatever the
19 jury says the judge does, basically. Life
20 means life without parole, death means death,
21 I mean, it's just that clear.

22 And so what you would have to do as
23 a juror if you found that the case was
24 appropriate for death, you would actually have
25 to sign your name to the death, some people

1 call it the death warrant, but you would have
2 to sign your name to a death verdict form
3 along with 11 other people, of course, because
4 all 12 of you would have to agree. And then
5 you would have to come out here in the
6 courtroom and in all probability stand and say
7 that is my decision.

8 So let me ask this -- with that in
9 mind, let me ask this question: If the case
10 was one that you felt, that you felt was an
11 appropriate case for the death penalty, could
12 you vote for a death penalty, sign your name
13 and announce in open court that you believe
14 that that was your decision?

15 THE JUROR: I could sign it, yes.

16 THE COURT: All right, sir.

17 Mr. Beauford?

18 EXAMINATION

19 BY MR. BEAUFORD:

20 Q. My name is Percy Beauford, just a few
21 questions.

22 A. Okay.

23 Q. In any case, not in this case, would you
24 be -- could you listen to all the facts and render
25 your opinion based on the facts?

1 A. Yes, sir.

2 Q. And if the facts in this hypothetical
3 case suggest that you wanted to vote for murder,
4 could you actually vote for murder? Not in this
5 case, but any case you can envision in your mind,
6 could you vote for murder, vote to convict someone of
7 murder?

8 A. I can.

9 Q. Saying that you have convicted this
10 person of murder and that case that you were thinking
11 in your mind is a death penalty case, would you be
12 able to listen to all the facts, both mitigating and
13 aggravating, the background, life history of the
14 individuals, something that has nothing to do with
15 the crime itself, and consider those factors and
16 decide whether you would vote for death or life?

17 A. I think so.

18 Q. And, again, you said in your mind if the
19 facts suggest that there -- in your mind, whatever
20 you envision in your mind, the facts suggest that
21 it's gruesome enough, is a horrible crime in your
22 mind or whatever it may be, you feel that that person
23 deserved to receive the death penalty, could you vote
24 for it?

25 A. I can vote for it, yes.

1 Q. And if the facts in your mind in that
2 scenario has some mitigating situation, could you
3 vote for life based on the mitigating, knowing the
4 person is already convicted of murder?

5 A. Yes, sir.

6 Q. Do you understand that life means life
7 without parole in South Carolina?

8 A. Yes.

9 Q. And you also understand that murder is
10 the intentional killing of someone with malice, it's
11 not by accident, it's not manslaughter, it's not
12 self-defense. Do you understand that?

13 A. Yes.

14 Q. Understanding that, would that change any
15 answers that you've already given?

16 A. No.

17 Q. And if you were on a jury and -- and the
18 majority voted one way and you wanted to vote another
19 way, would you change your vote in order to just get
20 the case over with?

21 A. I don't like to think that I would, no,
22 sir.

23 Q. You said you don't like to think. What
24 would be the determining factor whether you would
25 change your vote? I mean, are you saying you would

1 change it to get the case over with? Or explain what
2 you are saying.

3 A. I believe I would stand up for what I
4 thought was right.

5 Q. You would respect the vote of the
6 majority?

7 A. I would respect my own.

8 Q. You would respect your vote, also want
9 them to respect your vote?

10 A. Yes, sir.

11 Q. No further questions.

12 EXAMINATION

13 BY MR. BAILEY:

14 Q. I'm Walter Bailey, I'll be prosecuting
15 this case, I need to kind of follow up on some of the
16 questions Mr. Beauford and the judge asked you, I'll
17 try to be kind of brief. Could you just tell us in
18 your own words -- I know you said you thought about
19 the death penalty before yesterday, and not relating
20 to this case, but just in general what your thoughts
21 are on the death penalty.

22 A. All right. I believe in punishment, I
23 believe in the death penalty, I believe in life
24 without parole. I've just never had to make an
25 opinion that really mattered before.

1 Q. Okay.

2 A. So, I mean....

3 Q. And the judge already told you this, but
4 if we reach that second part of the trial, that will
5 mean the defendant's guilty of murder beyond a
6 reasonable doubt, that jury would have found him
7 guilty based on the evidence. And as he told you,
8 the judge doesn't make the decision on punishments.
9 Strictly the jury is the judge as far as punishment
10 concerned. All the judge does is order that sentence
11 to be carried out.

12 And we're looking at a trial that
13 may last three to four days. And of course the
14 defendant's going to be in the courtroom, you'll be
15 up there in the jury box if you're picked as a juror
16 and he'll be within your eyesight the whole time.

17 Nobody is going to ask you to
18 predict what you would do if you were picked as a
19 juror because you haven't heard the facts that you
20 would have to hear to make that decision. But if the
21 case is bad enough could you as a juror vote for the
22 death penalty knowing that person that you've been
23 eyeballing for the last three or four days is
24 actually going to be put to death?

25 A. Yes. It would just be hard. I mean, I

1 wouldn't do it lightly.

2 Q. Okay. If all 12 jurors vote for the
3 death penalty, the next thing they're asked to do as
4 part of the process is to sign their name to a death
5 verdict form, a death warrant, that's going to result
6 in that person being executed. Could you sign that
7 paper knowing the result, the consequences of that?

8 A. If I decided for the death penalty I
9 would sign whatever I agreed to.

10 Q. Okay. And I think the judge asked you
11 also, could you announce that decision if that was
12 your decision?

13 A. Yes, sir.

14 Q. Okay. While this trial's going on,
15 probably starting tomorrow the jury's going to be put
16 in a motel to keep them away from any outside
17 influence. Nobody looks forward to that. We're
18 talking about something less than a week. Is that
19 something that you could handle if you were picked?

20 A. Be in a motel, yeah, I could handle it.

21 Q. Nobody looks forward to it, but is it
22 something you could -- anything going on in your life
23 that it could create an undue hardship?

24 A. The only thing that crossed my mind, I'm
25 an insulin dependent diabetic and I'm worrying about

1 the schedule or something.

2 THE COURT: Let me ask you about that.
3 Do you have your medication in the morning,
4 twice a day?

5 THE JUROR: In the morning.

6 THE COURT: Twice a day, once a day?

7 THE JUROR: Morning and evening.

8 THE COURT: Morning and evening. Do you
9 give your own self a shot?

10 THE JUROR: Yes, sir. Usually it's not
11 no trouble at all, but I don't know how the
12 schedule would work.

13 THE COURT: Well, we would work our
14 schedule around your schedule. What do you
15 do?

16 THE JUROR: I eat around lunch time or
17 dinner time, within an hour or two.

18 THE COURT: In other words, as long as
19 you eat at the right time you get a shot
20 before, you inject yourself before you -- I
21 guess while you're dressing in the morning or
22 whatnot, when you get up in the morning
23 sometime?

24 THE JUROR: Yeah, before breakfast.

25 THE COURT: And then after you get home

1 in the afternoon, or at night?

2 THE JUROR: Yes, sir.

3 THE COURT: We'll arrange whatever
4 schedule we can for that, that doesn't --
5 that's not a problem for me. If it isn't a
6 problem for you, it's certainly not a problem
7 for us.

8 THE JUROR: I don't see any problem with
9 that.

10 BY MR. BAILEY:

11 Q. Okay. Any other problems we may not have
12 even addressed that you think might affect your
13 ability to sit as a juror in this case and fairly
14 consider both sides?

15 A. No. It would always be a hardship
16 somehow, but I don't see where it would stop me.

17 Q. Okay. All right. That's all I've got.
18 Thank you very much.

19 THE COURT: Thank you, sir. Please step
20 back in the hall just a minute and I'll bring
21 you right back.

22 (Whereupon, the prospective juror leaves
23 the courtroom.)

24 MR. BAILEY: Qualified.

25 MR. BEAUFORD: Qualified.

1 THE COURT: Thank you. He's qualified.
2 (Whereupon, the prospective juror return
3 to the courtroom.)

4 THE COURT: Mr. Encarnacion, we've got
5 some telephone numbers right here. What I'd
6 like to do is have the clerk -- are those
7 right?

8 THE JUROR: Yeah.

9 THE COURT: I'd like to have the clerk
10 call you if possible this afternoon, if
11 possible, or tonight, and just tell you what
12 time to come back tomorrow. We think
13 tomorrow's the day we're going to get started

14 THE JUROR: Okay.

15 THE COURT: We've got this many more to
16 do today.

17 THE JUROR: I'll be coming back tomorrow.

18 THE COURT: You will be coming back.
19 That's not to say that you are going to be
20 serving, all right?

21 THE JUROR: Yeah.

22 THE COURT: In other words, what I'm
23 going to do is to try to get about 35
24 individuals in this pool and then of those 35
25 we're going to draw 12 jurors and two

1 alternates. So, you know, one out of the
2 three that come back will be drawn, basically
3 And so I don't want to tell you to come back
4 tomorrow now and we don't need you until
5 tomorrow afternoon. I don't want you to wait
6 on us, so we'll just call you and tell you
7 what time.

8 THE JUROR: Okay.

9 THE COURT: And if you will, sir, don't
10 discuss this case, and for that matter don't
11 go home and begin a discussion of, you know,
12 death penalty and what it means and this,
13 that, and the other. Just avoid any kind of a
14 conversation about a death penalty case.

15 Obviously you've got to tell your
16 people, whoever, that you have to -- you may
17 have to serve and are going to come back, but
18 other than that just don't get into a
19 discussion of the case itself.

20 THE JUROR: I understand.

21 THE COURT: Thank you, sir. We
22 appreciate it very much. We'll call you
23 tonight. Thank you, sir.

24 (Whereupon, the prospective juror leaves
25 the courtroom.)

1 (Michael E. Black, called as a potential
2 juror, having first been duly sworn, is
3 examined as follows:)

4 THE COURT: Mr. Black?

5 THE JUROR: Yes, sir.

6 THE COURT: How are you doing this
7 morning?

8 THE JUROR: Doing good.

9 THE COURT: Thank you for coming back and
10 helping us out. I'm just going to ask you
11 just a few questions and then these lawyers
12 might ask you one or two and then you'll be
13 out of here.

14 You've been working now for five
15 years driving?

16 THE JUROR: Yes, sir.

17 THE COURT: Have you served as a juror
18 before?

19 THE JUROR: No, sir.

20 THE COURT: What about that piece of
21 paper back there that you read, where do you
22 think you might fall in that?

23 THE JUROR: Between the first one and the
24 third one.

25 THE COURT: First one says that if you

1 convict someone as a juror of murder that you
2 would always give death in every case. The
3 second one says you would always give life,
4 and the third one says I could give death or I
5 could give life, but I'd have to consider what
6 the circumstances are.

7 THE JUROR: Right. The third one.

8 THE COURT: That's where you are? I
9 mean, maybe I just -- you know, I wrote the
10 thing and I may not have been very clear. Are
11 you saying that you favor the death penalty,
12 or are you just saying, no, I have to listen
13 to both sides?

14 THE JUROR: I favor the death penalty if
15 he's guilty of it.

16 THE COURT: When you say he's guilty of
17 it, you mean if he's guilty of the crime?

18 THE JUROR: Right. Yes, sir.

19 THE COURT: Well, suppose -- and see
20 here's what happens. The State charges
21 somebody with murder. The State has to prove
22 that he's guilty of murder, do you understand
23 that?

24 THE JUROR: Yes, sir.

25 THE COURT: Beyond a reasonable doubt.

1 And all 12 jurors would have to hear that part
2 of it and all 12 vote guilty of murder, the
3 malicious intentional killing of another
4 person. In other words, that's what the
5 definition partly of murder is, it's the
6 killing, intentional killing of one human
7 being by another with malice aforethought.
8 Malice in your mind at some point in time
9 before the person is killed.

10 What -- so what occurs is that if
11 jurors vote guilty of murder, then those same
12 12 jurors are going to have to decide what
13 punishment to impose. Do you follow me?

14 THE JUROR: Yes, sir.

15 THE COURT: So you have to assume,
16 putting the cart before the horse in here this
17 morning, you have to assume that you're a
18 juror and you have already convicted somebody
19 of murder, just assume that you've done that,
20 the State has proven that.

21 THE JUROR: Right.

22 THE COURT: I'm not asking you what you
23 would do, I'm asking you what you could do.
24 don't know what you would do. You don't know
25 that because you hadn't heard the evidence in

1 the case.

2 THE JUROR: Right.

3 THE COURT: But the point I'm trying to
4 get to is this: If you convicted somebody of
5 murder as a juror, all of you did and you were
6 one of them, would you say, well, if it's
7 murder, then he needs the death sentence every
8 time, I don't care what the circumstances are,
9 if it's murder he deserves death?

10 Or would you be a juror who would
11 say it doesn't make any difference that he's
12 committed murder to me, I don't believe in the
13 death sentence, I would never give it, I would
14 always give life?

15 Or, number three, could you give
16 death, could you give life, but you have to --
17 it depends on what you hear, what the
18 circumstances are in order to determine what
19 the sentence would be? You follow where I'm
20 coming from?

21 THE JUROR: Yes, sir. It would be the
22 third one, have to have enough evidence.

23 THE COURT: So when you said a few
24 minutes ago, and I just want to go back and be
25 sure, when you said a while ago, well, if it's

1 proven he were guilty I would give the death
2 sentence. Explain that a little bit to me.

3 THE JUROR: I mean, like if, you know,
4 after he's guilty of it and we was -- you
5 know, how he came about or she came about
6 doing and it, how it's set and the
7 circumstance and everything.

8 THE COURT: All right. All right. So
9 what you're saying is you would have to hear
10 basically the circumstances surrounding what
11 occurred?

12 THE JUROR: Right.

13 THE COURT: Not just the fact that he's
14 guilty of murder, but exactly what the
15 circumstances were before you could decide
16 what kind of punishment to give?

17 THE JUROR: Right, yes, sir.

18 THE COURT: All right, sir. Well, let me
19 ask you this: Do you understand that in this
20 kind of a case if you all were to find the
21 defendant guilty of murder, not only would you
22 hear evidence of the circumstances of the
23 crime itself, but you would actually be given
24 some other evidence, some evidence in
25 aggravation, things that make the crime even

1 worse. And you would be given some
2 information that makes the crime not so bad.
3 In other words, it lessens the effects of the
4 crime. So you would be given some good and
5 some bad, in addition to just the facts about
6 what happened right there at the time that the
7 crime was committed that you found him guilty
8 of already. Do you follow where I'm coming
9 from?

10 THE JUROR: Uh-huh (affirmative
11 response).

12 THE COURT: Would you, could you, and
13 would you consider both the aggravating
14 circumstances and the mitigating circumstances
15 and then make up your mind as to what sentence
16 is appropriate?

17 THE JUROR: Yes, sir.

18 THE COURT: So I just want to go back
19 over it one more time because I want to be
20 sure. There aren't any right or wrong
21 answers, do you follow me?

22 THE JUROR: Yes, sir.

23 THE COURT: If you tell me I'm the fellow
24 that I think everybody ought to get the death
25 sentence, that's fine, too. If you tell me I

1 think everybody ought to get a life sentence
2 that's fine, too. I mean, it doesn't matter
3 But we need to know where you -- I need to
4 make sure what you're telling me is coming
5 from the heart.

6 THE JUROR: Right. Yes, sir.

7 THE COURT: Do you follow me? Are you
8 saying then that you are not one who would
9 automatically give life or death, but that you
10 could do one or the other depending on the
11 circumstances?

12 THE JUROR: Right.

13 THE COURT: Is that really where you're
14 coming from?

15 THE JUROR: Yes, sir.

16 EXAMINATION

17 BY MR. BEAUFORD:

18 Q. Mr. Black, my name is Percy Beauford,
19 just a few other questions. In South Carolina murder
20 is the intentional killing of someone with malice.
21 So in the first phase you would have found that the
22 person intentionally killed someone with malice, it'
23 not by accident, it's not manslaughter or it's not
24 self-defense.

25 Knowing that you've already

1 convicted the individual of murder, would that change
2 your views of when you would apply a death vote, life
3 sentence, or would that change your views in looking
4 at the case?

5 A. No, sir.

6 Q. And you said that in the second phase
7 where you've already convicted someone of murder
8 you're willing to look and consider other factors
9 that has nothing to do with the crime, like
10 background, health of the individual, health of the
11 victim, background of the victim?

12 MR. BAILEY: Judge, again, I object to
13 getting into specifics.

14 THE COURT: All right.

15 MR. BEAUFORD: Your Honor, I'm just
16 trying to give a laundry list.

17 THE COURT: I know you are, I understand
18 that you are. And I've allowed it to some
19 extent so far. I don't mind. It's probably
20 violative of the rules, but I've allowed it in
21 others and I'm going to go ahead and let you
22 ask it if you don't go any further than that.
23 You've gone as far as you've been every time
24 and I'm not going to....

25 BY MR. BEAUFORD:

1 Q. Are you willing to consider those factors
2 that have nothing to do with the crime in determining
3 whether to vote for death or life?

4 A. Yeah, I would check, you know, make
5 everything -- I would check everything out, you know
6 with my head.

7 Q. Okay. And you understand that life in
8 South Carolina means life without parole?

9 A. Right.

10 Q. And if you were on the jury and the
11 majority wanted to vote a particular way and you
12 wanted to vote the other way, would you change your
13 vote in order to just get the case over with?

14 A. No. I'm an independent person, I'll
15 stick to whatever I decide.

16 Q. And would you respect the vote of the
17 other jury members?

18 A. Oh, yes, respect other people's.

19 Q. How did you come about your opinion about
20 the death penalty? Have you ever thought about that
21 before, how you came about your opinion, whether
22 pro --

23 A. About the --

24 Q. -- death, or pro life, or whatever it is

25 A. I'm just old, went to the old school, you

1 know.

2 Q. What old school is that?

3 A. You know what I mean by you deserve
4 whatever -- you got a chance at life, you're innocent
5 until you're proven guilty, and if you kill somebody
6 and whatever the aggravation is, circumstances is,
7 should be considered and everything. Is that what
8 you're trying to get to?

9 Q. I mean, I'm just letting you answer.
10 There's no right or wrong answer. No right or wrong
11 answer.

12 A. Yeah, that's just --

13 Q. I was just a little confused when you
14 started to say if you committed, then you should get
15 what -- you didn't say what's coming to you or
16 whatever. What did you say?

17 A. Like the circumstance we was just talkin
18 about.

19 Q. Okay. No further questions.

20 EXAMINATION

21 BY MR. BAILEY:

22 Q. Mr. Black, I'm Walter Bailey, I'm going
23 to be prosecuting the case. I'm going to be real
24 brief because I think that most of the questions hav
25 already been asked, but just to make sure that I

1 fully understand, what you are saying is if you were
2 on a jury and you get the second part of the trial
3 you would want to listen to what came out before you
4 decided on punishment, and you could vote either way.

5 A. Yes, sir.

6 Q. And you understand that the jury makes
7 decision on the penalty, not the judge if we get to
8 that point?

9 A. Yes, sir.

10 Q. The judge just orders that to happen,
11 whatever the jury says the sentence is. The jury
12 votes for life, the judge orders that, the person
13 gets life without parole. If the jury votes for
14 death, the judge would order that and he actually is
15 executed based on that jury's vote.

16 I'm not going to ask you what you
17 would do in this case because you hadn't heard any of
18 the facts. But if the case is bad you've indicated
19 you could vote for the death penalty; is that right?

20 A. If it's bad enough.

21 Q. If all 12 jurors vote for the death
22 penalty, there's a verdict form, a death warrant that
23 each juror is asked to sign. Could you sign your
24 name to that paper along with the other jurors if
25 that was your vote?

1 A. Yes, sir.

2 Q. When your name's called out could you say
3 out loud that was your vote?

4 A. Yes, sir.

5 Q. The jury's going to be put in a motel
6 starting probably tomorrow until the trial's over,
7 we're talking about maybe four or five days, probably
8 no more than a week. That's an inconvenience for
9 everybody, but is that something that you could
10 handle if you were picked on the jury?

11 A. Yes, sir. I can.

12 Q. That's all I've got, Mr. Black. Thank
13 you.

14 THE COURT: Thank you, Mr. Black. Step
15 in the hall one second, we'll bring you right
16 back.

17 (Whereupon, the prospective juror leaves
18 the courtroom.)

19 THE COURT: How says the State?

20 MR. BAILEY: Qualified, Your Honor.

21 THE COURT: Defendant?

22 MS. HARDEE-THOMAS: Qualified.

23 MR. BEAUFORD: Qualified.

24 THE COURT: He's qualified.

25 (Whereupon, the prospective juror returns

1 to the courtroom.)

2 THE COURT: Mr. Black, this telephone
3 number, check that and make sure that's
4 correct.

5 THE JUROR: Yes, sir.

6 THE COURT: What I'm going to do is have
7 the clerk, if you don't mind, I'm going to
8 have someone call you late this afternoon or
9 tonight.

10 THE JUROR: All right.

11 THE COURT: Are you going to go home?

12 THE JUROR: Yes, sir. I'm going to do a
13 little running around.

14 THE COURT: But you'll be here late this
15 afternoon or tonight, you'll be in your home?

16 THE JUROR: Yes, sir.

17 THE COURT: What I'm going to do rather
18 then telling you to come back tomorrow exactl
19 what time, because I don't know until I finis
20 all this business today, I'm going to have
21 them call you and tell you what time to come
22 back.

23 THE JUROR: Okay.

24 THE COURT: I'm trying to get 35, out of
25 which 14, 12 and two alternates, will be

1 drawn. So I'm not telling you're on the jury,
2 I'm simply telling you I want you to be in
3 that pool.

4 THE JUROR: Right.

5 THE COURT: And don't discuss, please,
6 sir, the death penalty, even just your ideas
7 about death penalty or have your wife talk to
8 you about what her ideas are. I mean, I know
9 you've probably done it before, but don't do
10 it now.

11 THE JUROR: All right.

12 THE COURT: Stop at this point, don't
13 talk about anything else. Tell her what
14 you're going to be doing, what you're going to
15 be involved in, obviously you've got to tell
16 her that, but don't go into any discussion of
17 the facts of the case or what somebody's --
18 you know, just don't get into the facts of
19 this case or even about the death penalty in
20 general, just leave that off until you're
21 finished if you will, sir.

22 THE JUROR: All right.

23 THE COURT: Thank you very much.

24 THE JUROR: You all have a good day.

25 THE COURT: Thank you, sir.

1 (Whereupon, the prospective juror leave
2 the courtroom.)

3 (Scott S. Atcherson, called as a
4 potential juror, having first been duly
5 sworn, is examined as follows:)

6 THE COURT: Good morning, sir, how are
7 you doing? This is Mr. Atcherson. You're tl
8 one that had the trouble with the car?

9 THE JUROR: Yes, sir.

10 THE COURT: What happened to it?

11 THE JUROR: Brakes went out.

12 THE COURT: Gracious. Did you pump it
13 down?

14 THE JUROR: Lots of times.

15 THE COURT: Lots of times. I don't blam
16 you. I've been there, done that. It's all
17 right unless you got a big load behind you.
18 Or you don't have a ditch to get in then you
19 got real trouble when it does that, I know.

20 Let me ask you this. I want to ask
21 you a couple questions and then I'll let you
22 go. You work at the ports authority now?

23 THE JUROR: Yes, sir.

24 THE COURT: Yes, sir. And heavy lifting
25 Tell me what you do exactly.

1 THE JUROR: I'm a welder mechanic on the
2 handling equipment that loads and unloads the
3 boxes.

4 THE COURT: Big cranes, that kind of
5 thing?

6 THE JUROR: Yes, sir. Off the ships and
7 on and off to the trucks.

8 THE COURT: Fool with all that hydraulic
9 business and stuff?

10 THE JUROR: Yes, sir.

11 THE COURT: Where did you learn all that
12 from, just doing it?

13 THE JUROR: Just doing it.

14 THE COURT: Everybody wants what they
15 can't have, but that's what I want to be able
16 to do for some reason or other. I don't know
17 why I like that mess, but that's what I want
18 to do, trade this robe for your job.

19 THE JUROR: Would you?

20 THE COURT: Probably would for about a
21 week. Let me ask you, sir, have you served as
22 a juror before?

23 THE JUROR: No, sir.

24 THE COURT: Did you read that, have time
25 to read that thing?

1 THE JUROR: Yes, sir.

2 THE COURT: Tell me where you fall in
3 that. And by the way, there aren't any right
4 or wrong answers, it doesn't matter where you
5 fall.

6 THE JUROR: I believe I would be number
7 three.

8 THE COURT: Which says what, sir, in your
9 mind?

10 THE JUROR: I would not draw a conclusion
11 as to the punishment until I've heard all the
12 evidence and circumstances.

13 THE COURT: Are you saying, sir, that you
14 are not one who just -- if you were a juror,
15 you convicted someone of murder, absolutely
16 know a murder, you convict him of that you
17 would not be one who would say, well, if he's
18 a murderer then I think he ought to get death
19 every time?

20 THE JUROR: No, sir.

21 THE COURT: Or after you find that he's
22 guilty of murder you wouldn't say, well, even
23 if he is I could never give death, I would
24 just have to give life every time?

25 THE JUROR: No, sir.

1 THE COURT: What you're saying is you
2 could give a death sentence, you could give a
3 life sentence, but you would have to hear all
4 the facts and circumstances good and bad
5 basically before you --

6 THE JUROR: Yes, sir.

7 THE COURT: -- made that kind of a
8 decision?

9 Did you think about that since
10 yesterday, or is that something that you've
11 thought about --

12 THE JUROR: I've thought about it quite a
13 bit through my life.

14 THE COURT: The whole time. All right,
15 sir.

16 EXAMINATION

17 BY MR. BAILEY:

18 Q. Mr. Atcherson, I'm Walter Bailey, I'll be
19 prosecuting this case, I need to ask you a few more
20 questions just to kind of follow up on what Judge
21 Shuler asked you. He went over this yesterday with
22 everybody out there, but you understand when the
23 State seeks the death penalty it's potentially a
24 two-part process where we start off with the guilt
25 phase, just like any other trial where the State has

1 the burden to prove to that jury's satisfaction tha
2 the defendant's guilty of what we charge him with.
3 In this case the charge is murder. If we can't pro
4 it that's the end of it, be found not guilty, go
5 home.

6 On the other hand, the State seeks
7 the death penalty if the jury finds him guilty of
8 murder, then we go into phase two of the trial. So
9 any time we're in phase two that means that the jur
10 is dealing with a convicted murderer.

11 The judge does not -- he's the
12 judge, but he doesn't judge the penalty. The jury
13 does that.

14 A. Right. I understand that.

15 Q. All the judge is going to do is he's
16 going to order that jury's verdict to happen, and it
17 will happen. So if the jury hears all the facts and
18 circumstances and says we vote for life, the judge
19 orders life and that person serves life without
20 parole. The jury votes for the death penalty, the
21 judge orders that and it will happen, he'll be
22 executed based on that jury's vote.

23 I'm not going to ask you what you
24 would do in this case if you were picked because you
25 hadn't heard any of the facts, it wouldn't be fair t

1 ask you that. But my question is if the case is bad
2 enough, could you vote for the death penalty knowing
3 that sentence would actually be carried out?

4 A. Yes, I could.

5 Q. If the jury votes for the death penalty,
6 all 12 would have to agree no matter what the vote
7 is. They're then asked to sign their name to a
8 verdict form that would result in that execution
9 happening at some point. Could you sign your name to
10 a paper like that if you already voted for the death
11 penalty?

12 A. Yes, sir.

13 Q. If you vote for the death penalty, you
14 sign the form, the next thing that the jury would do,
15 they come out here and the verdict's announced, each
16 juror's name will be called out and they would be
17 asked to say if that's their verdict, is it still
18 your verdict. Could you do that?

19 A. Yes, sir.

20 Q. If that was your verdict.

21 Okay. Starting probably tomorrow
22 the jury is going to be put up in a motel at night to
23 keep them away from newspapers, TV, radio, whatever.
24 So that way they can focus in strictly on the
25 evidence that comes up in trial.

1 As far as your work and all that, j
2 you had, say, a day to -- or the rest of today and
3 tomorrow to make arrangements, could you handle that
4 being in a motel for a few days?

5 A. Yes, sir.

6 Q. Okay. Is there anything at all that you
7 can think of that we may not even have asked about
8 yet that you think might prevent you from sitting as
9 a juror in this case?

10 A. No, sir.

11 Q. Okay. So you're ready to go if picked?

12 A. I would just have to go home to make a
13 few arrangements to take care of my pets.

14 Q. All right, sir.

15 A. Other than that, no.

16 Q. Okay. Thank you, sir. That's all I've
17 got.

18 THE COURT: Mr. Beauford?

19 EXAMINATION

20 BY MR. BEAUFORD:

21 Q. Mr. Atcherson, my name is Percy Beauford
22 just a few questions. Do you understand in South
23 Carolina that murder is the intentional killing of
24 someone with malice, it's not by accident, it's not
25 manslaughter, or it's not self-defense? Knowing

1 that, if someone is convicted of murder and in those
2 three numbers that you had on that slip in front of
3 you, would you always give the death penalty, would
4 you always give life, or would you still consider the
5 facts?

6 A. I would still consider the facts.

7 Q. Okay. Knowing that someone is convicted
8 of murder and you're in the second phase, would you
9 also consider factors that has nothing to do with the
10 crime itself?

11 A. How meaning?

12 Q. Like maybe the life of the parties, life
13 of the defendant, life of the victim, how they were
14 raised, things of those natures in determining
15 whether to give death or life?

16 A. I would have to hear it in order to be
17 able to make a decision on that.

18 Q. Not in this case, but in any case now.

19 A. Like I say, I would have to hear all the
20 evidence in order to make a decision.

21 Q. Okay. And you understand my question is
22 they're already convicted of murder.

23 A. Right.

24 Q. But we're just talking about the
25 sentencing phase.

1 A. Right.

2 Q. So you're willing to sit and consider all
3 other factors?

4 A. Yes, sir.

5 Q. You understand that life in South
6 Carolina means life without parole?

7 A. Yes, sir.

8 Q. And if you were a member of the jury and
9 the majority wanted to vote a certain way and you
10 wanted to vote another way, would you change your
11 vote in order just to get the case over with?

12 A. Not if I believed in my decision.

13 Q. Okay. And would you also respect the
14 decision of the other jurors?

15 A. Yes.

16 Q. May have been asked, but basically tell
17 me your opinion about the death penalty.

18 A. Well, I don't really believe in taking a
19 life, I don't believe in hunting, I fish and I catch
20 and release, but sometimes things don't always go the
21 way we want in life and we have to deal with that.

22 Q. Thank you.

23 THE COURT: Mr. Atcherson, if you would
24 stand out there in the hall for a minute, not
25 even a minute, ten seconds, and I'll bring you

1 right back.

2 (Whereupon, the prospective juror leaves
3 the courtroom.)

4 THE COURT: State?

5 MR. BAILEY: Qualified.

6 THE COURT: Defendant?

7 MR. BEAUFORD: Qualified.

8 THE COURT: He's qualified.

9 (Whereupon, the prospective juror returns
10 to the courtroom.)

11 THE COURT: Mr. Atcherson, can we call
12 you at that number late this afternoon, early
13 tonight, or either one, your home phone?

14 THE JUROR: Either one. Let me give you
15 one other number, my cell phone number.

16 THE COURT: All right, sir.

17 THE JUROR: 814-7732.

18 THE COURT: Okay. It's 843?

19 THE JUROR: Yes, sir.

20 THE COURT: What we can do is this:
21 We're going to try to go through all these
22 things today. If we can get about 35 and
23 you're just going to be one of the 35, I'm
24 going to bring them in we think tomorrow.

25 THE JUROR: Okay.

1 THE COURT: Out of which 12 jurors and
2 two alternates will be drawn. So not saying
3 you're on the jury, just saying I need a pool
4 and you're one of those I'm satisfied is
5 qualified to serve on the case. And so all
6 I'm going to do is have the clerk or someone
7 calling your home or whatnot, and say be here
8 tomorrow at such and such a time.

9 THE JUROR: Okay.

10 THE COURT: So you'll know.

11 Don't discuss, if you don't mind,
12 the case or your feelings, or let anybody else
13 talk to you about their feelings on the death
14 penalty, just keep that --

15 THE JUROR: To myself.

16 THE COURT: -- to yourself at this point.

17 Thank you very much, sir. We
18 appreciate your help. You need help getting
19 back now?

20 THE JUROR: I have been told to see one
21 of the deputies downstairs.

22 THE COURT: Whatever you need we'll do it
23 for you. Thank you, sir.

24 (Whereupon, the prospective juror leaves
25 the courtroom.)

1 (Thomas O. Lockyer, called as a potential
2 juror, having first been duly sworn, is
3 examined as follows:)

4 THE COURT: Mr. Lockyer, how are you
5 doing this morning?

6 THE JUROR: Good.

7 THE COURT: Thank you for coming back
8 this morning, sir. Thank you for helping us
9 out.

10 THE JUROR: Your Honor, I would like to
11 speak to you maybe about a couple of health
12 problems.

13 THE COURT: Sure. We can talk about that
14 right now, I don't mind a bit.

15 THE JUROR: Well, I guess about two year
16 ago I had half of my colon removed, I got
17 prostate trouble, I got to go all the time.

18 THE COURT: I understand. All right.
19 Well, do you think -- because what's going to
20 occur in this case because we're going to
21 obviously be out here for like an hour and a
22 half at a time before we take a break, do you
23 think that would cause you a problem?

24 THE JUROR: Yeah. If I don't eat or
25 drink I probably would be okay.

1 THE COURT: I understand, sir. You can
2 do that, you got to live.

3 THE JUROR: Yeah. I got another problem
4 I wouldn't want to talk to it in front of
5 everybody here.

6 THE COURT: I understand. I understand.

7 Well, you all heard, do you all want
8 to speak on that or do you want me to just
9 rule on what I've heard so far?

10 MR. BEAUFORD: Your Honor, I would defer
11 to the chair.

12 MR. BAILEY: So would I.

13 THE COURT: I'm going to excuse
14 Mr. Lockyer. I appreciate you coming back and
15 I appreciate you telling me about that. If
16 that's the problem certainly we're not going
17 to put you in that kind of a situation. Thank
18 you very much, sir, for coming back.

19 (Whereupon, the prospective juror leaves
20 the courtroom.)

21 (Lunch recess taken.)

22 (Sarah M. Horne, called as a potential
23 juror, having first been duly sworn, is
24 examined as follows:)

25 THE COURT: Ms. Horne, come on and have a

1 seat, please, ma'am. How are you doing today?

2 THE JUROR: I'm nervous.

3 THE COURT: Well, don't be for two
4 reasons -- several reasons, but the most
5 important one is that you can't give me a
6 wrong answer, whatever you tell me is fine.
7 Just tell me what you know. I realize that
8 it's a little bit nerve racking because you
9 probably haven't done this before.

10 Let's see, you used to work at home,
11 stay at home, right?

12 THE JUROR: Yes, sir.

13 THE COURT: And your husband is retired
14 from Westvaco. What does he do? Part-time
15 consultant, what does he do exactly?

16 THE JUROR: He travels and does basically
17 what he did with Westvaco.

18 THE COURT: Which is what, I mean?

19 THE JUROR: He's an operator and pushup
20 foreman with Westvaco.

21 THE COURT: When you say pushup foreman,
22 you mean when they replant trees, when they go
23 out there and plant the land is what you're
24 talking about, is that pushup?

25 THE JUROR: No. When a foreman was out

1 he pushed up in his position.

2 THE COURT: That's a lot different than
3 what I'm talking about. I thought you were
4 talking about pushing up land or something.
5 I'm with you.

6 You grew up, were born in West
7 Virginia I see and apparently went to school
8 there, too.

9 THE JUROR: Yes, sir.

10 THE COURT: So you've been here for a
11 good number of years?

12 THE JUROR: 30 some years.

13 THE COURT: Have you ever served as a
14 juror in any kind of case?

15 THE JUROR: Yes, sir.

16 THE COURT: When was that, do you recall

17 THE JUROR: I believe it was in '97 in
18 Summerville.

19 THE COURT: Magistrate's court?

20 THE JUROR: It was a civil case.

21 THE COURT: Yeah, magistrate's court.

22 But you've never served in a criminal case in
23 a setting like this?

24 THE JUROR: No, sir.

25 THE COURT: Did you read that sheet that

1 I had for you?

2 THE JUROR: Yes, sir.

3 THE COURT: What do you -- where do you
4 fall on that sheet?

5 THE JUROR: I believe I fall in the third
6 category.

7 THE COURT: All right. Tell me what that
8 means for you when you say you fall into the
9 third category, what exactly do you figure
10 that --

11 THE JUROR: If someone's found guilty I
12 would have to know the circumstances before I
13 made my decision of what the punishment was.

14 THE COURT: All right. In other words,
15 you're not a person if you were to serve on a
16 jury and the jury convicted someone of murder.
17 of course we're putting the cart before the
18 horse because obviously the State would have
19 to prove guilt first. But putting the cart
20 before the horse, so to speak, if you were
21 serving on a jury and the jury convicted
22 someone of murder, you're telling me that
23 you're not one who would say, well, I think
24 this person needs to get a death sentence
25 because if you're guilty of murder there isn't

1 but one really appropriate punishment and that
2 would be death in every case, you're not one
3 of those people?

4 THE JUROR: No, sir.

5 THE COURT: Nor are you one who would
6 say, well, even if he's guilty of murder I
7 could never put someone to death, I don't
8 believe in the death penalty, I would always
9 in every case give life no matter how bad it
10 is?

11 THE JUROR: No, sir.

12 THE COURT: So basically what you're
13 telling me I think is that you're -- you could
14 give a death sentence or you could give a life
15 sentence, but it really just depended on the
16 circumstances surrounding what you hear, the
17 circumstances of the case?

18 THE JUROR: Yes, sir.

19 THE COURT: You'd have to hear all that
20 before you could make a decision one way or
21 the other?

22 THE JUROR: Yes, sir.

23 THE COURT: Could you, then I'll ask you
24 again, could you vote to give someone a death
25 sentence in the appropriate case?

1 THE JUROR: Yes, sir.

2 THE COURT: Could you give someone a life
3 sentence if you felt like that was the
4 appropriate thing?

5 THE JUROR: Yes, sir.

6 THE COURT: All right. And in connection
7 with giving someone a death sentence, and the
8 reason I ask you this is because all of the
9 jurors if they voted to do so, all 12 jurors
10 would have to sign their names to a form
11 saying we sentence the defendant to death
12 basically. Would there be any problem, if you
13 voted and all 12 of you voted that the death
14 sentence was the appropriate sentence, could
15 you sign your name to that form?

16 THE JUROR: Yes, sir.

17 THE COURT: And announce in open court
18 that that would be your decision, that that
19 was your decision?

20 THE JUROR: Yes, sir.

21 THE COURT: By the same token, are you
22 telling me that if you felt like it was not
23 the appropriate thing to do that you would not
24 vote for death but that you would vote for a
25 life sentence?

1 THE JUROR: Yes, sir.

2 THE COURT: All right. Gentlemen?

3 MR. BAILEY: Thank you.

4 EXAMINATION

5 BY MR. BAILEY:

6 Q. Ms. Horne, I'm Walter Bailey and I'll be
7 prosecuting the case, I need to ask you a couple
8 follow-up questions. Some people never think about
9 the death penalty until they get in the position lik
10 you are in now where you may be a juror and others
11 have, you know, talked about it or thought about it.

12 Before yesterday when you found out
13 what kind of case this is, have you ever really
14 thought about the death penalty one way or the other

15 A. Well, I guess I've thought about it.

16 Q. Okay.

17 A. But I've never been in a position to
18 whether I would have to choose or not.

19 Q. Just in general, not this case but just
20 in general, could you tell us what your thoughts wer
21 on the death penalty when you did think about it?

22 A. Well, I really can't explain how I felt
23 about it. I don't like to see anyone put to death,
24 but.....

25 Q. All right. We're not testing you or

1 trying to put you on the spot, but this is the only
2 chance the lawyers and the judge get to talk to the
3 jurors before we really pick a jury and start the
4 case. And if by then if we -- you know, it's too
5 late to ask questions once we get started, so that's
6 why we're asking you all these questions, not trying
7 to embarrass you or put you on the spot or anything.

8 But like the judge said we're kind
9 of putting the cart before the horse because we're
10 talking about penalty life or death. But before we
11 even get to that point we would have to go through a
12 trial where the State would have to prove the
13 defendant guilty of murder beyond a reasonable doubt

14 If the defendant's found guilty of
15 murder then we go into the second phase and that's an
16 opportunity for additional evidence to come out that
17 may not come out in the first part of the trial to
18 help that jury decide what the sentence ought to be.
19 And they have two choices, life or death. And the
20 life sentence is life without parole.

21 The judge doesn't make that
22 decision, the jury makes it. If the jury says life,
23 the judge orders life, this defendant would serve
24 life without parole. If the jury, on the other hand
25 votes for the death penalty, the judge will order

1 that to happen and he actually will be executed. So
2 that's the process we go through.

3 I'm not going to ask you to tell us
4 what you would do in this case or to predict it
5 because you hadn't heard the facts. But if the case
6 was bad enough could you, as a juror, vote for the
7 death penalty knowing that person actually would be
8 executed?

9 A. Yes, sir.

10 Q. And you've already answered this, but
11 just to make sure I'm clear on it, could you sign
12 your name to a verdict form after that vote if all 1
13 jurors voted for the death penalty that would
14 ultimately result in that execution taking place?

15 A. Yes, sir.

16 Q. And could you announce your decision out
17 loud if that was your decision?

18 A. Yes, sir.

19 Q. Okay. The jury's going to be put in a
20 motel probably starting tomorrow. That's to keep
21 them from watching television, talking to people
22 about the case. And the idea is that all of the
23 information you get on this case should come from
24 that witness stand where you're sitting now, not from
25 the newspaper or television or next-door neighbor or

1 something. We're looking at maybe five days, I would
2 guess a week at the most. Nobody wants to do that,
3 but if you got picked could you do it?

4 A. Yes, sir.

5 Q. Okay. All right. Ms. Horne, that's all
6 I've got. Thank you very much.

7 THE COURT: Mr. Beauford?

8 EXAMINATION

9 BY MR. BEAUFORD:

10 Q. How are you doing today, Ms. Horne? I
11 have just a few other questions, and start with this:
12 Do you understand that murder is the intentional
13 killing of someone with malice, it's not by accident,
14 it's not manslaughter, it's not self-defense?
15 Knowing that as I said to you now, would that change
16 your views whether you would impose the death penalty
17 at any point, whether you impose life sentence, or
18 would you still consider the facts after the person's
19 already been convicted of murder in that phase of the
20 trial?

21 A. Would still consider?

22 Q. Other factors in determining whether life
23 or death.

24 A. Right.

25 Q. And those facts that we talk about, if

1 those facts has nothing to do with the crime, would
2 you still consider those facts in determining whether
3 you would vote for life or death?

4 A. Say that again.

5 Q. The person's already convicted of murder
6 and we're into the second phase, the sentencing. If
7 there are facts presented from both sides maybe
8 mitigating or aggravating that has nothing to do with
9 the crime, would that be a determining factor or --
10 not would that be. Would you consider those, could
11 you consider those facts in determining whether to do
12 death or life?

13 A. Yes.

14 Q. If you were on the jury and the majority
15 wanted to vote a particular way and you wanted to
16 vote another way, would you change your vote just to
17 get out of the case?

18 A. No, sir.

19 Q. Would you respect the votes of the other
20 jurors?

21 A. Yes.

22 Q. Would you want them to respect your vote?

23 A. Yes.

24 MR. BEAUFORD: No further questions.

25 THE COURT: All right, Ms. Horne. If you

1 don't mind, step right there in the hallway
2 just for ten seconds and I'll bring you right
3 back.

4 (Whereupon, the prospective juror leaves
5 the courtroom.)

6 Juror 152, how says the State?

7 MR. BAILEY: Qualified.

8 THE COURT: Defendant?

9 MR. BEAUFORD: Qualified.

10 MS. HARDEE-THOMAS: Qualified.

11 THE COURT: She is qualified.

12 (Whereupon, the prospective juror returns
13 to the courtroom.)

14 THE COURT: Ms. Horne, I'm just about
15 through now. I want to try to get about 35
16 jurors out of this entire 200, however many we
17 had yesterday, who I believe qualify to serve.
18 We've been going through this process as you
19 know all day yesterday, all day today, we'll
20 go through, you know, late this afternoon.
21 What I would like to do is to have the clerk
22 call you at your home. I've got your phone
23 number here on the thing, just to have and an
24 emergency number as well, but just to let
25 someone call you to tell you what time to come

1 back. I'm not saying that you're on the jury
2 I'm simply saying I would like for you to be
3 in the panel with the 35 out of which we're
4 going to draw 12 jurors, two alternates. So
5 one out of three is going to end up serving
6 basically is what it amounts to. Do you
7 follow me?

8 THE JUROR: Yeah.

9 THE COURT: All right. You're going to
10 be around, I mean you'll be there so we can
11 get in touch with you?

12 THE JUROR: Yeah.

13 THE COURT: All right. We'll call you.
14 Thank you. Don't discuss, if you don't mind,
15 I know you've got to tell your husband and so
16 forth that you are going to be called to come
17 back, but don't discuss death penalty or this
18 case or anything like that with anyone. Than
19 you, ma'am.

20 THE JUROR: This will be tomorrow?

21 THE COURT: I believe it will be. We're
22 going pretty well now, we've got a good number
23 of jurors, I've got to get 35 and, you know,
24 who knows. That's why I say I'd rather call
25 you than make you come back tomorrow then hav

1 to wait on us. But I think by late this
2 afternoon or early night we should know that
3 we've got the number, so we'll just call and
4 tell you what time to come. Thank you, ma'am.

5 THE JUROR: Thank you.

6 (Whereupon, the prospective juror leaves
7 the courtroom.)

8 MR. BEAUFORD: Your Honor, I would like
9 to bring something to the Court's attention.

10 THE COURT: Yes, sir.

11 MR. BEAUFORD: During lunch break not
12 even thinking about the scenario, we ate at
13 the Western Steer.

14 THE COURT: Yes, sir.

15 MR. BEAUFORD: And not realizing -- I
16 didn't think about that witness had worked
17 there. And she was working, but she was not
18 our server or anything like that.

19 THE COURT: You mean the lady who was th
20 waitress?

21 MR. BEAUFORD: Yes. But we did eat
22 there, but she was not our server.

23 THE COURT: No problem. You all didn't
24 give her a big tip, did you?

25 MR. BEAUFORD: She was not our server.

1 THE COURT: That's fine. Thank you.
2 Thank you for bringing that.

3 MR. BEAUFORD: Yes.

4 THE COURT: All right. Mr. Owens, I
5 believe.

6 (Daniel E. Owens, called as a potential
7 juror, having first been duly sworn, is
8 examined as follows:)

9 THE COURT: Mr. Owens, how are you doing
10 sir?

11 THE JUROR: Pretty good.

12 THE COURT: Come on and have a seat. Let
13 me ask you a few questions and then I'll let
14 you get out of here. How in the world could
15 you go to Summerville and Berkeley High
16 School, wouldn't you make enemies?

17 THE JUROR: No.

18 THE COURT: Just by virtue of the fact
19 that you would even think about going to
20 Berkeley and then come to Summerville?

21 THE JUROR: Well, I went to Berkeley
22 Elementary School up through middle school.

23 THE COURT: And then you ended up at the
24 Citadel, you got a BS in civil engineering?

25 THE JUROR: Yes, sir.

1 THE COURT: Do you use that degree in
2 your work?

3 THE JUROR: I'm an environmental
4 engineer.

5 THE COURT: Environmental engineer. Tell
6 me what you do.

7 THE JUROR: I manage the base cleanup
8 program at the Marine Corps base in Albany,
9 Georgia.

10 THE COURT: In Albany, Georgia. So you
11 travel down there all during the week?

12 THE JUROR: No, sir. They have an
13 on-base rep as well. We mostly manage the
14 money here from Charleston and the
15 contracting.

16 THE COURT: I see. Have you -- you know,
17 Mr. Owens, you and I have a lot in common. I
18 bet you didn't know that, did you?

19 THE JUROR: Like to dove hunt?

20 THE COURT: Yes, sir. And I'll tell you,
21 they charged me with aiding and abetting
22 shooting over a baited dove field. I planted
23 the dove field, I put the feed in the field, I
24 invited lawyers, doctors, and bankers, and
25 game wardens to come to my dove shoot. And

1 would you believe that those people came out
2 there and charged all of my friends, includin
3 me and I wasn't even shooting, and claimed
4 that there was too much bating, too much feed
5 in the field eight days before we shot?

6 THE JUROR: I believe that.

7 THE COURT: Yes, sir. They lost the bes
8 friend they ever had on the bench in South
9 Carolina when they did that to me.

10 THE JUROR: I hope you didn't get caught
11 by the federal people.

12 THE COURT: I did. They wouldn't mess
13 with me with the local people, they had to go
14 get Mr. Heinz. That's exactly what they did.
15 So we got a lot in common.

16 THE JUROR: Did any of your friends go to
17 jail?

18 THE COURT: No, we all paid the fine. I
19 was a pretty bad situation to be perfectly
20 honest with you, and I'm not making all that
21 much light of it because it was a pretty bad
22 situation because of the position I was in,
23 you know, I felt like I couldn't contest it.
24 I mean, even if I contested it and one the
25 public would say that's Judge Shuler and he

1 got out of it because he's a judge. So I paid
2 the fine.

3 The problem is every time I go to
4 Columbia to be screened or whatnot, I've got
5 to write the same thing you wrote, that I'm a
6 convicted baiter or something like that. I
7 got to go through this business with them in
8 Columbia every time.

9 You read that thing?

10 THE JUROR: Yes, sir.

11 THE COURT: What do you think about that,
12 where do you fit in?

13 THE JUROR: I probably fall into the
14 first paragraph.

15 THE COURT: First?

16 THE JUROR: Yes, sir.

17 THE COURT: Give everybody the death
18 sentence?

19 THE JUROR: If murder is proven. It
20 seems to me there's always a circumstance of
21 aggravation or else we'd be going for
22 manslaughter or a lesser charge.

23 THE COURT: Okay. But let me see if I --
24 well, expound on it a little bit, just tell me
25 a little bit about what you got in your mind

1 in regards to the death penalty if murder is
2 proven you say.

3 THE JUROR: If you've proven murder to m
4 that means there's some aggravating
5 circumstances, or else you would have pushed
6 for a lesser charge.

7 THE COURT: All right, sir. Well, in
8 this state if someone is convicted of murder,
9 that conviction for murder in and of itself
10 does not allow the sentence of death to be
11 imposed. In other words, people are convicted
12 of murder in this state from time to time and
13 they are given a life sentence. And the Stat
14 doesn't even seek the death sentence, they're
15 simply given a life sentence after they've
16 been convicted of murder.

17 But what occurs is occasionally the
18 State seeks the death penalty where it
19 believes that not only a murder has been
20 committed but also some aggravating
21 circumstance. And that aggravating
22 circumstance could be, and I just -- I'm just
23 going to give you a couple of examples, the
24 only way I know to explain it to you, could be
25 murder plus kidnapping, let's say. That's one

1 that the law specifically says, if you have a
2 murder, a kidnapping, a murder while in the
3 commission of a kidnapping, then there's a
4 possibility, a possibility that a jury could
5 impose the death sentence in that kind of a
6 case.

7 So my question is this: Is that if
8 someone is convicted of murder are you a juror
9 who would say, well, if he's convicted of
10 murder alone that he should be given a death
11 sentence in every case?

12 THE JUROR: Unless there's some real
13 extenuating circumstances.

14 THE COURT: All right, sir. I want to
15 talk about the extenuating circumstances.
16 Suppose you were on a jury and you found that
17 the person was guilty of murder plus an
18 aggravating circumstance. In other words, you
19 found that there was a murder and an
20 aggravating circumstance, a murder, and I'll
21 just use my first example murder and
22 kidnapping, would you be a juror who would
23 always give a death sentence in that kind of a
24 situation? Or, again, would you consider the
25 extenuating -- if there are extenuating

1 circumstances or mitigating circumstances,
2 would you consider those?

3 THE JUROR: I would consider those.

4 THE COURT: All right, sir. So let me be
5 sure then that we are on the same -- are you
6 telling me that you're not one who would
7 always give death, even if it was proven
8 beyond a reasonable doubt the person was a
9 murderer, you know you're -- actually what
10 happens is the jury determines first guilt or
11 innocence. We have to assume these questions
12 you have to assume that you have convicted
13 somebody of murder, he's sitting in the
14 courtroom a murderer, convicted murderer.
15 Assume that's what has occurred with you and
16 you're one of the jurors.

17 The question is are you going to
18 always give that person death because of that
19 murder? Or are you going to always give that
20 person life saying, well, I don't care if he
21 did commit murder, I just don't believe in the
22 death penalty, I would have to give a life
23 sentence? Or are you one to say I could give
24 death or I could give life, but I would have
25 to listen to all the circumstances before I

1 made a choice?

2 **THE JUROR:** I would be inclined towards
3 the death penalty.

4 **THE COURT:** You would be inclined towards
5 the death penalty.

6 **THE JUROR:** I mean, I would listen to the
7 facts.

8 **THE COURT:** I understand. There's no
9 right or wrong answer, whatever you say is
10 fine. Nobody's going to embarrass you and
11 make you feel -- because you have the right to
12 believe what you want to believe. You are
13 inclined to give the death penalty. But could
14 you say or would you say that in every single
15 case if you convicted someone of murder and an
16 aggravating circumstance that you would always
17 give the death sentence?

18 **THE JUROR:** No.

19 **THE COURT:** Would there be circumstances
20 or cases in which you could envision -- and
21 I'm not asking about this case because you
22 don't know anything about this case, I'm just
23 talking in general -- would there be cases
24 where you feel and you could envision that you
25 might convict someone of murder and an

1 aggravating circumstance, murder and
2 kidnapping, for instance, in which you would
3 say, well, a life sentence is more appropriat
4 in this case because I've heard these other
5 extenuating circumstances and I just think
6 that a life sentence is more appropriate? Yc
7 see where I'm coming from?

8 THE JUROR: Yes. I think I could -- I
9 would weigh all the facts.

10 THE COURT: Is that where you think
11 you're coming from?

12 THE JUROR: Yes, sir.

13 THE COURT: I don't want you to tell me
14 what you -- you know, you think I want you to
15 say, neither do these lawyers. We all really
16 just want you to tell us, you know, what you
17 honestly feel from the heart. You're saying
18 that you would favor the death penalty.

19 THE JUROR: Yes, sir.

20 THE COURT: But -- over life?

21 THE JUROR: Yes, sir.

22 THE COURT: If there was a murder, is
23 that what I'm hearing?

24 THE JUROR: Yes, sir.

25 THE COURT: But again, are you saying

1 that in every case you would give the death
2 sentence?

3 THE JUROR: No, sir.

4 THE COURT: Are you saying that you would
5 listen to the evidence both bad and good, and
6 if you felt like it was a case where someone
7 ought to be given a life sentence you would go
8 with that rather than death?

9 THE JUROR: Yes, sir.

10 THE COURT: Or vice-versa?

11 THE JUROR: Yes, sir.

12 THE COURT: All right, sir.

13 Mr. Beauford?

14 EXAMINATION

15 BY MR. BEAUFORD:

16 Q. How are you doing, Mr. Owens?

17 A. Pretty good.

18 Q. My name is Percy Beauford and I have a
19 few questions I want to ask you. Could you expound a
20 little bit more about your opinion on the death
21 penalty?

22 A. I support it.

23 Q. You support it. And how did you come
24 about your opinion?

25 A. I don't know, just --

1 Q. Have you always had that, held the same
2 opinion?

3 A. Yes, sir.

4 Q. Okay. Is it through literature,
5 religious beliefs?

6 A. Just upbringing, I guess. Just
7 upbringing.

8 Q. And you understand that murder is the
9 intentional killing of someone with malice, it's not
10 manslaughter, it's not by accident, it's not
11 self-defense?

12 A. Yes, sir.

13 Q. And if you found someone guilty of
14 intentionally killing someone, you said you would be
15 more inclined to give murder -- or excuse me, more
16 inclined to give the death penalty vote or not?

17 A. Yes, sir.

18 Q. Yes, you would be more inclined?

19 A. Yes, sir.

20 Q. Would you feel -- would you always want
21 to give the death penalty?

22 A. No, sir.

23 Q. In deciding to give death or life, would
24 you look at other factors that does not have anything
25 to do with the crime itself, and could you use those

1 other factors in determining death or life?

2 A. Yes, sir.

3 Q. Such as?

4 MR. BAILEY: Objection. Getting into the
5 specifics, Your Honor.

6 THE COURT: I sustain. Could I just ask
7 the same question I've been asking? I want to
8 try to help you with it.

9 MR. BEAUFORD: Yes.

10 THE COURT: What he wants to know is
11 other than hearing the evidence of the crime
12 itself, the circumstances of the event, the
13 crime itself, would you be willing to listen
14 to other evidence that might be given you all
15 good, you might say good and bad, before you
16 decided which sentence to impose?

17 THE JUROR: Yes.

18 BY MR. BEAUFORD:

19 Q. And the person's already convicted of
20 murder at this time.

21 A. Yes.

22 Q. You understand in South Carolina life
23 imprisonment means life without parole?

24 A. Yes, sir.

25 Q. How did you come to that knowledge, how

1 did you find that information?

2 A. I don't know, just what I've heard. Just
3 newspapers, whatever.

4 Q. If you were on a jury and a majority
5 wanted to vote a particular way and you wanted to
6 vote another way, would you change your vote just to
7 get the case over with?

8 A. No.

9 Q. Would you respect the other jurors'
10 votes?

11 A. I would respect it, yes.

12 Q. Would you want them to respect your vote?

13 A. Yes.

14 Q. You graduated from Berkeley High School?

15 A. Yes, sir.

16 Q. Approximately what year?

17 A. '82.

18 Q. '82. Did you play football?

19 A. No.

20 Q. Any sports?

21 A. I played soccer.

22 Q. Soccer. While you were there did you
23 know the defendant, John Weik?

24 A. I don't believe so. Which one is he, in
25 the middle?

1 Q. The gentleman sitting with the red.

2 A. No, sir.

3 Q. Okay. Thank you.

4 EXAMINATION

5 BY MR. BAILEY:

6 Q. Mr. Owens, I'm Walter Bailey and I'll be
7 prosecuting the case, just a couple real quick
8 questions for you. The judge and Mr. Beauford asked
9 you most of it, what I would ordinarily have asked
10 you, so I'll try to cut it short.

11 But there's a process if the jury
12 votes for the death penalty in the second phase of
13 the trial, then each member of the jury is asked to
14 sign their name to a verdict form which is going to
15 result in that execution taking place. If after
16 hearing all the evidence you felt the case warranted
17 the death penalty and the other 11 jurors did also,
18 could you sign your name to that paper that would
19 result in the execution taking place?

20 A. Yes, sir.

21 Q. And if that was your decision could you
22 stand up in court and announce that out loud?

23 A. Yes, sir.

24 Q. Starting probably tomorrow the jury's
25 going to have to stay in a motel while this case is

1 going on to keep them away from any outside
2 influence. And we're not talking about any extended
3 period of time, we're talking about maybe five days.
4 That's an inconvenience for everybody, but if you go
5 chosen on this case could you do that?

6 A. I would need to let some people know for
7 work.

8 Q. Okay. But you could work that out?

9 A. Yes, sir.

10 Q. That's all. Thank you very much.

11 THE COURT: Step in the hall for one
12 minute, I'll bring you right back.

13 (Whereupon, the prospective juror leaves
14 the courtroom.)

15 THE COURT: Mr. Owens, Juror Number 239.

16 MR. BAILEY: Qualified, Your Honor.

17 MR. BEAUFORD: Qualified, Your Honor.

18 THE COURT: He's got to cut Mr. White,
19 you've got to cut Mr. Owens. Everybody in the
20 courtroom knows that. He's qualified.

21 (Whereupon, the prospective juror return
22 to the courtroom.)

23 THE COURT: Mr. Owens, thank you, sir,
24 for coming. Is your phone number correct?

25 THE JUROR: Yes, sir.

1 THE COURT: We're going to call you
2 tonight.

3 THE JUROR: Okay.

4 THE COURT: Somebody will call you. We
5 need 35 jurors or so, out of which 12 and two
6 alternates will be drawn. We'll just call you
7 and tell you what time to come tomorrow. We
8 think tomorrow is the day. Thank you, sir.

9 THE JUROR: Thank you.

10 THE COURT: Don't discuss the case, don't
11 discuss the death penalty and so forth with
12 family. Thank you, sir.

13 (Whereupon, the prospective juror leaves
14 the courtroom.)

15 (Linda S. Barclay, called as a potential
16 juror, having first been duly sworn, is
17 examined as follows:)

18 THE COURT: Come on, Ms. Barclay, come on
19 and have a seat. That's the last one,
20 gentlemen, ladies and gentlemen, that's the
21 last one on this list, on this panel that was
22 not filled out and so she just did.
23 Ms. Barclay, let me ask you a couple of
24 questions. Alabama. How long have you been
25 here then?

1 THE JUROR: Twenty years.

2 THE COURT: Twenty years. And tell me,
3 what, you work at home?

4 THE JUROR: Yes.

5 THE COURT: All right. Husband, Alcoa.
6 What does he do?

7 THE JUROR: He's -- he just got a new
8 title so I can't think of what his title is,
9 but basically he works for the corporate
10 offices in Knoxville and goes to all the
11 different plants.

12 THE COURT: Have you served as a juror
13 before?

14 THE JUROR: No, I haven't.

15 THE COURT: Let me tell you something,
16 I'm going to ask you a couple of questions,
17 these lawyers are going to ask you one or two
18 it's painless, I promise you.

19 THE JUROR: Okay.

20 THE COURT: Whatever you tell us doesn't
21 matter. I mean, there are no right or wrong
22 answers, whatever you -- all I want from you
23 is the truth, what you feel, what you honestly
24 feel. That's all we're looking for. We're
25 not asking anyone to tell us what we want to

1 hear, we want to know what you think, what you
2 feel.

3 This little sheet that I gave you to
4 read back there, did you read that?

5 THE JUROR: Yes, I did.

6 THE COURT: Can you tell me what group
7 you would fall into?

8 THE JUROR: I think the third.

9 THE COURT: Which means what, ma'am?

10 THE JUROR: That I wouldn't have my mind
11 already made up as far as the punishment.

12 THE COURT: In other words, you're saying
13 that number -- as I read the thing, number one
14 is a juror who would say, well, if someone's
15 guilty of murder I'm going to give death every
16 time, I don't care I'm just going to give
17 death every time, that's what I think it ought
18 to be.

19 Number two says, I don't care if
20 he's guilty of murder I'm going to give life
21 every time, I don't believe in the death
22 sentence, I just think life is the appropriate
23 sentence every time no matter what the
24 circumstances.

25 Number three says I could give

1 death, I could give life, but I've got to hear
2 all the evidence, the good and the bad,
3 aggravating, mitigating and then I can make a
4 decision.

5 THE JUROR: Right.

6 THE COURT: Is that where you truly think
7 you are?

8 THE JUROR: Yes.

9 THE COURT: Could you, could you impose
10 death sentence if you felt that it would be
11 the appropriate sentence?

12 THE JUROR: Yes.

13 THE COURT: And likewise, could you
14 impose a life sentence if you felt like that
15 was the appropriate sentence?

16 THE JUROR: Yes.

17 THE COURT: If you were to vote along
18 with the other jurors to impose a death
19 sentence, could you, are you able or would you
20 be able to sign your name to a death warrant?
21 Some people call it that, really it's just a
22 death verdict form. Twelve people, in other
23 words, would have to all sign their individual
24 names to it.

25 THE JUROR: Right.

1 THE COURT: And the reason for that is
2 the jury really does the sentencing. I don't
3 even do that. It's all left to the jury to
4 determine what the sentence is to be. You
5 follow me?

6 THE JUROR: Yes.

7 THE COURT: Could you sign your name if
8 you felt that would be appropriate?

9 THE JUROR: If I felt that was warranted,
10 yes.

11 THE COURT: By the same token, could you
12 come to the courtroom here and announce in
13 open court this is my sentence, this is what I
14 voted to do, this is my verdict?

15 THE JUROR: Yeah.

16 THE COURT: All right.

17 Mr. Bailey?

18 EXAMINATION

19 BY MR. BAILEY:

20 Q. Ms. Barclay, I'm Walter Bailey and I'll
21 be prosecuting the case, I need to ask you just a few
22 follow-up questions, and like the judge said there
23 are no right or wrong answers, okay? We're not
24 trying to test you in other words.

25 A. Okay.

1 Q. But have you ever thought about the death
2 penalty just in general terms before yesterday when
3 you found out you might be a juror?

4 A. Oh, yes.

5 Q. Okay. And could you tell us just in your
6 own words what your thoughts were on the death
7 penalty?

8 A. Well, it's not something that you would
9 take lightly. I mean, I think it would have to be
10 absolutely, without any doubt that was the
11 appropriate punishment.

12 Q. All right. You understand, I think the
13 judge may have mentioned this, we're sort of putting
14 the cart before the horse because we're talking about
15 the penalty and the defendant's presumed to be
16 innocent until the State can prove him guilty beyond
17 a reasonable doubt, of course the trial hadn't even
18 started yet.

19 A. Right.

20 Q. But this is the only chance we get to ask
21 these questions so we have to do it that way. But if
22 we go into the guilt phase, the first part of the
23 trial which is like any other trial, the jury is just
24 there to decide whether or not the State can prove
25 this person guilty beyond a reasonable doubt. If

1 he's found guilty of murder we go on to phase two.
2 And the purpose of having that second part of the
3 trial is to allow additional evidence to come in.

4 A. Right.

5 Q. Evidence in aggravation, evidence in
6 mitigation, there would be additional instructions
7 from the judge to aid the jury in making the
8 determination of the punishment because it's the
9 jury's call, not the judge's.

10 A. Right.

11 Q. He will order whatever the jury says the
12 verdict is to happen, that's his role. So if the
13 jury votes for life the judge orders life, he'll
14 serve life without parole. If the jury unanimously
15 votes on the death penalty that will be the judge's
16 order, he will be executed based on the jury's
17 verdict.

18 And I'm not going to ask you, and
19 nobody else is going to ask you to predict what you
20 would do in this case because you hadn't heard the
21 facts, but if the case is bad enough could you vote
22 for the death penalty knowing that sentence would
23 actually be carried out based on the jury's verdict?

24 A. Yes.

25 Q. The judge asked you this before, but

1 could you sign the verdict form if that was your
2 vote?

3 A. Yes.

4 Q. And there's a process called polling the
5 jury where if the jury comes out and announces the
6 death verdict, then each juror's name will be called
7 one at a time and they will be asked to say is that
8 your verdict, is it still your verdict. Could you do
9 that?

10 A. Yes.

11 Q. Okay. The last thing I want to mention,
12 I hate to mention this to everybody, but in a death
13 penalty case the jury's sequestered. And we're not
14 talking about months and months like in California,
15 we're looking at maybe four or five days, a week at
16 the most.

17 A. Okay.

18 Q. Probably starting tomorrow. Is that
19 something that you can handle if you are picked as a
20 juror?

21 A. Yes.

22 Q. Okay. And no reason that you can think
23 of that would prevent you from serving as a fair
24 juror to both sides, State and defense?

25 A. I can't think of any.

1 Q. Okay. Thank you. That's all I have.

2 EXAMINATION

3 BY MR. BEAUFORD:

4 Q. Ms. Barclay, my name is Percy Beauford.
5 How are you doing today?

6 A. Fine, thank you.

7 Q. I just have a few questions. Phase two
8 of this case which is the sentencing, defendant's
9 already found guilty of murder. Could you consider
10 other factors that has nothing to do with the crime
11 itself, mitigation or aggravating, and I want to
12 define that a little bit for you. Like something
13 aggravating may be how gruesome the case is, how bad
14 it is. The mitigating situation might be the life of
15 the defendant, how he was raised, things of those
16 nature.

17 A. Right.

18 Q. Could you consider those things in
19 determining whether to impose a death or life
20 sentence after the defendant's already been found
21 guilty of murder?

22 A. Yes.

23 Q. You can consider those things?

24 A. Oh, yes.

25 Q. And you understand that life in South

1 Carolina means life without parole, means life?

2 A. Yes, I understand.

3 Q. And if you were on the jury and the
4 majority of the jurors voted a particular way and you
5 wanted to vote the other way, would you hold to your
6 view or would you change your view just to get the
7 case over with?

8 A. I think I'd hold my view.

9 Q. And would you respect the vote of the
10 other jurors?

11 A. Yes.

12 Q. And you understand in South Carolina that
13 murder is the intentional killing of someone with
14 malice, it's not manslaughter, it's not self-defense
15 it's not an accident?

16 A. Right.

17 Q. Okay. No further questions.

18 THE COURT: Would you please just step
19 out there in the hall, I'll bring you right
20 back. It will be just a second.

21 (Whereupon, the prospective juror leaves
22 the courtroom.)

23 MR. BAILEY: Qualified.

24 THE COURT: Qualified.

25 MR. BEAUFORD: Qualified.

1 MS. HARDEE-THOMAS: Qualified.

2 THE COURT: She's qualified.

3 (Whereupon, the prospective juror returns
4 to the courtroom.)

5 THE COURT: Ms. Barclay, what we're going
6 to do, your phone number, that's correct,
7 isn't it?

8 THE JUROR: No, I have a new number.

9 THE COURT: Would you mind giving it to
10 me? What I'm going to do is have the clerk
11 call you late this afternoon and tell you what
12 time to come back tomorrow.

13 THE JUROR: It's 8879.

14 THE COURT: Don't discuss -- I know you
15 got to tell your husband and whatnot.

16 THE JUROR: He's out of town. I don't
17 have to tell him anything.

18 THE COURT: You don't have to tell him
19 anything, aren't you lucky. Well, if you talk
20 to anyone else just don't discuss the death
21 penalty or anything like that and this case,
22 and we will call you later this afternoon and
23 let you know. Thank you so much.

24 (Whereupon, the prospective juror leaves
25 the courtroom.)

1 MR. BAILEY: Judge, while I'm thinking c
2 it I was just wondering about Mr. McCann.

3 THE COURT: We called and he's on the
4 way. He'll be here at 3:30.

5 MR. BAILEY: All right.

6 THE COURT: Mr. Mark Donald Hall.

7 (Mark D. Hall, called as a potential
8 juror, having first been duly sworn, is
9 examined as follows:)

10 THE COURT: Mr. Hall, come on in, sir.
11 How are you doing today?

12 THE JUROR: Pretty good.

13 THE COURT: Tell me about Republic
14 Contracting. What do you all do?

15 THE JUROR: Build bridges right down in
16 Beaufort.

17 THE COURT: Bridges for automobiles?

18 THE JUROR: Yes, sir.

19 THE COURT: How long have you been doing
20 that now? It says May 6th, 1999.

21 THE JUROR: Thursday will be three weeks.

22 THE COURT: Okay. Before that what did
23 you do?

24 THE JUROR: I worked at McDonald's.

25 THE COURT: For how long, sir?

1 THE JUROR: It was around four or five
2 months.

3 THE COURT: Okay. And your birthday, did
4 they put that on there? When is your birth
5 date?

6 THE JUROR: July 14th, 1977.

7 THE COURT: '77, all right, sir. And I
8 just want to ask you a couple questions in
9 regard -- first of all, have you served as a
10 juror before?

11 THE JUROR: No, sir.

12 THE COURT: Okay. Did you read that?

13 THE JUROR: Yes, sir.

14 THE COURT: Tell me where you think you
15 fall, what type juror, one, two, or three.

16 THE JUROR: Probably the third one, sir.

17 THE COURT: What does that mean basicall
18 to you? How do you understand that juror to
19 be?

20 THE JUROR: Basically what it means to m
21 is that once the suspect has already been --

22 THE COURT: Convicted?

23 THE JUROR: -- convicted, then it would
24 still need to be discussed more between
25 jurors.

1 THE COURT: As to what the sentence would
2 be?

3 THE JUROR: Yes, sir.

4 THE COURT: Well, do you -- in other
5 words, what you're saying is you would be
6 willing to listen to the evidence that's
7 presented even after someone has been
8 convicted of murder, that you would not be one
9 who would automatically give in every case a
10 death sentence? In other words, you wouldn't
11 say, well, if he's convicted of murder then he
12 ought to get death every time?

13 THE JUROR: No, sir.

14 THE COURT: You wouldn't be one, a juror
15 like that?

16 THE JUROR: No, sir.

17 THE COURT: I see that as juror A. Juror
18 B, or second type, would be one who would say
19 even if he is guilty of murder I would never
20 give a death sentence, I don't believe in it,
21 I would give life every time. You're saying
22 you're not one of those?

23 THE JUROR: No, sir.

24 THE COURT: So basically what you say is
25 you are a juror who would have to -- who could

1 give death or could give life?

2 THE JUROR: Yes, sir.

3 THE COURT: But you basically wouldn't be
4 able to do that unless you heard all the
5 evidence in the case, the aggravating things,
6 the mitigating things?

7 THE JUROR: No, sir.

8 THE COURT: I even say good and bad. You
9 have to hear all that before you could
10 determine what the appropriate sentence would
11 be. Is that where you truly are?

12 THE JUROR: Yes, sir.

13 THE COURT: All right, sir. There aren't
14 any right or wrong answers. Of course you
15 could tell me, you know, if you feel
16 otherwise, certainly we don't want you to say
17 anything that you don't feel because there
18 aren't any right or wrong answers. Some
19 people just feel like the death sentence is
20 the thing to do every time and some people say
21 I ain't ever going to give the death sentence
22 I'd never do it, I give life every time.

23 A lot of people say, well, I suppose
24 I could, it would have to be under the right
25 circumstances, I could give life but it would

1 have to be under the right circumstances. Is
2 that where you truly feel like you are?

3 THE JUROR: Yes, sir.

4 THE COURT: All right.

5 Mr. Beauford?

6 EXAMINATION

7 BY MR. BEAUFORD:

8 Q. How are you doing today, Mr. Hall? My
9 name is Percy Beauford, just a few questions. What
10 is your opinion about the death penalty?

11 A. Personally I don't really think it's --
12 mean --

13 Q. There's no right or wrong answer so this
14 is your opinion.

15 A. I don't really think it's right, but it
16 has to be a choice, I guess.

17 Q. Explain that to me. You don't believe
18 what is right?

19 A. Well, it would be right to a point. I
20 mean, if you take someone else's life, then take
21 their life too, but I mean....

22 Q. Okay. Do you understand that murder is
23 the intentional killing with someone by malice, it's
24 not by accident, it's not manslaughter, or it's not
25 in self-defense? Would that in any way change your

1 views of the death penalty or life imprisonment in
2 voting on either of those choices?

3 A. Somewhat it would, yes.

4 Q. How would that, knowing what murder is,
5 how would that change your views?

6 A. Well, what kind of age groups were we
7 talking about? I mean, if you hand a kid a gun --

8 Q. I didn't hear you, repeat that.

9 A. What kind of age group are we talking
10 about? If you give a kid a gun, ask them to shoot
11 somebody, is that considered murder?

12 Q. So you're getting to the next area of
13 questions I'm going to ask you about. Say someone is
14 convicted of murder, they're convicted of murder.
15 Would you be able to consider other factors in
16 determining what the punishment may be, whether death
17 or life, and you mentioned age or whatever, a kid or
18 whatever, could you consider factors that does not
19 have anything to do with the crime itself of murder,
20 the intentional killing of someone else, these other
21 factors like you said, age or whatever, could you
22 consider those factors in determining whether death
23 or life?

24 A. Yes.

25 Q. And you understand in South Carolina life

1 means life without parole?

2 A. Yes, sir.

3 Q. Okay. And if you were on a jury and a
4 majority wanted to vote a particular way and you
5 wanted to vote another way, would you change your
6 vote just to get the case over with?

7 A. No, sir.

8 Q. Would you respect the views of the other
9 jurors?

10 A. Yes, sir.

11 Q. How would you describe yourself, as a
12 follower or leader?

13 A. A follower.

14 Q. You said a follower?

15 A. Right now.

16 Q. Okay. Thank you.

17 EXAMINATION

18 BY MR. BAILEY:

19 Q. Mr. Hall, I'm Walter Bailey, I'll be
20 prosecuting this case, I need to ask a few more
21 questions. And like the judge said there are no
22 right or wrong answers and we're not trying to test
23 you on your answers, we just need to know what you
24 really feel. Because after we pick a jury we can't
25 ask any more questions so this is the only chance we

1 get to do this.

2 And what I want to do is just kind
3 of run over the process again for you. The judge did
4 it yesterday, but you've never been on a jury before,
5 have you?

6 A. No, sir.

7 Q. So this is all pretty new to you. But
8 the first part of the trial is the guilt phase.
9 That's like any other trial, could be a DUI trial,
10 could be an armed robbery, any kind of a criminal
11 trial where the State has the burden of proof. In
12 other words, the State has to prove that defendant
13 guilty of whatever he's charged with beyond a
14 reasonable doubt to that jury's satisfaction.

15 And if we do that the jury would
16 then convict him and we'd go to the second phase,
17 okay, when it's a case involving murder and we're
18 seeking the death penalty. So anytime we're talking
19 about that second phase where the jury is considering
20 the death penalty or life imprisonment, that means
21 that jury's already convicted that person of murder
22 in the first phase. The judge doesn't decide what
23 the penalty is. The jury makes that decision.
24 Whatever the jury says, they say life, the judge
25 orders life, he gets life, he serves life without

1 parole. The jury votes on death, that's what the
2 judge is going to order and he actually is going to
3 be executed based on that jury's verdict. So that's
4 the way the system works here in this state.

5 Now, I'm not going to ask you to
6 predict or to tell us what you would do in this case
7 if you got picked as a juror because you hadn't hear
8 the facts and you'd want to hear the facts before you
9 decided anything about the case; is that right?

10 A. Yes, sir.

11 Q. If the facts are bad enough, could you
12 vote for the death penalty knowing that that
13 penalty's actually going to be carried out, that
14 person actually will be executed based on that jury'
15 vote?

16 A. Yes, sir.

17 Q. If all 12 jurors vote for the death
18 penalty, there's a paper they have to sign called a
19 death verdict form or death warrant. When they sign
20 that paper at some point in time after that that
21 defendant will be executed because that paper was
22 signed. Could you sign your name to a paper like
23 that knowing it would result in an execution?
24 There's no right or wrong answers, we just need to
25 know if you can do it or not.

1 A. I don't believe I could.

2 Q. Okay. You said, "I don't believe I
3 could."

4 A. I can't.

5 Q. You couldn't do it?

6 A. Could not.

7 Q. Thank you. That's all I have.

8 THE COURT: Tell me why you couldn't do
9 it.

10 Any questions, Mr. Beauford,
11 anything else?

12 MR. BEAUFORD: I was just waiting for the
13 answer, that was a question I wanted to ask
14 also.

15 THE COURT: If he chooses not to -- if he
16 can't express himself, I mean certainly I
17 don't want to put him on the spot. I want to
18 give him the chance to answer it. If he can,
19 I would like for him to try to answer.

20 MR. BEAUFORD: Just a few questions.

21 EXAMINATION

22 BY MR. BEAUFORD:

23 Q. You said if the facts are bad enough you
24 are able to vote for the death penalty; am I correct?

25 A. Yes, sir.

1 Q. And then the second question was now the
2 you have decided that the person should get the death
3 penalty and you have to sign your name on a paper,
4 you say you can't sign that piece of paper?

5 A. Yes, sir. I hadn't really thought about
6 it at that time when you asked me.

7 Q. Okay. No further questions.

8 THE COURT: Thank you, sir. You may step
9 in the hall just a minute, sir.

10 (Whereupon, the prospective juror leaves
11 the courtroom.)

12 THE COURT: State?

13 MR. BAILEY: Not qualified, Your Honor.

14 THE COURT: Defendant?

15 MR. BEAUFORD: Not qualified.

16 THE COURT: He's not qualified.

17 (Whereupon, the prospective juror returns
18 to the courtroom.)

19 THE COURT: Mr. Hall, I'd excuse you. I
20 want to thank you very much for coming and
21 helping us with this thing and you're free to
22 go. Thank you, sir.

23 THE JUROR: Thank you.

24 (Whereupon, the prospective juror leaves
25 the courtroom.)

1 (Robert C. Adams, called as a potential
2 juror, having first been duly sworn, is
3 examined as follows:)

4 THE COURT: Mr. Adams, how are you doing,
5 sir?

6 THE JUROR: All right.

7 THE COURT: Ask you a few questions and
8 get you out of here. Thank you, sir, for
9 being here today, we appreciate you helping
10 us. Tell me about Boeing Company, if you
11 would, what you do, what they do.

12 THE JUROR: We sold the C17 to the US Air
13 Force, we also support it. And I work at
14 supply side of the house, engineering, work
15 with them, drawings, blueprints and been here
16 five years with them, hopefully be here
17 another five.

18 THE COURT: And you came here from?

19 THE JUROR: I've been with the company 18
20 years, I come from a Shreveport, Louisiana, on
21 the KC10 program, another company program. I
22 was there seven years.

23 THE COURT: I see. I see. Have you
24 served, sir, as a juror before?

25 THE JUROR: Not in this state. In North

1 Carolina I did.

2 THE COURT: North Carolina?

3 THE JUROR: Yes, sir.

4 THE COURT: Criminal case or civil case?

5 THE JUROR: One of each about 20 years
6 ago.

7 THE COURT: Well, you've got pretty good
8 experience, better experience, better
9 experience than most jurors who come in if you
10 served twice.

11 Let me ask you this, sir, this thing
12 I had you all read back there, did you read
13 that?

14 THE JUROR: Yes, sir.

15 THE COURT: Tell me where you think you
16 fit in on that.

17 THE JUROR: I think I would be the --
18 would have to wait and see the circumstances,
19 mitigation and aggravation, I'd have -- of
20 course, the court would explain it to me more

21 THE COURT: Yes, sir. Yes, sir.

22 THE JUROR: But I would be open minded.
23 I wouldn't be closed minded about anything
24 until I heard all the facts.

25 THE COURT: What I understand, of course

1 I typed the thing up about the best way I
2 could think in my own mind about how jurors
3 might consider, you know, a situation where
4 someone has already been convicted of murder.
5 Obviously we're putting the cart before the
6 horse. When we talk about sentencing we don't
7 ever get there, of course, unless the jury
8 were to determine that someone was guilty
9 beyond a reasonable doubt of murder. So
10 that's just sort of a given for the purposes
11 of these questions, obviously. Not a given in
12 any other sense, but obviously we have to talk
13 about a situation where the State has actually
14 proven someone guilty of murder.

15 You're saying that if you were a
16 juror, and we're not talking about this case,
17 we don't ask you to predict this case and
18 obviously we know that there aren't any right
19 or wrong answers, but however you believe is
20 how you believe, there's no problem with that.
21 But, again, if you were a juror and the jury,
22 including yourself, had heard enough evidence
23 and had convicted someone of murder, are you
24 telling me that you would not automatically
25 say, well, if he's a murderer, then the death

1 sentence is the appropriate sentence in ever
2 case?

3 THE JUROR: No, sir. I'd have to hear
4 all the facts to it.

5 THE COURT: And conversely you wouldn't
6 be one who would say, well, even if he is
7 guilty of murder I don't believe in the death
8 sentence, I would never give anything but a
9 life sentence because I'm not going to give
10 anybody death. So you're not one of those a
11 I understand it?

12 THE JUROR: No, sir.

13 THE COURT: Basically what I understand
14 from you is that you would be willing, you
15 could give death, you could give life, but you
16 would have to listen to both sides, basically
17 all the evidence and instruction as you say
18 from me, and then consider what appropriate
19 sentence to impose?

20 THE JUROR: Yes, sir.

21 THE COURT: There's nothing about your
22 religion, religious views or your views
23 period, which would prevent you from imposing
24 a death sentence if you felt that was the
25 appropriate sentence to give?

1 THE JUROR: No, sir.

2 THE COURT: And conversely, nothing in
3 your opinion or your consideration of this
4 kind of thing that would prevent you from
5 giving a life sentence if you felt like that
6 was the thing that you should do?

7 THE JUROR: No, sir.

8 THE COURT: All right, sir.

9 EXAMINATION

10 BY MR. BAILEY:

11 Q. Mr. Adams, how are you doing? I'm Walter
12 Bailey, I want to ask you a few more questions here
13 just to follow up on what the judge asked you, no
14 right or wrong answers. But in regard to the death
15 penalty, in general could you tell us what your
16 thoughts are?

17 A. I'm not for or against, I would have to
18 be -- I would have to hear the facts more so than
19 anything else.

20 Q. Okay. All right, sir. And you
21 understand, like the judge said, we're kind of
22 putting the cart before the horse because that's the
23 only way to get to the death penalty questions, we're
24 assuming when we ask these questions that the
25 defendant's been tried in the guilt phase, found

1 guilty of murder, we're in the second phase of the
2 trial. You understand that?

3 A. Yes, sir.

4 Q. Before we get to that point I would have
5 to prove to the satisfaction of that jury that that
6 defendant is guilty of murder beyond a reasonable
7 doubt.

8 A. Yes, sir.

9 Q. And so anytime we're talking about
10 penalty phase, that means that defendant's already a
11 convicted murderer. And that second phase is to
12 allow additional evidence to come out that may not
13 have come out in the first part of the trial,
14 evidence of aggravation, evidence of mitigation. The
15 judge would give the jury some additional
16 instructions, then the jury, not the judge, makes the
17 decision on the penalty.

18 A. Yes, sir.

19 Q. If the jury votes for life, the judge
20 would order life and the defendant would serve life
21 without parole. If the jury orders the death penalty
22 that's what the judge would order, and he would be
23 executed.

24 A. Yes, sir.

25 Q. I'm not going to ask you to predict what

1 you'd do in this case because you hadn't heard any of
2 the facts, but if the facts were bad enough could you
3 vote for the death penalty knowing that as a result
4 of that vote that defendant actually would be
5 executed?

6 A. Yes, sir.

7 Q. And the judge I believe asked you this
8 also, but there's a verdict form, a death verdict
9 form that each juror would be asked to sign their
10 names to if they all vote for the death penalty.
11 Could you sign that paper if that was your vote?

12 A. Yes, sir.

13 Q. And could you stand up in court and
14 announce that verdict out loud when your name is
15 called?

16 A. Yes, sir.

17 Q. Okay. The last thing I want to mention
18 is that we'll probably start this trial tomorrow if
19 things go along as they've been going today in the
20 jury question process. The jury's put in a motel at
21 night until the trial's over. And we're looking at
22 probably a period of time less than a week. That's
23 an inconvenience for everybody, but if you were
24 picked as a juror is that something that you could
25 accommodate, could you work that out?

1 A. If I had to, yes, sir.

2 Q. That's all I have. Thank you very much.

3 THE COURT: Mr. Beauford?

4 EXAMINATION

5 BY MR. BEAUFORD:

6 Q. Yes. Mr. Adams, my name is Percy
7 Beauford, just a few questions. Murder is the
8 intentional killing of someone with malice. Knowing
9 that someone has been convicted of murder, which is
10 intentionally killing someone with malice, would tha
11 change your views on voting for the death penalty or
12 life?

13 A. I'd have to hear more facts before I
14 could make a decision.

15 Q. Facts of aggravation or mitigations?

16 A. Right.

17 Q. And you feel that you would consider
18 those facts at that phase --

19 A. Right.

20 Q. -- in determining the sentence?

21 A. Yes, sir.

22 Q. You understand in South Carolina life
23 means life imprisonment without parole?

24 A. Yes.

25 Q. The case that you served in North

1 Carolina, the criminal case, was that a murder case?

2 A. No, sir. It was a drunk driving case.

3 Q. Okay. And if you were on the jury and
4 the majority wanted to vote a particular way and you
5 wanted to vote the other way, would you change your
6 views just to get the case over with?

7 A. No, sir. If I felt it I would stand for
8 it.

9 Q. Would you respect the views of the other
10 jurors?

11 A. Yes.

12 Q. Is there any particular point in life
13 that you came to this particular opinion about the
14 death penalty, your views on the death penalty?

15 A. No, sir.

16 Q. You've always held that view?

17 A. Yes, sir.

18 Q. When was the last time you had --

19 A. Under certain conditions, and like I say,
20 I'd have to hear all the facts, I've never been one
21 way or the other and I'd have to hear all the facts.

22 Q. When was the last time you had the
23 occasion to talk about the death penalty other than
24 this week, other than the last couple days not talk
25 about it, we know you hadn't, but when was the last

1 time you had the occasion to talk about a death
2 penalty?

3 A. I don't know. I can't say. It's been
4 years. It's just never come up, really, one way or
5 the other.

6 Q. No further questions.

7 THE COURT: Mr. Adams, would you mind
8 stepping in the hall just for a moment and
9 I'll bring you right back. Just for a moment
10 (Whereupon, the prospective juror leaves
11 the courtroom.)

12 THE COURT: State?

13 MR. BAILEY: Qualified.

14 THE COURT: Defendant?

15 MR. BEAUFORD: Qualified.

16 THE COURT: He's qualified.

17 (Whereupon, the prospective juror returns
18 to the courtroom.)

19 THE COURT: Mr. Adams?

20 THE JUROR: Yes, sir.

21 THE COURT: This phone number you've
22 given us up here, it's correct, sir?

23 THE JUROR: That's my home phone and work
24 phone, yes, sir.

25 THE COURT: You're going to go -- I'm not

1 trying to be nosey, but, I mean, are you going
2 back to work or are you going home now, sir?

3 THE JUROR: I'm going back home now, but
4 whatever you say.

5 THE COURT: That's what I'd be doing if I
6 were you. I just didn't know if you wanted to
7 go back to work.

8 THE JUROR: It depends from what happens
9 here from then on, but I'm going home today.

10 THE COURT: What happens is this: We've
11 been through a lot of jurors, still have a
12 good many to go, I'm trying to get 35 at least
13 in a pool, you being one that I think is
14 qualified to serve, out of which 12 jurors and
15 two alternate jurors will be drawn to actually
16 try the case. So one out of every three is
17 going to be drawn, basically, when I get that
18 pool together.

19 I've got I don't know how many now,
20 but I hadn't got 35 yet, so rather than
21 telling you to come back in the morning at a
22 certain time, I think we're going to be able
23 to start in the morning, I thought I would
24 just have the clerk call your home tonight or
25 late this afternoon and tell you what time to

1 come. Would that be fair enough?

2 THE JUROR: That would be fine, sir.

3 THE COURT: Just don't discuss the death
4 penalty, you know, your opinions about it or
5 this case or anything like that. Obviously
6 you've got to tell your wife, or whomever at
7 home, you've got to tell them you may get a
8 call and you'll probably have to come back in
9 the morning and you don't know whether you'll
10 be selected and so forth, just don't get into
11 a discussion of the facts.

12 THE JUROR: Okay.

13 THE COURT: Thank you, sir. We
14 appreciate it.

15 (Whereupon, the prospective juror leaves
16 the courtroom.)

17 THE COURT: Ladies and gentlemen, I've
18 got Iris Eagan. She was a white lady about 60
19 years, 65 years of age, 60 years of age, I
20 guess. She sat about three-quarters of the
21 way back there yesterday, she's from
22 Summerville if I'm not mistaken.

23 I got a thing here from her saying
24 Iris is sick and would not be able to serve
25 jury duty for two, three weeks and a scribble,

1 you know, a doctor's signature. But it's come
2 from doctors Brake, Bolt, Sailer, two others I
3 can't pronounce, Medical Plaza Drive,
4 Charleston, South Carolina. She's out there,
5 the clerk says she's coughing.

6 **MR. BEAUFORD:** Your Honor, we don't have
7 any problem excusing her.

8 **MR. BAILEY:** I don't either, if she
9 doesn't want to be here.

10 **THE COURT:** Well, if she's got a doctor's
11 excuse, tell her. Let me give you a Hall's.

12 **THE CLERK:** She was number 5 on panel
13 nine.

14 **THE COURT:** The lady I just excused?

15 **THE CLERK:** Right. For 3:00 this
16 afternoon.

17 **THE COURT:** 3:00 this afternoon, number 5
18 on panel nine. The last one on this panel I
19 believe is Mr. Thorpe.

20 (Thomas R. Thorpe, called as a potential
21 juror, having first been duly sworn, is
22 examined as follows:)

23 **THE COURT:** Mr. Thorpe, how are you
24 doing? Come on have a seat, I'm going to ask
25 you a couple questions and let you get out of

1 here this afternoon. You work for the Medical
2 University. Tell me about your job, please,
3 sir.

4 THE JUROR: I'm a research technician and
5 I assist investigators with the research
6 animals with housing them, taking care of
7 them, medical needs. The particular
8 department that I work for, we purchase and
9 maintain supplies in the areas for the
10 surgical procedures where they're done so we
11 basically run OR, do anesthesia.

12 THE COURT: For animals?

13 THE JUROR: Yes.

14 THE COURT: Or for research animals?

15 THE JUROR: Yes.

16 THE COURT: And you've been doing that
17 for 13 years?

18 THE JUROR: Yes, I have.

19 THE COURT: And your wife is a nurse as
20 understand it?

21 THE JUROR: Yes, Your Honor.

22 THE COURT: You've got one child ten
23 weeks old?

24 THE JUROR: Yes, Your Honor.

25 THE COURT: Do you get up in the night to

1 give her the bottle?

2 THE JUROR: Right now I'm on paternity
3 leave. I'm supposed to return back to work
4 the 7th of next month. So right now I'm at
5 home, but I have -- yesterday he stayed with
6 the neighbors and today my wife was home
7 before I left.

8 THE COURT: You mean to tell me that
9 she's working and you're home taking care of
10 the baby?

11 THE JUROR: Right now. Right now. She
12 stayed home the first six weeks, then I'm
13 staying home the second six weeks, then after
14 that he's going to be staying with the
15 neighbors.

16 THE COURT: I see. Well, if you were to
17 serve on this case and have to stay in a motel
18 for five days, six days, how is that?

19 THE JUROR: He will stay with the
20 neighbors. My wife is -- my wife's job is not
21 strictly a 40-hour week, it's only like 35
22 hours and it varies from day to day.

23 THE COURT: But you're satisfied that you
24 could work that out if that happened?

25 THE JUROR: I think so. Or my

1 mother-in-law also stays with us.

2 THE COURT: You would be glad to be with
3 me if your mother-in-law's living with you.

4 THE JUROR: Yeah. It's our first child
5 so she wants to give us all kinds of
6 suggestions.

7 THE COURT: I'm just having fun with you

8 THE JUROR: It's not that bad.

9 THE COURT: I have a nice mother-in-law
10 myself.

11 Have you served as a juror before,
12 sir?

13 THE JUROR: No, Your Honor, I have not.

14 THE COURT: How about that sheet, you
15 read that sheet back there?

16 THE JUROR: Yes, I did.

17 THE COURT: Tell me where you fall, where
18 you think you fall as a juror.

19 THE JUROR: I would think I would be the
20 third one.

21 THE COURT: Which basically says what,
22 sir?

23 THE JUROR: It says that --

24 THE COURT: What does it mean more than
25 what it says.

1 THE JUROR: It says that -- it basically
2 states that even though you may know that
3 someone has done something, and you know for a
4 fact that they've done it because you've been
5 told that they've done it and they've admitted
6 it themselves that they've done it, that you'd
7 have to listen to all the circumstances and
8 see was there some sort of factor that caused
9 them to do it, was it something that -- a spur
10 of the moment or was it a long thought out
11 and -- premeditated is the word they use.

12 THE COURT: And so what you're saying is
13 that you're -- those who are in that group
14 basically could impose the death sentence if
15 they felt it would be the appropriate sentence
16 in a particular case, or they could impose a
17 life sentence if they felt like that was the
18 appropriate thing in the case?

19 THE JUROR: Yes. Yes, Your Honor.

20 THE COURT: Basically you have to listen
21 to both sides, good and bad you might as well
22 say, before you make that determination?

23 THE JUROR: That's true.

24 THE COURT: Others, as I've got it set
25 out there, laid out on that sheet there,

1 others would say I don't care about hearing
2 anything else, if he's guilty of murder death
3 penalty every time, every case. Others would
4 say, well; even if he is guilty of murder I'm
5 not going to ever give the death penalty, give
6 life every time, I just don't believe in the
7 death sentence. So you've got two extremes
8 and you've got those I say in the middle who
9 say I could do one, could do the other, but I
10 would have to listen basically to everything
11 as it was given to me.

12 THE JUROR: That's true.

13 THE COURT: Is that truly where you feel
14 like you fall?

15 THE JUROR: I think so. I've often --
16 people have often said that I'll, you know,
17 usually listen out and give the benefit of the
18 doubt and see what's going on.

19 THE COURT: All right, sir.

20 All right. Mr. Beauford?

21 EXAMINATION

22 BY MR. BEAUFORD:

23 Q. Mr. Thorpe, my name is Percy Beauford, a
24 few questions. What is your opinion on the death
25 penalty?

1 A. Well, I don't believe it's for everyone.
2 I don't think that, as you stated, you know, you
3 could have killed someone, but that doesn't
4 necessarily mean that you should die yourself. That
5 I don't think no one should die, you know, I'm not
6 100 percent either way. I don't feel that if you
7 kill someone you should die, but then again I don't
8 feel that even though you've killed someone that you
9 shouldn't die.

10 Q. Okay.

11 A. I'd have to see what the scenario was or
12 what the reasons for it were.

13 Q. Okay. You know in South Carolina
14 murder's the intentional killing of someone with
15 malice, it's not by accident, it's not manslaughter,
16 it's not in self-defense. Knowing that, would that
17 change your views as you just told us?

18 A. When you say what murder --

19 Q. Murder, the intentional killing of
20 someone with malice.

21 A. Does that mean like a person sitting
22 there and saying I'm going to go kill this person and
23 then getting something and going to do it? Is that
24 what you mean by that, that's what murder is?

25 THE COURT: I think -- I don't mean to

1 cut you off. Would you like for me to try?

2 MR. BEAUFORD: Please do.

3 THE COURT: Well, rather than getting
4 into a factual -- in the answering of a
5 factual question like that a lot of people, I
6 suppose most people who watch television have
7 this idea that murder is some -- everybody
8 says premeditated murder. Premeditated is no
9 in our vocabulary in this state, that's not a
10 word, that's not a part of the definition of
11 murder. So it's not a situation where someone
12 would plan out. Could be, but it's not an
13 element of the offense of murder, actually
14 premeditated.

15 What is in the definition is that
16 sometime before the act occurs, may be a
17 second, may be ten seconds, may be ten
18 minutes, may be ten days. At some time before
19 the act occurs there has to be in the mind of
20 that person who commits the action malice. We
21 call it malice aforethought, which really
22 means malice before the act.

23 Malice is -- could be a number of
24 things, just meanness, just a hatred, just a
25 determination to do what one knows to be

1 wrong, just a heart devoid of anything which
2 would be socially acceptable, someone who just
3 simply says I hate this person or that kind of
4 thing.

5 But that's what he's asking you.
6 He's saying if you're a juror and you convict
7 someone of murder, you basically are saying I
8 believe beyond a reasonable doubt that this
9 person has committed a murder which means that
10 in his heart, in his mind, before the act he
11 has this hatred, this ill will, or whatever it
12 is that -- that I'll explain. And I'll
13 explain that to you, of course.

14 But what he's saying is as a juror
15 when you convict someone of murder you have
16 gone through that process and you have
17 determined that this person actually had in
18 his mind, in his heart, this ill will, this
19 hatred so to speak.

20 And what he wants to know is knowing
21 that that is the definition of murder, knowing
22 that the jury has convicted and you have
23 convicted someone who you believe has that ill
24 will and that hatred, could you still listen
25 to the evidence as it's presented, both sides

1 good and bad, before you determine whether
2 that person should get life or death.

3 THE JUROR: Okay.

4 THE COURT: Isn't that what you're
5 saying?

6 MR. BEAUFORD: Yes.

7 BY MR. BEAUFORD:

8 Q. You already convicted him of murder and
9 you're in the second stage of trial. Knowing that
10 you convicted him of murder and knowing you know what
11 the murder is at this point, do you still hold your
12 views as to you would want to listen to the other
13 evidence, or would you say that because he committed
14 murder that he should get death, he committed murder
15 he should get life? How would you weigh those things
16 now?

17 A. I think I understand that we've already
18 decided that the person -- at that point you've
19 already decided that the person has done it.

20 Q. Intentionally killed the person with
21 malice.

22 A. Because of the definition of it that they
23 had malice.

24 THE COURT: Right. That's right.

25 BY MR. BEAUFORD:

1 Q. That you already determined that.

2 A. I think I'd still have to listen to what
3 brought them to that point. I would have to listen
4 to what brought them to that point before I could
5 say, okay, this person needs to be sentenced to
6 death, or this person needs to stay in prison for the
7 rest of their life.

8 Q. Could you consider other factors that had
9 nothing to do with the crime itself in determining
10 whether to give death or life?

11 A. Sure.

12 Q. Whether those facts might be mitigating
13 or aggravating, had nothing to do with the crime, you
14 already convicted him of murder, could you consider
15 other factors?

16 A. Yes. You're saying the things -- I think
17 you're bringing about -- or what brought the person
18 to that point, you know, what was occurring to that
19 person before that day.

20 Q. Not necessarily. Not what --

21 A. I don't mean like that morning when they
22 woke up, I'm talking about your --

23 THE COURT: Over the life span.

24 THE JUROR: Your whole experience.

25 BY MR. BEAUFORD:

1 Q. Background, how you were raised, things
2 of aggravation, how bad the crime was, how horrible
3 the crime was.

4 A. Like if something was going on with this
5 person and the person that was killed beforehand.

6 Q. Yeah, those things. Could you consider
7 those kind of things?

8 A. I could.

9 Q. And you understand life in South Carolina
10 means life without parole, it means life?

11 A. That, I didn't know that. I didn't know
12 Because I had heard some things before that when the
13 say when you get life imprisonment you think, okay,
14 the person's going to get put behind bars and never,
15 ever, you know, see the light of day. Then sometime
16 they say, well, he had a life sentence, but he's out
17 in 20 years or something. I don't know. Is that how
18 it is here?

19 Q. Life means life without parole.

20 A. Okay.

21 Q. If you were chosen as a juror and the
22 majority wanted to vote a particular way and you
23 wanted to go the other way, would you change your
24 views just to get the case over with?

25 A. I don't think so.

1 Q. You said you don't think so?

2 A. No, I don't believe I would. I'm usually
3 pretty persistent, if I feel something is a certain
4 way I'll keep saying that.

5 Q. Would you be willing to respect the views
6 of the other jurors?

7 A. Oh, yeah.

8 Q. You want them to respect your views also?

9 A. Yes.

10 MR. BEAUFORD: No further questions.

11 EXAMINATION

12 BY MR. BAILEY:

13 Q. Mr. Thorpe, I'm Walter Bailey, I'll be
14 prosecuting the case, I need to ask you a few more
15 questions to follow up what Mr. Beauford asked you,
16 try to be as short as I can. Now that you know that
17 when we say life it means life without parole, you
18 learned that after you answered one of the judge's
19 questions, would your answers to his questions be the
20 same, knowing that life means life without parole,
21 they wouldn't get out, could you still fairly
22 consider both penalties?

23 A. Yes.

24 Q. Okay. And, again, and I think the judge
25 mentioned this but I want to make sure you

1 understand, that if we get to that second phase, tha
2 means you found the person guilty of murder beyond a
3 reasonable doubt in the first phase of the trial, if
4 the jury gets to that point the jury's going to make
5 the decision and not the judge. All the judge does
6 at that point is he orders that verdict to happen.
7 So if the jury votes for life he orders life, that
8 person serves life without parole. If the jury vote
9 for death, he will order that and that person's goin
10 to be executed.

11 I'm not going to ask you to tell us
12 what you would do in this case, to give us a
13 prediction or anything of that nature because you
14 hadn't heard any of the facts, but my question to yo
15 is if the facts were bad enough could you vote for
16 the death penalty knowing that as a result of that
17 vote that person actually would be executed?

18 A. I could.

19 Q. Okay. If all 12 jurors -- and whatever
20 vote there is it has to be unanimous. If all 12
21 jurors vote for the death penalty there's a form, a
22 death verdict form that each juror would be asked to
23 sign their names to. Could you sign that paper if
24 that was your verdict?

25 A. I could.

1 Q. And could you announce that verdict out
2 loud if it was your verdict?

3 A. I could.

4 Q. Okay. The judge asked you earlier about
5 your child, your baby, and, you know, you're caring
6 for him now. I don't think I mentioned this, but the
7 jury is going to be in a motel during this trial at
8 night for probably up to a week starting maybe
9 tomorrow. The idea is the jury is supposed to make
10 their decision based strictly on the evidence and the
11 law from the judge and not from talk, newspapers,
12 television, radio, anything of that nature. If you
13 get picked as a juror, could you work that out with
14 your personal life?

15 A. I think so, yes.

16 Q. You could be in a motel for four or five
17 days, up to a week?

18 A. I believe I can.

19 Q. All right, Mr. Thorpe. That's all I've
20 got. Thank you very much.

21 THE COURT: Thank you, sir. Would you
22 step in the hall for just one second? I'll
23 bring you right back.

24 (Whereupon, the prospective juror leaves
25 the courtroom.)

1 THE COURT: State?

2 MR. BAILEY: Qualified.

3 THE COURT: Defendant?

4 MR. BEAUFORD: Qualified.

5 THE COURT: He's qualified.

6 (Whereupon, the prospective juror return
7 to the courtroom.)

8 THE COURT: Mr. Thorpe, we will call you
9 tonight, late this afternoon. You're going to
10 go home obviously from here?

11 THE JUROR: Yes, sir.

12 THE COURT: That's your number, still
13 your number?

14 THE JUROR: Yes.

15 THE COURT: All right. We'll have the
16 clerk, someone will call you, tell you what
17 time, we don't know exactly. What we're
18 trying to do is get 35 or so jurors in the
19 pool. You know, 200 yesterday, narrow it to
20 35. From those 35, 12 and two alternates. S
21 one out of three that come back will serve.

22 THE JUROR: All right.

23 THE COURT: So I'm not telling you you'r
24 going to serve, I'm telling you you're just i
25 the pool, but we will call you, tell you what

1 time.

2 Please don't discuss the death
3 penalty, your views, somebody else's views,
4 this case, anything about it. Obviously you
5 got to tell your wife and others what may
6 occur. There's nothing wrong with doing that,
7 but just keep it to what it is that you are
8 going to be called on to do to come to serve,
9 rather than get into the facts of the case or
10 your views on the death penalty. Fair enough?

11 THE JUROR: All right. Yes.

12 THE COURT: Thank you, sir.

13 THE JUROR: So I'll be called tomorrow
14 morning?

15 THE COURT: This afternoon. Probably
16 late this afternoon.

17 THE JUROR: All right. Thank you.

18 THE COURT: Thank you, sir.

19 (Whereupon, the prospective juror leaves
20 the courtroom.)

21 MR. BAILEY: Judge, before the next one
22 comes in --

23 THE COURT: Yes, sir.

24 MR. BAILEY: -- he's indicated on his
25 questionnaire that he's been convicted of

1 perjury, fined \$1,200. That does not appear
2 on his rap sheet. They don't always get
3 picked up.

4 THE COURT: Mr. Scott? This is
5 Mr. Scott?

6 MR. BAILEY: Yes, sir. He was also
7 arrested for indecent exposure, was put into
8 PTI for that.

9 THE COURT: Yeah. He told me that. He
10 came up yesterday, I believe.

11 MR. BEAUFORD: Yes, he did.

12 THE COURT: I think when I asked him,
13 that sort of a tall fellow as I recall, from
14 what I recall he looks like, he told me he was
15 in PTI. Let me ask him about that perjury.
16 Of course, the question is what occurs if the
17 perjury was a crime in San Diego, wherever he
18 is from, and the fine's \$1,200 and there's no
19 punishment for it, what occurs in that case?

20 MR. BAILEY: I guess we need to make some
21 inquiry what it would have carried.

22 THE COURT: I'm saying assuming that it
23 did not carry a year in San Diego, but it does
24 here but he pled guilty there. How does that
25 work? I just hadn't thought about it lately

1 MR. BAILEY: I think he would be
2 qualified if it didn't carry over a year.

3 THE COURT: Wherever he pled guilty. Not
4 this state, it's that state.

5 MR. BAILEY: I believe that would be
6 correct, Judge.

7 THE COURT: Let's ask him.

8 (Anthony L. Scott, called as a potential
9 juror, having first been duly sworn, is
10 examined as follows:)

11 THE COURT: Mr. Scott, how are you doing,
12 sir?

13 THE JUROR: All right.

14 THE COURT: Come on, let me ask you a
15 couple questions. I noticed on your form here
16 you sent back in and said PTI, I believe you
17 told me yesterday you wanted PTI. What about
18 this business of perjury where you paid
19 \$1,200, where was that?

20 THE JUROR: 78, the one down on 78.

21 THE COURT: A jail on 78?

22 THE JUROR: No.

23 THE COURT: You mean a magistrate?

24 THE JUROR: It's that new -- it's the
25 new --

1 MR. ROBBINS: Family court.

2 THE COURT: Oh, you go to Summerville to
3 the family court. So you've been -- you were
4 found guilty or pled guilty --

5 THE JUROR: It was a child support case,
6 it was like back child support or something
7 like that I had to pay.

8 THE COURT: Well, what's that got to do
9 with perjury? I mean, you know, perjury is
10 lying, lying under oath. So were you
11 convicted of lying under oath, or did you just
12 have to pay \$1,200 back in child support
13 because you said the child's not mine or
14 something like that?

15 THE JUROR: I had to pay 1,200, you know
16 six months or 1,200.

17 THE COURT: Okay. Well, that's not
18 perjury, that's just failing to pay child
19 support. Isn't that what that is? Contempt
20 of court is what you're talking about, he's
21 held in contempt of court.

22 THE JUROR: Yeah.

23 THE COURT: Said, well, I'm going to let
24 you out of jail, I'm going to give you six
25 months, but I'm going to let you out of jail

1 provided you pay the \$1,200 child support,
2 right?

3 THE JUROR: Right.

4 THE COURT: All right, sir. That's not
5 perjury, you're all right then. It's just the
6 child support. Then the question is what does
7 contempt carry? What does contempt of court
8 carry?

9 MR. BEAUFORD: That's up to the judge.
10 Generally it's up to one year.

11 THE COURT: One year. I thought it was.
12 Isn't that correct, Solicitor?

13 MR. BAILEY: It's up to a year.

14 THE COURT: It's up to a year. It's not
15 more than a year. So I think he's all right,
16 isn't he, Solicitor, for contempt of court?
17 Are you all satisfied? I mean, I think he's
18 telling me exactly what happened.

19 MR. BAILEY: I have no reason to think
20 that's not correct.

21 THE COURT: It's not on his rap sheet or
22 otherwise, so that's what it is.

23 MR. BEAUFORD: Again, that's not even a
24 crime, either, that's a civil --

25 THE COURT: Well, I understand. All

1 right.

2 Well, let me ask you this,
3 Mr. Scott. You do what for a living?

4 THE JUROR: I'm an assistant anodize
5 foreman at Brightline Extrusions,
6 Incorporated.

7 THE COURT: What in the name of heaven is
8 that?

9 THE JUROR: It's an aluminum plant. We
10 make stuff like molding and stuff like this
11 here. What my job is, is to get it racked up
12 And after we rack it up we send it through
13 a -- like with caustic acid, caustic acid,
14 nitrate, sulphuric, and phosphoric. And what
15 it does when you set it in the sulphuric, it
16 opens up the pores in the metal that way it
17 can suck up dye.

18 THE COURT: Color it?

19 THE JUROR: Yeah, color it or seal it.

20 THE COURT: I got you. Where is that
21 plant?

22 THE JUROR: 575 Beech Hill Road,
23 Summerville.

24 THE COURT: Summerville. And you've
25 worked there for three years; is that right,

1 sir?

2 THE JUROR: Yes.

3 THE COURT: Let me ask you this: Did you
4 read that paper back there?

5 THE JUROR: Yes, I did.

6 THE COURT: Tell me what group you think
7 you fall into.

8 THE JUROR: Number three.

9 THE COURT: Which means what, sir?

10 THE JUROR: Which means you got -- okay.
11 First one they figure under -- they can give
12 them the death penalty under any circumstance
13 or whatever.

14 THE COURT: Right.

15 THE JUROR: That's where you got to
16 listen to all the evidence first.

17 THE COURT: Right.

18 THE JUROR: And in order for it -- I was
19 listening yesterday when you were saying in
20 order for it to be a death penalty he's got to
21 have some kind of aggravation with it.

22 THE COURT: Right.

23 THE JUROR: Then after that you're going
24 to have to vote again on whether he's going to
25 be the death penalty or whether going to be

1 life.

2 THE COURT: But is that -- and that's how
3 the law is set up. But the question is, is
4 that the kind of juror you are? Because a lot
5 of people will say, you know, there are a lot
6 of people who come in and say I'm going to
7 give the death sentence, if I find somebody
8 guilty of murder I'm going to give them the
9 death sentence every single time, I don't care
10 about anything else.

11 THE JUROR: No. You got to look at it
12 like suppose that was you sitting there.

13 THE COURT: All right.

14 THE JUROR: You got to go with the
15 evidence.

16 THE COURT: All right, sir. Then are you
17 also saying that you wouldn't be one who would
18 say, well, even if it is murder I'm going to
19 give life every time?

20 THE JUROR: No, I can't say that either.

21 THE COURT: In other words, you could
22 give a death sentence or you could give a life
23 sentence, but you would have to listen to all
24 the evidence before you decide?

25 THE JUROR: All the evidence first.

1 THE COURT: All right, sir. Thank you,
2 sir. They're going to ask you a couple
3 questions.

4 EXAMINATION

5 BY MR. BAILEY:

6 Q. Mr. Scott, I used to work out at
7 Brightline. Do you ever work where those billets
8 come through, that machine heats up?

9 A. Press, no.

10 Q. Okay. You never worked on that end of
11 it?

12 A. No. Always worked in the anodizing
13 department.

14 Q. Okay. I never made it that far, okay.
15 You've been working there three years?

16 A. Yes.

17 Q. Okay. And I want to ask you a little bit
18 about the death penalty. I want you to forget this
19 case right now. Just in general can you tell us what
20 your thoughts are on the death penalty?

21 A. My thoughts on the death penalty?

22 Q. Yeah.

23 A. Well, that's a real hard question.

24 Q. Okay. Let me ask you this: Do you have
25 any --

1 A. Just say for example like if -- just say
2 for example like this guy goes out and murders about
3 seven or eight people and is found guilty, chances
4 are I might go with it.

5 Q. Okay.

6 A. If he's proven guilty.

7 Q. Okay. And of course we wouldn't even be
8 considering punishment unless he'd already been found
9 guilty of murder in the first part of the trial.

10 A. Right. Chances are I might go with it.
11 It depends on how bad of a murder he did, you know.

12 Q. Okay. All right.

13 A. If he was forced to kill, or either to
14 kill to live is a different story then.

15 Q. Okay. Do you have any religious beliefs
16 in the death penalty one way or the other, does it
17 ever come up at church, sermon, Sunday school or
18 anything like that?

19 A. No.

20 Q. Okay. Now, there are no right or wrong
21 answers, we're not testing you, because whatever
22 answer you give if it's your answer it's correct and
23 nobody's going to question you on that. But if we
24 get to the second phase of this trial, that of course
25 means the defendant's found guilty of murder in the

1 first part of the trial, and the reason we have that
2 second part is to allow additional evidence to come
3 out that didn't come out the first part of the trial.
4 The judge would instruct the jury, tell them the law
5 that applied to the penalty phase of the trial. Then
6 the jury makes the decision, not the judge. All the
7 judge does, he orders whatever that jury's verdict is
8 to happen. If the jury votes for a life sentence the
9 judge orders a life sentence, he would serve life
10 without parole. If the jury orders -- if the jury
11 votes for the death penalty the judge would order it.
12 And that person's actually going to be executed based
13 on that jury verdict. That's how the deal works.

14 Now, I'm not going to ask you to
15 predict or tell us what you would do if you got to be
16 a juror in this case because you hadn't heard the
17 facts, don't know anything about it, do you?

18 A. No. I don't know anything about it.

19 Q. But if the case is bad enough could you
20 vote for the death penalty knowing that as a result
21 of that vote that person who you've seen in the
22 courtroom for four or five days --

23 A. Knowing that he's going to be executed I
24 just sentenced him to die, that's what you're saying?

25 Q. Yeah.

1 A. Probably could.

2 Q. Okay. Now, again, I'm not asking you
3 what you'd do in this case, I'm asking you --

4 A. If I would be able to stand my decision.

5 Q. Yeah.

6 A. Yeah, right.

7 Q. If it's bad enough could you do it?

8 A. Yes, I could.

9 Q. And live with it?

10 A. Yes, I could.

11 Q. If all 12 jurors vote for the death
12 penalty there's a paper they got to sign, a death
13 warrant or death verdict form. Could you sign your
14 name to that paper knowing that person is going to
15 get executed after that paper's signed?

16 A. Yes.

17 Q. Could you stand up here and say out loud
18 that's your verdict if it was your verdict?

19 A. Yes.

20 Q. Okay. And the jury in this kind of a
21 case, they're put in the motel at night to keep them
22 away from the newspaper or people talking on the
23 street about the case, because they're supposed to
24 make a decision based only on the evidence in court.
25 So they would either be in court, they would be in

1 the motel, or out at the restaurant eating supper or
2 breakfast or whatever. And of course the county pays
3 for all that.

4 If you got picked as a juror in this
5 case, would that be a problem for you, to be in a
6 motel for several days?

7 A. No, sir.

8 Q. All right. I think that's all I got.
9 Thank you.

10 THE COURT: Mr. Beauford?

11 EXAMINATION

12 BY MR. BEAUFORD:

13 Q. How are you doing today, Mr. Scott? My
14 name's Percy Beauford, maybe just one question. If
15 the individual in any trial is convicted of murder,
16 could you consider other factors, mitigating or
17 aggravating, how bad the crime is, or life of the
18 defendant, things of that nature in deciding whether
19 to vote for the death penalty or life? He's already
20 convicted of murder, you're in the sentencing phase.

21 A. Right.

22 Q. Could you consider other factors that
23 does not have anything to do with the murder itself,
24 both aggravating or mitigating, in determining the
25 sentence whether death or life?

1 A. In other words, would I go with something
2 that's happened outside -- I mean, that's not inside
3 the case, is what you're saying?

4 Q. It would be inside the case coming from
5 the chair, but it won't have anything to do with the
6 crime itself.

7 A. No. That wouldn't be right then, would
8 it? I'm talking about -- you're kind of confusing
9 now.

10 Q. Okay. The defendant is already convicted
11 of murder. Could you consider mitigating, which
12 means how -- mitigating things, the life of the
13 defendant, life of the victim, how they were raised,
14 or aggravating things, such as how gruesome the crime
15 is, how bad the crime is, could you consider those
16 things in determining whether to vote death or life?

17 A. Yes.

18 MR. BEAUFORD: No further questions.

19 THE COURT: Mr. Scott, please stand out
20 in the hall about three seconds and I'll bring
21 you right back.

22 (Whereupon, the prospective juror leaves
23 the courtroom.)

24 THE COURT: State?

25 MR. BAILEY: Qualified.

1 THE COURT: Defendant?

2 MR. BEAUFORD: Qualified.

3 THE COURT: Let me ask you this -- what
4 number is that?

5 MR. BAILEY: 33.

6 THE COURT: Why don't we go on ahead and
7 tell them they might as well pack their bags,
8 don't you think? I really could have done
9 that after lunch, there's no use to the clerk
10 having to call these folks tonight. Do you
11 all -- I suppose the best way to handle that
12 is just tell them to go ahead and pack for a
13 week and leave it in the car and so forth, and
14 come in tomorrow at what time do you all
15 figure?

16 MR. BAILEY: Nine o'clock.

17 THE COURT: Does that suit you,
18 Mr. Beauford?

19 MR. BEAUFORD: That would be fine, Your
20 Honor.

21 THE COURT: All right, sir.

22 (Whereupon, the prospective juror returns
23 to the courtroom.)

24 THE COURT: Mr. Scott, come on, have a
25 seat, tell you one more thing then you can go.

1 We're going to begin tomorrow morning in this
2 trial. What we've got, what we're doing now
3 is going through a whole list of jurors, 200
4 out there yesterday. We've narrowed this
5 thing down, trying to narrow it down to get
6 about 35 jurors who will come tomorrow. And
7 we're going to pick 12 jurors and two
8 alternates from the 35. You follow me?

9 THE JUROR: Yeah.

10 THE COURT: You're one of those 35. I
11 find that you're qualified, I want you to come
12 back tomorrow. What I'd like for you to do,
13 pack your bags for one week. Tell your family
14 you don't know whether you're going to be gone
15 or not, you might be back home in an hour, I
16 can't tell you you're going to be selected,
17 I'm not telling you that, I'm simply telling
18 all the jurors that they need to come in the
19 morning, leave your baggage in your car, pack
20 your bags and leave them in the car, and you
21 would be here at nine o'clock in the morning
22 out in the courtroom with all the other
23 jurors. So there would be at least 35 other
24 jurors from which we'll pick the jury that
25 will actually try the case.

1 But in case you are selected, I'd
2 like to have you ready so we can go ahead and
3 start the trial, and then the SLED agents and
4 so forth will carry you to eat lunch and all
5 that business, motel, and you'll have all your
6 baggage and you won't have to go back to
7 Summerville and pick it up. Follow me?

8 THE JUROR: Yes, sir.

9 THE COURT: Fair enough?

10 THE JUROR: Fair enough.

11 THE COURT: Don't discuss the case and
12 don't discuss your views, or let anybody
13 discuss their views in regard to the death
14 penalty tonight. Certainly tell your people
15 that you may be selected and why you'll be
16 gone. And I'm going to allow -- I'll talk to
17 you all about this more tomorrow, but you're
18 not going to be, you know, in isolation, I
19 mean, you're going to be able to call home and
20 that kind of thing, but there will be some
21 restrictions on it, but you'll understand
22 tomorrow, watch TV, have your own room, pay
23 for all the meals, you'll have your own
24 transportation, you don't have to worry about
25 driving your car, we'll impound your car for

1 you. We'll take care of you, all right?

2 THE JUROR: All right.

3 THE COURT: I'll see you in the morning
4 at nine o'clock. Thank you, sir.

5 (Whereupon, the prospective juror leaves
6 the courtroom.)

7 (Edith W. Axson, called as a potential
8 juror, having first been duly sworn, is
9 examined as follows:)

10 THE COURT: This is Ms. Axson; is that
11 correct?

12 THE JUROR: That's correct.

13 THE COURT: All right. Thank you, ma'am
14 for coming. We have gone through a long list
15 of jurors.

16 THE JUROR: You sure have.

17 THE COURT: Let me see here. You were
18 born here in St. George and you owned a shop.
19 Tell me about that, please, ma'am.

20 THE JUROR: Ceramic shop.

21 THE COURT: You're retired now, but ran
22 one for a good number of years?

23 THE JUROR: Right. Right. I still have
24 my shop, I hope to go back into it sometimes.

25 THE COURT: All right. And you live here

1 in St. George?

2 THE JUROR: I live one block over.

3 THE COURT: All right. You can walk to
4 work in the morning?

5 THE JUROR: Right.

6 THE COURT: And your husband, let's see,
7 manages a grocery store, ma'am?

8 THE JUROR: That's right.

9 THE COURT: All right. Have you served,
10 ma'am, as a juror before?

11 THE JUROR: I have not.

12 THE COURT: All right. The sheet that
13 you read a few minutes ago, did you have time
14 to read it?

15 THE JUROR: I did. I read it over twice.

16 THE COURT: All right. Tell me where you
17 think you fall on that.

18 THE JUROR: Number three.

19 THE COURT: And what does a number three
20 juror basically mean to you?

21 THE JUROR: It means to me that when I
22 come into this courtroom that I would not have
23 preformed opinions and that I would give my
24 attention to what is said here and would not
25 be judgemental until I heard the facts and

1 would make my decision as to how I voted upon
2 what I heard.

3 THE COURT: All right. Well, are you
4 saying then that you could, in fact, vote to
5 give someone a death sentence if you felt like
6 that was the appropriate thing to do after you
7 heard all the facts and the law?

8 THE JUROR: Well, if that's what was
9 called for and I served as juror and am honest
10 I would have to do what I'm supposed to do.

11 THE COURT: All right.

12 THE JUROR: That would be my
13 understanding.

14 THE COURT: Well, but you see, you know,
15 what occurs sometimes is that some people come
16 along and they say, well, even if I'm a juror
17 even if I find somebody guilty, even if I were
18 to find them guilty of murder I would never
19 give a death sentence, I just don't think
20 that's the thing to do, I think that a life
21 sentence would be the appropriate sentence in
22 every single case. I just don't believe in
23 the death sentence and I'm not going to give
24 anything but life.

25 Other people come along and say I

1 don't believe in life sentence, I think they
2 all ought to get a death sentence if they're
3 convicted of murder, death is the appropriate
4 sentence. Then there's the third type, is the
5 one you say you fall into, which would be one
6 who says I could give the death sentence --

7 THE JUROR: If it was --

8 THE COURT: -- or I could give a life
9 sentence, but I really have to listen to both
10 sides before I made up my mind.

11 THE JUROR: Right.

12 THE COURT: There aren't any right or
13 wrong answers. Is that truly where you feel
14 like you fall?

15 THE JUROR: Yes, sir.

16 THE COURT: There's no religious belief
17 or any other belief or opinion which would
18 cause you to be unable to give a death
19 sentence if you felt like it was the
20 appropriate thing?

21 THE JUROR: No, sir.

22 THE COURT: And conversely --

23 THE JUROR: I would not really like to
24 have to do that.

25 THE COURT: Certainly. And conversely

1 there wouldn't be anything, any opinion or
2 religious belief and so forth which would
3 prevent you from giving a life sentence if you
4 felt like that was the appropriate thing to
5 give?

6 THE JUROR: No, sir.

7 THE COURT: All right. Mr. Beauford?

8 EXAMINATION

9 BY MR. BEAUFORD:

10 Q. How are you doing today, Ms. Axson? My
11 name is Percy Beauford, just a few questions. What
12 is your opinion on the death penalty?

13 A. What is my opinion on the death penalty?

14 Q. Yes, ma'am.

15 A. I don't know exactly know how to answer
16 that, exactly what you're looking for.

17 Q. There's no right or wrong answer, I'll
18 tell you that.

19 A. Well, the Bible speaks of an eye for an
20 eye and that is our law in this country that -- for
21 murder the death penalty is called for under some
22 circumstance, so that we're supposed to go by the
23 law, what the law says. That's the best opinion I
24 can give you. I don't know exactly what to say on
25 that, I hadn't really thought about it.

1 Q. Is it fair to say that your belief is
2 somehow derived mainly from your religion?

3 A. Our laws are derived from the Bible,
4 aren't they?

5 Q. Okay. And do you understand that murder
6 is the intentional killing of someone with malice
7 aforethought, it's not by accident, it's not
8 manslaughter, it's not self-defense?

9 A. I certainly do.

10 Q. Knowing now the definition of murder,
11 would that change your views of how you would vote on
12 those three categories?

13 A. Say that last statement again.
14 Knowing...?

15 Q. Knowing what murder is now, did you
16 understand as I define murder?

17 A. Yes.

18 Q. Knowing what murder is now, would that
19 change your view on how you would vote on murder,
20 always murder, murder, always life, murder, let me
21 listen to the facts first?

22 A. I would say it would because I was always
23 surprised to hear that statement added in on murder.
24 I thought murder was murder, I didn't realize that it
25 was considered as if they had malice in their heart

1 when they did it. That statement was made in the
2 courtroom prior.

3 Q. So how would that change your views now
4 knowing what murder is?

5 A. Well, it was enlightening that murder is
6 not murder, that there are other circumstances
7 surrounding murder that can change the sentence. An
8 I making sense?

9 Q. You're making sense, it's just that I'm
10 little slow. So how do you change your views now?

11 A. How do I change my views now? Well, I
12 realize that murder does not always call for the
13 death penalty is the best way I know to answer that.

14 Q. And that's pretty much consistent with
15 what you told earlier, you want to listen to the
16 circumstances?

17 A. Right.

18 Q. Okay. And if someone is convicted of
19 murder and you move into the second phase which is
20 the sentencing, could you listen to other facts that
21 does not have anything to do with the facts
22 surrounding the crime, such as mitigating or
23 aggravating, whether it be how bad the crime is, how
24 gruesome the crime is, or it would be how the victim
25 the defendant was raised, what his life was like,

1 things of those nature?

2 A. I certainly think you have to listen to
3 all circumstances in making any opinions on anything.

4 Q. Okay. Basically what I'm asking,
5 person's already convicted of murder, could you
6 consider those things in deciding whether death or
7 life?

8 A. I believe so.

9 Q. I'm not talking about this case, I'm just
10 talking about any case in general.

11 A. Any case, I believe so.

12 Q. In any case, not this case, do you think
13 those things make a difference in determining you
14 coming to a decision whether death or life?

15 A. I believe so.

16 Q. Do you understand in South Carolina the
17 life means life without parole, that means actual
18 life?

19 A. I'm glad you cleared that up. I wasn't
20 sure which, if it was life with parole or without
21 parole. I understand.

22 Q. Okay. Now knowing that, would that
23 change any of the other answers that you gave me
24 before?

25 A. I don't believe so.

1 Q. Okay. If you were on a jury and the
2 majority voted for a particular way and you wanted
3 go the other way, would you change your views just
4 get the case over with?

5 A. No.

6 Q. Would you respect the views of the other
7 jurors?

8 A. Yes.

9 Q. Would you want them to respect your
10 views?

11 A. Of course.

12 MR. BEAUFORD: No further questions.

13 EXAMINATION

14 BY MR. BAILEY:

15 Q. Ms. Axson, I'm Walter Bailey, I want to
16 ask you a few more questions. I think between
17 Mr. Beauford and the judge they're pretty well
18 covered, but just to make sure I understand your
19 views because this is the only chance we have to tal
20 to potential jurors, okay?

21 And you understand, of course, that
22 we wouldn't even be talking about the penalty phase
23 unless and until the defendant's found guilty of
24 murder in the first part of the trial, then we move
25 into the second phase?

1 A. I thought that was the case.

2 Q. And there would be additional testimony
3 that would come out in that second part of the trial
4 the jury may not have heard the first time around.
5 That additional evidence would be calculated to help
6 that jury decide among those two options, life
7 without parole or the death penalty.

8 And the judge would instruct the
9 jury on the law that applied to that part of the
10 trial, the jury would go back and deliberate, they'd
11 make a decision and that decision will happen. In
12 other words, whatever the jury says the sentence
13 should be by their verdict form will be the judge's
14 order and will be carried out.

15 So if the jury hears all the facts
16 and circumstances, they vote for a life sentence, the
17 judge would order that life sentence and that person
18 will serve life without parole. If the jury votes on
19 death, the judge orders the death penalty to be
20 carried out, then he will be executed.

21 I'm not going to ask you what you
22 would do in this case because you hadn't heard any of
23 the facts and it wouldn't be fair to ask you for a
24 prediction.

25 A. I wouldn't know what I would do at this

1 point.

2 Q. My question is if the case is bad enough
3 could you vote for the death penalty knowing that
4 sentence would actually be carried out, that he would
5 be executed?

6 A. It would be painful to do, but I would do
7 what I have to do.

8 Q. All right. And if the -- if all 12
9 jurors vote for the death penalty there's a verdict
10 form, a death verdict form that each juror's asked to
11 sign their names to. Could you sign that form if you
12 had already voted for the death penalty?

13 A. That would be painful, too, but I would
14 do what I have to do.

15 Q. Okay. And as far as actually signing
16 that form, that would, of course, only occur if the
17 jury had already considered everything and voted for
18 the death penalty; you understand that?

19 A. Right.

20 Q. The last thing the jury would have to do
21 if they vote for the death penalty, they come out
22 into open court here and sit in these chairs out here
23 and somebody would call out each juror's name one at
24 a time and you would be asked to say out loud if that
25 was your verdict, is it still your verdict. Could

1 you say that if it was your verdict?

2 A. Again, it would be painful, but, yes, I
3 would have to do what I would have to do.

4 Q. All right. Last thing I want to mention
5 is that in order to keep the jury focused in on just
6 what's happening in court and not being influenced by
7 anything outside, like newspapers, TV, whatever, when
8 we're not in court the jury's in a motel, or they're
9 out at a restaurant eating, they're sequestered.
10 That's a hardship on anybody. And we're talking
11 about maybe a period of five or six days starting
12 tomorrow.

13 If you got picked as a juror, can
14 you accommodate that with your other -- you know,
15 your home life and work life and all?

16 A. Yes, sir.

17 Q. All right. Ms. Axson, that's all I've
18 got. Thank you very much.

19 THE COURT: Thank you very much. Please
20 stand out in the hall a moment and I'll bring
21 you right back.

22 (Whereupon, the prospective juror leaves
23 the courtroom.)

24 MR. BAILEY: Qualified.

25 MR. BEAUFORD: Qualified.

1 THE COURT: She's qualified.

2 (Whereupon, the prospective juror return
3 to the courtroom.)

4 THE COURT: Ms. Axson, would you please,
5 ma'am, come back in the morning at nine
6 o'clock? What we're going to do is to try to
7 assemble 35 or so jurors out of that huge
8 crowd that we had yesterday who are qualified
9 to serve in this case. And obviously 12 plus
10 two alternates would be ultimately selected,
11 so I'm not saying, you know, that you've been
12 selected as a juror.

13 THE JUROR: Right.

14 THE COURT: But I would like for you to
15 come back. You're only a block away. And
16 if -- you can do it any way you'd like to, I
17 have asked a couple others to pack their bags
18 put them in their cars. The truth of it is
19 for a block away it might be easier for you
20 not to do that, you might just want to pack
21 and leave your things there because if you are
22 selected and we started into the trial
23 tomorrow, of course you go to eat, the SLED
24 agents will carry you there, have
25 transportation and so forth, and they could

1 just run by and pick your baggage up, carry
2 you. I don't think there's any use for you to
3 bring it. I don't know how you get back and
4 forth to the courthouse, but the point of it
5 is I don't think you want to leave your car
6 anyway.

7 So if you could come here in the
8 morning, or if you do drive we can certainly
9 take your car back home and leave it, the SLED
10 agent will pick it up. You see where I'm
11 coming from?

12 THE JUROR: Yes, sir.

13 THE COURT: I just want everybody to sort
14 of be prepared. I hate to make 35 people pack
15 bags, but I don't know any other way to do it.

16 THE JUROR: Right. I understand. Pack
17 for a week, though, don't get anything else
18 from home, once you come, that's it.

19 THE COURT: Oh, you can if there's a
20 problem with anything, medication, clothing,
21 anything else, there's certainly not -- you
22 are not going to be in total isolation by any
23 means. You certainly have your own room, your
24 own privacy, but if you need to make a phone
25 call we're going to have a phone available.

1 And there's going to be some restrictions
2 about some things, but we're certainly going
3 to accommodate you all any way we can.

4 THE JUROR: Okay.

5 THE COURT: Don't discuss, please, the
6 case or your views on the death penalty.

7 THE JUROR: Yes, sir.

8 THE COURT: Thank you, ma'am. Thank you
9 ma'am.

10 THE JUROR: Thank you.

11 (Whereupon, the prospective juror leaves
12 the courtroom.)

13 THE COURT: Mr. McCann is here. I think
14 we probably ought to go ahead and talk to him
15 because that's going to determine what else w
16 do.

17 (Kevin J. McCann, called as a potential
18 juror, having previously been sworn, is
19 examined as follows:)

20 THE COURT: Hey, Mr. McCann.

21 THE JUROR: Hey, Your Honor.

22 THE COURT: How are you doing, sir?

23 THE JUROR: Good.

24 THE COURT: Tell me, I got a message tha
25 said you were having some problems.

1 THE JUROR: I got some information that I
2 wasn't aware of when I was here yesterday.

3 THE COURT: Yeah, I understood that.
4 What was that information?

5 THE JUROR: I got home last night and
6 after dinner I sat down with my wife and I
7 told her that there was a possibility I could
8 be called to be on this jury and it's a murder
9 trial and I would have to stay at the hotels
10 until it's over with until the end of the
11 week.

12 And she said, is it the same trial
13 that Karen Spolane, her employer at
14 Knightsville Elementary School, was -- I guess
15 was subpoenaed on Friday at Knightsville
16 Elementary School as a witness? And I said,
17 I'm not supposed to say yes or no, but, yes,
18 that's between me and you. She said, do you
19 know what that trial's all about? I says, no,
20 just preliminary. She says, that's the murder
21 of the woman who has two children that goes to
22 our school. My two children go to the same
23 school as the two children of the deceased, I
24 guess.

25 Okay. And I said, do you mean the

1 one that happened two or three miles from our
2 house in Knightsville? She said, yes. I
3 said, no, I did not know that.

4 And I did not know the woman or the
5 children, but one of my children I guess play
6 with one of the boys in the playground during
7 recess. And like I said, I didn't know any
8 one of the children or of the mother. But we
9 spoke about this murder last April and May.
10 It was in the news quite a bit, in the papers
11 for a couple weeks.

12 THE COURT: Yes, sir.

13 THE JUROR: And I would be lying if I
14 told you that we did not kind of draw a lot o
15 conclusions at that time.

16 THE COURT: Sure. I understand. Most
17 people do.

18 THE JUROR: Right. And when the names
19 were read out of the suspect who's on trial,
20 that did not touch with me as far as who it
21 was, that it happened two miles from my house
22 and it happened in front of these children
23 supposedly. So that's why I thought that I
24 should call today to tell you that not so much
25 because my wife happens to work at the school

1 with one of the witnesses and knows the
2 children indirectly, I guess her best friend
3 taught one of the children last year in
4 school.

5 THE COURT: Right. Right.

6 THE JUROR: It's just that we -- I came
7 to an opinion last year based on the evidence
8 in the newspaper that I could not really be a
9 witness that would be --

10 THE COURT: A juror, you mean?

11 THE JUROR: A juror, I mean, I'm sorry,
12 that could listen to the evidence again and
13 make a logical decision.

14 THE COURT: In other words, you're saying
15 that you could not put aside what you read in
16 the newspaper and come in here and sit with 11
17 other people and listen to the evidence in
18 this courtroom and decide the case based only
19 on what you hear in this courtroom from the
20 evidence presented and the law that I give
21 you, you could not do that, you could not put
22 aside what you had read, or heard, or thought,
23 or decided at some time two years ago and come
24 in here and listen to the evidence as it's
25 presented here and the law and decide on the

1 case solely on what you hear here?

2 THE JUROR: Basically, Your Honor,
3 exactly what you are saying.

4 THE COURT: Could not do that?

5 THE JUROR: I could not do that. It was
6 a pretty brutal murder from what I understand.
7 This is only from what I understand.

8 THE COURT: I understand.

9 THE JUROR: Since it happened so close to
10 my house, less than a couple miles, my
11 children go to the same school, my wife works
12 there with these children, I kind of prejudge
13 already a year ago.

14 THE COURT: I understand. Well, I mean,
15 there's nothing -- you know, there's nothing
16 wrong with doing that, people do it all the
17 time. I just -- the thing that -- that does
18 not disqualify you. What disqualifies you is
19 if you say you cannot, and you said -- you've
20 already said, so I'm going to tell you, what
21 disqualifies you is the fact that you cannot
22 set aside what you've read or what you've
23 heard, what your opinion has been and come and
24 listen and consider only what you hear in the
25 courtroom. If you could do that doesn't

1 matter what you read or heard. Because people
2 read things all the time.

3 THE JUROR: I understand.

4 THE COURT: But if you feel that you
5 can't do it, I'll excuse you.

6 THE JUROR: Because I can't believe this
7 happened this way, but we discussed this a
8 year ago when it happened and my mind could
9 not -- I don't think it could change based on
10 the way -- no matter what they say at the
11 trial, Your Honor. I'm sorry to waste your
12 time yesterday.

13 THE COURT: No problem. I thank you for
14 coming and telling me that. You did the right
15 thing.

16 THE JUROR: Thank you, Your Honor.

17 THE COURT: Thank you, sir. I appreciate
18 it.

19 (Whereupon, the prospective juror leaves
20 the courtroom.)

21 THE COURT: Let's take a minute or two.
22 I'm getting tired of this business. Let's
23 take about five minutes, ten minutes.

24 (Recess taken.)

25 (Barbara D. Michael, called as a

1 potential juror, having first been duly
2 sworn, is examined as follows:)

3 THE COURT: This one's Barbara, I can't
4 read it, Michael. Ms. Michael, how are you
5 doing?

6 THE JUROR: I'm fine. How are you?

7 THE COURT: Come on and have a seat,
8 ma'am. Won't be just a minute and I'll let
9 you out of here. I just want to ask you a fe
10 questions, these lawyers will ask you a coupl
11 of questions, we'll be out of here.

12 You've been here in this area for
13 how long?

14 THE JUROR: Nine years.

15 THE COURT: And a nurse?

16 THE JUROR: Uh-huh (affirmative
17 response).

18 THE COURT: What is Coastal Center, what
19 exactly is that?

20 THE JUROR: It's a residence for mentall
21 and physically handicapped.

22 THE COURT: Mentally and physically
23 handicapped residents?

24 THE JUROR: Uh-huh (affirmative
25 response).

1 THE COURT: And you're a registered
2 nurse?

3 THE JUROR: Uh-huh (affirmative
4 response).

5 THE COURT: And you've been there I
6 believe you said five years?

7 THE JUROR: Right.

8 THE COURT: When you say what is your
9 religious affiliation, if any, Christian, are
10 you saying that you attend the Christian
11 church, or that you are a Christian in
12 general?

13 THE JUROR: In general.

14 THE COURT: All right. Is there -- have
15 you served, ma'am, as a juror before?

16 THE JUROR: No.

17 THE COURT: Is there anything -- well,
18 let me tell you this: First of all there are
19 no right or wrong answers, whatever you tell
20 me is fine, I mean you're not on trial, you're
21 not being tested or anything like that. Just
22 I need to know how you honestly feel about the
23 death penalty, that's really the purpose for
24 asking you to come, okay?

25 THE JUROR: Right.

1 THE COURT: You read that form back
2 there?

3 THE JUROR: Uh-huh (affirmative
4 response).

5 THE COURT: Tell me where you think you
6 fit in as far as a type of juror, juror one,
7 two, or three?

8 THE JUROR: I'm between two and three.
9 would consider life in prisonment, but not the
10 death penalty.

11 THE COURT: You don't think you could
12 ever give a death penalty under any
13 circumstances?

14 THE JUROR: No.

15 THE COURT: You don't think that there
16 would be any case so severe that you could
17 give the death sentence?

18 THE JUROR: No, I couldn't. Life in
19 prison I could, but not the death penalty.

20 THE COURT: All right.

21 MR. BAILEY: Your Honor, no questions.

22 THE COURT: Thank you, ma'am. You
23 answered it right, you're excused. Thank you,
24 ma'am. You won't have to come back. Thank
25 you very much.

1 (Whereupon, the prospective juror leaves
2 the courtroom.)

3 (Richard D. Lacey, called as a potential
4 juror, having first been duly sworn, is
5 examined as follows:)

6 THE COURT: Mr. Lacey, how are you doing,
7 sir?

8 THE JUROR: Fine. Yourself?

9 THE COURT: Fine. Come on in if you
10 don't mind, we'll talk to you for a minute or
11 two.

12 THE JUROR: Okay.

13 THE COURT: Thank you again for coming in
14 here today to help us with this.

15 You live in the great town of
16 Ravenel.

17 THE JUROR: Well, not in the town, but
18 close to it.

19 THE COURT: There isn't a town there, is
20 it? If you blink you're through.

21 THE JUROR: Not much of one.

22 THE COURT: Only person I know in Ravenel
23 is Mackey Hill. You know him?

24 THE JUROR: I know him.

25 THE COURT: He's a character.

1 Tell me about your work, sir,
2 project manager for Hoffman Electrical
3 Associates.

4 THE JUROR: I basically supervise land
5 surveying crews and land surveying operations
6 in our office and generally a troubleshooter
7 on our jobs.

8 THE COURT: Have you served as a juror,
9 served before?

10 THE JUROR: Never.

11 THE COURT: Have you ever thought much
12 about the death penalty?

13 THE JUROR: Yes, I have.

14 THE COURT: Can you tell me -- you read
15 that sheet I gave you?

16 THE JUROR: Uh-huh (affirmative
17 response).

18 THE COURT: Can you tell me where you
19 think you fit in that sheet, what type of
20 juror you might be?

21 THE JUROR: I feel like I believe in the
22 death penalty; however, I'm not sure that I
23 could be the one who could give somebody the
24 death penalty.

25 THE COURT: All right, sir. Well, would

1 you say then that you are a juror who would
2 say even if I find that a person is guilty of
3 murder as a juror, we're not talking about
4 this case, we're just talking about in
5 general.

6 THE JUROR: Right.

7 THE COURT: Would you say you're a juror
8 who would say that even if I found that
9 someone was guilty of murder that I would in
10 every case impose a life sentence, that I
11 simply could not impose a death sentence under
12 any circumstances?

13 THE JUROR: I don't know if I'd go so far
14 as to say that.

15 THE COURT: Well, could you, and I'm not
16 asking you to give me an example or to tell me
17 what you think would be the appropriate case,
18 but do you believe that there are cases in
19 which you would be able to impose a death
20 sentence?

21 THE JUROR: I think I could.

22 THE COURT: In other words, if you found
23 that a defendant was guilty of murder, and in
24 addition to that you listened to the other
25 evidence and you determined that the case was

1 bad enough, the murder was bad enough or the
2 case itself was bad enough, you're telling me
3 that you believe that you could give the death
4 sentence?

5 THE JUROR: I could possibly give it.
6 I'd hate to say that I could. I wouldn't say
7 it would be beyond me to give it, but I don't
8 know that -- it wouldn't come very easily. I
9 would be tough for me to do that.

10 THE COURT: All right, sir. Well, and I
11 understand that. And, again, there are no
12 right or wrong answers. Some people just say
13 I just don't believe in death penalty and I'm
14 just not going to give it, I just think life
15 is appropriate. Some other people come in and
16 say I think people should get the death
17 penalty every time they're convicted of
18 murder, different people just have a different
19 opinion. Some people say, well, I could give
20 death, I would give life, but I would have
21 to -- it just depends on the circumstances of
22 the case.

23 But you feel that you fall more in
24 two than you do three, are you saying that
25 you're more prone to give life or that you

1 would always give life? That really is the
2 ultimate question.

3 THE JUROR: I guess what I'm saying is I
4 would be reluctant to give the death penalty.

5 THE COURT: But you could do so given the
6 right circumstances?

7 THE JUROR: There's that possibility.

8 THE COURT: Well, I need more than a
9 possibility. Can you say that you could under
10 the appropriate circumstances? And I'm not
11 trying to --

12 THE JUROR: Yeah.

13 THE COURT: -- make you say what I want
14 you to say.

15 THE JUROR: I know.

16 THE COURT: If you can't say it, don't
17 say it, but if you can --

18 THE JUROR: I'm trying to answer it the
19 best way I know how.

20 THE COURT: I understand that. Again, I
21 don't want you to tell me what you think I
22 want to hear. I just have to make a
23 determination based on your answers and I just
24 want to be clear, you know, where you're
25 coming from.

1 The ultimate question in my mind is
2 whether or not a juror could impose death if
3 he felt like that was the appropriate thing to
4 do. If you say I cannot, then I need to ask
5 some other questions. But if you say I can,
6 then I need to expand on that just a little.
7 And again, if you can't say either way, I mean
8 if you just say it's a possibility, if that's
9 where you are, that's where you are. Again,
10 I'm not trying to put words in your mouth.

11 THE JUROR: That's the best way I know
12 how to answer that.

13 THE COURT: There's just a possibility
14 that you could give a death sentence in the
15 appropriate case?

16 THE JUROR: Yeah.

17 EXAMINATION

18 BY MR. BAILEY:

19 Q. Mr. Lacey, I'm Walter Bailey, I'll be
20 prosecuting this case, and I, of course, need to ask
21 you some questions about the death penalty. Like the
22 judge said, there are to right or wrong answers.

23 A. Sure.

24 Q. Please don't give me an answer because
25 you think I want to hear it or because you think it's

1 the right answer.

2 A. I won't.

3 Q. Because there's no right answer, no wrong
4 answer, it's just what you really feel from the
5 heart.

6 As you know the State's seeking the
7 death penalty in this case. And we wouldn't even get
8 to that point of talking about punishment unless and
9 until the defendant's found guilty of murder in the
10 first part of the trial; you understand that?

11 A. Yes.

12 Q. So we're kind of reversing the order of
13 things for the purpose of talking about it.

14 In South Carolina when the State
15 seeks the death penalty and we make it to that second
16 part of the trial where the jury is considering the
17 two options, life without parole, because that's what
18 a life sentence means here, or the death penalty, the
19 judge doesn't make that decision, the jury makes it.
20 All the judge does is he orders whatever the jury
21 says the verdict is to happen, and it will happen,
22 okay?

23 A. Okay.

24 Q. So if the jury votes for life without
25 parole, the judge orders that, that defendant will

1 serve the rest of his life in prison. If, on the
2 other hand, they vote for the death penalty, the
3 judge is going to order that to happen and that
4 person is going to be executed.

5 Now, it would not be fair to try to
6 stake you out on this case or to ask you for a
7 prediction of what you would do in this particular
8 case because you don't know anything about it.

9 A. Right.

10 Q. Except what the judge told you when he
11 read the indictment to you and the other jurors
12 yesterday. But my question is if the case is bad
13 enough, could you vote for the death penalty knowing
14 that that sentence would be carried out, that that
15 person would actually be put to death by lethal
16 injection or the electric chair based on that jury's
17 verdict?

18 A. I don't know how to answer that any way
19 other than I already have. Like I said, I believe in
20 the death penalty, I'm not sure that I could give it
21 without being put in the situation to do so.

22 Q. Okay. And again, I'm not --

23 A. I'm not saying that I couldn't do it.

24 Q. Okay.

25 A. I'm not saying that I would freely do it,

1 but I'm not sure I could answer that.

2 Q. Okay. Would it be fair to say as you sit
3 here now you don't know whether or not you could ever
4 impose the death penalty?

5 A. I would say that would be fair.

6 Q. I understand. Let me ask you this, and I
7 may be kind of getting ahead of it, but if a jury
8 votes for the death penalty then each member of that
9 jury's asked to sign their name to a death verdict
10 form or death warrant. Could you sign your name to a
11 paper like that knowing that that person would be
12 executed based on --

13 A. After having voted to do so?

14 Q. Yes, sir.

15 A. Yes.

16 Q. Okay. And could you announce that
17 verdict out loud if it was your verdict?

18 A. Yes.

19 Q. Okay. And, of course, those last two
20 questions presuppose that you could reach a death
21 penalty verdict and the other 11 jurors did it also.

22 A. Right.

23 Q. As you sit here now you're not in a
24 position to say you could ever do that?

25 A. I can't answer that unless I was put in

1 that situation.

2 Q. Okay. And you understand that we're not
3 trying to pick your brain.

4 A. I understand.

5 Q. But once the trial gets started we can't
6 ask you any questions.

7 A. Sure, I understand.

8 Q. Okay.

9 MR. BAILEY: That's all I have right now
10 of this juror.

11 THE COURT: Mr. Beauford?

12 EXAMINATION

13 BY MR. BEAUFORD:

14 Q. How are you doing today, Mr. Lacey?

15 A. All right.

16 Q. My name is Percy Beauford, just some
17 follow-up questions. You indicated that you possibly
18 could but you're unsure, and you also said if you're
19 put in the position. Say in any case you are chosen
20 and put in that position to first find whether the
21 person is guilty of murder and find that he's guilty
22 of murder, again you're put in the position of
23 deciding death or life. And these facts as you may
24 see them in your mind may be gruesome or whatever,
25 and you're placed in that position, could you then

1 determine whether -- could you vote for a death
2 sentence?

3 A. I'm not sure that's any different than
4 the way it's been phrased to me. Are you telling me
5 that I'm the only one that makes this decision?

6 Q. Well, each individual would have to make
7 their own choice.

8 A. Right.

9 Q. But you're put in the position, you're
10 chosen as a juror, you've convicted him of murder.

11 A. Right.

12 Q. The facts as you see them may be the most
13 gruesome thing you can envision in your mind, not
14 this case, they're there, could you come back for
15 the -- vote of the death penalty?

16 MR. BAILEY: Your Honor, I want to object
17 to that question about the most gruesome thing
18 you could ever imagine because that's --

19 THE COURT: I think all he's trying to do
20 is to phrase it in a way that I did not.
21 Basically I said could you consider any
22 situation or any murder in which you might
23 impose the death sentence. I think he's just
24 trying to say the same thing in a little
25 different way.

1 MR. BEAUFORD: Yes, Your Honor, I want to
2 see if there are any extremes --

3 THE COURT: I understand. I'm going to
4 allow you to go ahead and ask it. I guess I
5 started it so I don't think I can stop you
6 from asking it.

7 He just wants to know whether or not
8 there's any situation, any murder as bad as
9 you might consider it yourself to be, whether
10 or not that would be a situation in which you
11 could impose the death sentence.

12 THE JUROR: Again, I'm not going to say
13 definite yes, but I think there's that
14 possibility.

15 THE COURT: Thank you, sir.

16 MR. BEAUFORD: A follow-up question, Your
17 Honor.

18 THE COURT: Yes, sir.

19 BY MR. BEAUFORD:

20 Q. In making a decision would it want -- to
21 make a difference, you would want to hear all the
22 evidence first before making your decision?

23 A. Sure.

24 Q. After hearing all the evidence then could
25 you make a decision whether to go death, vote for th

1 death sentence?

2 A. I don't think that changes my answer any,
3 I'm sorry.

4 Q. Okay. Thank you.

5 THE COURT: Thank you, sir. If you don't
6 mind just step right there one second and I'll
7 bring you right back.

8 THE JUROR: Okay.

9 (Whereupon, the prospective juror leaves
10 the courtroom.)

11 THE COURT: How says the State?

12 MR. BAILEY: Your Honor, the State
13 contends very strongly that he's not
14 qualified. He was unable to say that he could
15 ever impose the death penalty --

16 THE COURT: All right, sir.
17 Defendant?

18 MR. BAILEY: -- under any circumstances.

19 MR. BEAUFORD: Your Honor, we say that he
20 qualifies. Basically he never said he
21 couldn't, he said it's possible. We don't
22 know what factor would determine whether he
23 could or not, but he never said he couldn't.
24 He said he possibly can, so we do feel that
25 he's qualified.

1 MR. BAILEY: Your Honor, of course he
2 doesn't have to state with unmistakeable
3 clarity that he could not.

4 THE COURT: That's right. The standard
5 for qualification of the juror is whether the
6 juror's views regarding the death penalty
7 would prevent or substantially impair his
8 performance, his duty as a juror in accordance
9 with the court's instructions and his or her
10 oath and duty under the law. Of course,
11 that's Wainwright versus DeWitt.

12 MR. BEAUFORD: Your Honor, if I may add
13 little.

14 THE COURT: Yes, sir.

15 MR. BEAUFORD: He does suggest that, or
16 state that he does believe in it.

17 THE COURT: He does. And we've had
18 another one who this morning the same thing,
19 lady who said I believe that, too, but I just
20 could never give it. In that case I said,
21 well, if you couldn't give it, you know,
22 you're not qualified. This guy is just one
23 step less. He basically says, well, there's
24 possibility that I could give it. He would
25 never go any further than that. He never

1 would say I could think of a situation in
2 which I could. He just said, well, I can't
3 say that it isn't -- there isn't at least a
4 possibility that I could. Isn't that where he
5 is?

6 MR. BEAUFORD: Yes, Your Honor.

7 THE COURT: If I'm right or am I wrong I
8 think that's where we are. I mean, I just
9 need some -- it seems to me that his views
10 would, if not prevent, substantially impair.
11 I mean, isn't that the whole crux of that
12 Wainwright case?

13 MR. BAILEY: Yes, sir.

14 THE COURT: Is that he says it's a
15 possibility that I could. But that to me
16 seems like he's saying that his ability is
17 substantially impaired, that he believes in
18 the death penalty but that he -- that he
19 wouldn't be the one who could give the death
20 penalty. Hold it just one second, let me look
21 a little more.

22 (Pause in proceedings.)

23 THE COURT: I know it's interesting. Of
24 course I qualified Mr. White, which is the one
25 that is probably least qualified of all and

1 vacillated, and I know vacillating answers is
2 really a good reason to disqualify. It's
3 interesting on this case, in this instance
4 that this juror doesn't vacillate at all. He
5 hasn't really changed from the first time he
6 answered my question from the attorney or
7 defendant, the solicitor, vice-versa.

8 He stuck with the answer that he
9 would -- there might be a possibility. I
10 tried to get him to say, but that's not good
11 enough, I need to know more, I need for you to
12 tell me whether or not you could. And he say
13 I can't go any further than a possibility. I
14 think he's not qualified. So over the
15 objection of the defendant I'm going to
16 disqualify this juror.

17 (Whereupon, the prospective juror return
18 to the courtroom.)

19 **THE COURT:** Mr. Lacey, thank you, sir.
20 I'm going to excuse you. I thank you for
21 coming and helping us out, sir. Thank you
22 very much.

23 (Whereupon, the prospective juror leaves
24 the courtroom.)

25 **THE COURT:** One thing, of course, is tha

1 I have to -- I'm charged with the
2 responsibility of eyeballing these prospective
3 jurors and, you know, sizing up their
4 testimony as best I can. I think the fellow
5 is trying to be as fair as he can be and to
6 tell the truth.

7 I really think he's doing what most
8 others have done, almost all of the others
9 have done. But because he hesitates so on his
10 ability to follow, I just think that's a
11 substantial impairment.

12 Anything is possible. He says
13 there's a possibility that I could do that. I
14 suppose, you know, maybe he's thinking of a
15 situation that someone kills an entire
16 population or something, I don't know. I
17 mean, I don't know what the possibility could
18 be, I don't know. But he just says it's a
19 possibility.

20 But for the most part he says I
21 don't think that I could do it, although I
22 believe in the death sentence. And I think
23 his ability is substantially impaired. If I'm
24 wrong, I'm just wrong, but I just have to call
25 it the way I see it. All right, sir.

1 (Jimmie C. Myers, called as a potential
2 juror, having first been duly sworn, is
3 examined as follows:)

4 THE COURT: Mr. Myers, how are you doing
5 sir? Come on in, sir. Give us a minute or
6 two, we certainly appreciate your help coming
7 back again today. And I just wanted to ask
8 you a couple questions, I was looking at your
9 form here that you filled out for Naval
10 Weapons Station 12 years, eight months. Tell
11 me, sir, what do you do? Crane operator?

12 THE JUROR: I'm a crane operator, yes.

13 THE COURT: Did you ever have one of
14 those things turn over?

15 THE JUROR: No, sir.

16 THE COURT: You ever seen one turn over?

17 THE JUROR: Yes, sir.

18 THE COURT: We had one turn over when
19 they were building 52 and they turned one over
20 in Kingstree not too long ago. That was quite
21 a scene. You've been doing that job for 12
22 years, eight months; is that right? Well, no,
23 nine years on that job?

24 THE JUROR: At the Naval Weapons Station.

25 THE COURT: I see.

1 THE JUROR: I've been doing this type
2 work for 33 years.

3 THE COURT: I got you. All right, sir.
4 I noticed that you got a son-in-law who is a
5 detention officer?

6 THE JUROR: In Charleston County, yes,
7 sir.

8 THE COURT: Right. And served 89 days in
9 the Georgia military police, whatever. What
10 brother was shot in the -- you say in November
11 '73, Aiken County. Those experiences, first
12 your experience as a policeman, military
13 police, your son's, son-in-law's job and so
14 forth, and more especially your brother's
15 being killed, would those things prevent you
16 from being fair and impartial in this trial?

17 THE JUROR: No, sir. Not in this trial.

18 THE COURT: All right, sir. Do you feel
19 that you could honestly listen to the evidence
20 that's presented and listen to the law that I
21 would give to you and render a fair and an
22 impartial verdict based only on what you hear
23 here in the courtroom and the law and the
24 evidence that you hear here in the courtroom?

25 THE JUROR: I could.

1 THE COURT: All right, sir. Let me ask
2 you this: This sheet that I had you read back
3 there, back there in that back room.

4 THE JUROR: Yes.

5 THE COURT: Tell me what -- did you read
6 that thing?

7 THE JUROR: Yes, sir. I did.

8 THE COURT: Tell me what group you think
9 you fall into.

10 THE JUROR: Well, group one --

11 THE COURT: Let me tell you there's no
12 right or wrong answer.

13 THE JUROR: Group one covers a very large
14 area, part of it could be right, but I would
15 probably myself fall more in group three.

16 THE COURT: All right, sir. And group
17 three says what, basically, just in your mind

18 THE JUROR: That you could render a
19 verdict by the circumstances of the law given
20 down by the judge.

21 THE COURT: All right, sir. Do you --
22 you understand that we're sort of putting the
23 cart before the horse when I ask you these
24 questions? The State, first of all, has got
25 to prove somebody is guilty of murder before

1 you even talk about sentencing, obviously.

2 THE JUROR: Yes, sir.

3 THE COURT: The first of part it is
4 guilty or not guilty.

5 THE JUROR: Yes, sir.

6 THE COURT: Of course if the jury were to
7 find the defendant was not guilty, the trial
8 would end there and we wouldn't even be
9 talking about sentencing. So I'm sort of
10 putting the cart before the horse.

11 Because what I'm really saying is
12 suppose you are a juror and suppose the jury
13 does convict someone of murder, suppose that
14 jury is the jury who actually sentences that
15 person either to life or to death for that
16 murder. And we're not talking about any
17 specific case, we're just talking about cases
18 in general.

19 THE JUROR: Yes, sir.

20 THE COURT: You know, we're not talking
21 about this case, obviously. The question is
22 are you a juror who would in every case
23 automatically give somebody a death sentence
24 if you felt like that person was guilty of
25 murder, are you a juror who would always in

1 every case give someone a life sentence
2 because you didn't believe in the death
3 penalty and you felt like a life sentence was
4 the appropriate one even though the person ha
5 committed a murder, or are you a juror, numbe
6 three, who would say, well, I could give a
7 death sentence, I could give a life sentence,
8 but I would have to listen to all the
9 circumstances before I made that decision?

10 THE JUROR: I think I would fall in
11 category three.

12 THE COURT: Three. All right, sir.
13 You're telling me then that you could give a
14 death sentence even to the extent that you
15 could sign a verdict form, put your name along
16 with 11 other people's names on a verdict
17 form, which really is the sentence of the jury
18 and the sentence of the court, because I'm
19 going to follow what the jury says. You could
20 actually sign your name to a death warrant, if
21 you want to call it that, if you felt like it
22 was the appropriate thing to do?

23 THE JUROR: If that was the correct thing
24 I thought to do then my name would be there.

25 THE COURT: All right, sir. And you

1 could announce that in open court, stand up in
2 open court and say that's my verdict?

3 THE JUROR: Yes, sir.

4 THE COURT: By the same token if you felt
5 that that was not the appropriate sentence,
6 that a life sentence should be the appropriate
7 one, could you also impose the life sentence
8 and not consider death?

9 THE JUROR: Yes, I could.

10 THE COURT: All right, sir.

11 Mr. Beauford?

12 EXAMINATION

13 BY MR. BEAUFORD:

14 Q. How are you doing today, Mr. Myers?

15 A. Doing fine, sir.

16 Q. My name is Percy Beauford, just a few
17 questions. On your questionnaire it says -- the
18 judge alluded to that your brother was shot and
19 killed.

20 A. Yes, he was.

21 Q. If you were involved in a case that
22 involved a firearm that someone was shot, would that
23 affect you?

24 MR. BAILEY: Objection to staking out on
25 the specifics of this case, Judge.

1 THE COURT: All right, sir. Well, you
2 know, I think probably technically it is, but
3 because he's written that his brother was
4 shot, obviously he was shot with a gun, I'm
5 going to allow you to ask that question. I
6 think it's all right under the circumstances.

7 BY MR. BEAUFORD:

8 Q. Okay.

9 A. Would you repeat your question, sir?

10 Q. In your questionnaire on your return it
11 indicated that your brother was shot and killed. If
12 you were involved in a case in which someone
13 involving a firearm was shot, would that affect your
14 decision?

15 A. No, sir.

16 Q. What is your opinion about the death
17 penalty?

18 A. By giving someone the death sentence, or
19 death sentence in general?

20 Q. Death sentence in general.

21 A. I think it's necessary in our society.

22 Q. And how did you come about that opinion?

23 A. Well, in everyday life we have to have
24 some kind of deterrent. I'm not saying that every
25 case warrants the death penalty, but I'm saying if

1 the death penalty is warranted then a person should
2 have the death penalty and it be carried out.

3 Q. And you understand in this state that
4 murder is the intentional killing of someone with
5 malice aforethought, it's not manslaughter, it's not
6 by accident, it's not by self-defense?

7 A. Yes, I understand that.

8 Q. Knowing that, does that in any way change
9 your view about the death penalty?

10 A. Of course, it always does. If something
11 like that comes into play, then there is a change.
12 There has to be a change in your thinking.

13 Q. Maybe I confused you with the question.
14 Knowing what murder is as I defined it, and you said
15 that basically you're willing to listen to the facts
16 and weigh that.

17 A. Yes.

18 Q. And someone is convicted of murder, will
19 you still be willing to listen to other facts in the
20 second phase of the trial?

21 A. Oh, of course.

22 Q. And could you consider other factors
23 after the person's been convicted, other factors
24 maybe dealing with aggravating situation or
25 mitigating situation, could you consider other

1 factors that has nothing to do with the crime in
2 determining whether to give the death sentence or
3 life?

4 A. Of course, sure.

5 Q. You understand in this state that life
6 means life without parole?

7 A. I don't understand it to be that.

8 Q. If it was given to you by the judge and
9 you had to follow that and it's said to be that's
10 what the case is, would that change your opinion on
11 your views of the death penalty?

12 A. If that is what was -- we determined in
13 the jury room, then that's the way it would be, yes,
14 sir. And coming from the judge.

15 Q. Explain that to me, I'm a little
16 confused.

17 A. If the judge explained to us that life
18 without parole, or life which from my opinion it's
19 two different things, but if the judge gave us his
20 opinion that life without parole, then we wouldn't be
21 considering no kind of parole, so.... If you follow
22 me.

23 Q. Okay. I'm saying opinion, but if the
24 judge instructed you that is the law.

25 A. Yes.

1 Q. Then you would actually follow the law if
2 that was your decision?

3 A. Right.

4 Q. Okay. If you were on a jury and the
5 majority wanted to vote a particular way and you were
6 not within the majority, would you change your vote
7 just to get the case over with?

8 A. Not if I had a different opinion.

9 Q. Would you respect the views of the other
10 jurors?

11 A. Yes, I would.

12 Q. No further questions.

13 EXAMINATION

14 BY MR. BAILEY:

15 Q. Mr. Myers, I'm Walter Bailey, and I'll be
16 prosecuting this case. I need to ask just a few more
17 questions, but I think pretty much everything's been
18 covered, but I just want to run over a few things
19 with you if that's okay.

20 Like the judge said, we're putting
21 the cart before the horse because we're asking
22 potential jurors about the penalty when this man
23 hasn't been convicted yet. So you understand the
24 first part of the trial, the guilt phase, the jury is
25 there just to decide whether or not this person has

1 been proved guilty beyond a reasonable doubt, and if
2 he's found guilty of murder then we go on to the
3 second phase?

4 A. Yes, sir.

5 Q. So anytime a jury is in that second phase
6 they're dealing with a convicted murderer and there
7 would be additional evidence that would come out in
8 the second part of the trial that didn't come out in
9 the first part to help that jury, to kind of guide
10 them, give them more information so they could kind
11 of go ahead and make that life and death decision.

12 And the judge told you that he
13 doesn't make the decision. All he does is order that
14 decision to be carried out. And it will be carried
15 out. Whatever the jury's verdict is will be the
16 order of the court and it will happen.

17 I'm not going to ask you to predict
18 what you would do in this case because you haven't
19 heard any of the facts. But just in general, if the
20 case is bad enough could you vote for the death
21 penalty knowing that person would eventually be
22 executed?

23 A. Yes, I could.

24 Q. And you've already said you could sign
25 your name to the verdict form if you voted for it

1 along with the other jurors; is that correct?

2 A. Yes, I would.

3 Q. And could you announce your verdict out
4 loud when your name was called and say that's, yes,
5 my verdict, still my verdict?

6 A. I would have no problem with it.

7 Q. Okay. The jury's going to be put in a
8 motel starting tomorrow and we're looking at a period
9 of time maybe five days, I would guess a week at the
10 most. And that's not something anybody's looking
11 forward to, but if you're picked on this jury could
12 you do that, I mean, as far as your work and family
13 life and all that?

14 A. It would be difficult, but I guess I
15 could.

16 Q. Okay. Mr. Myers, that's all I've got.
17 Thank you very much.

18 THE COURT: Step in the hall about two
19 minutes, two seconds, I'll bring you right
20 back, sir.

21 (Whereupon, the prospective juror leaves
22 the courtroom.)

23 THE COURT: What says the State?

24 MR. BAILEY: Qualified.

25 THE COURT: Defendant?

1 MR. BEAUFORD: Qualified.

2 THE COURT: He's qualified.

3 (Whereupon, the prospective juror return
4 to the courtroom.)

5 THE COURT: We're going to begin in the
6 morning at nine o'clock. We've gotten down
7 now, we've gotten just about enough jurors.
8 We've got to have about 35 or so jurors in a
9 pool like we had 200 yesterday, or how ever
10 many we had, I'm getting it down to about 35
11 out of which we're going to draw 12, and two
12 alternates.

13 So I'm not telling you that you're
14 selected for the jury, I'm just simply saying
15 I need you to come back to be a part of that
16 pool of jurors.

17 THE JUROR: All right, sir.

18 THE COURT: Could I ask you, sir, please
19 to pack your clothes, clothing for about a
20 week. I don't know that it will be that long
21 but do so anyway, leave it in your car, be
22 here at 9:00 in the morning. If you aren't
23 selected we've imposed on you to pack your
24 clothes and unpack them. But, you know, if
25 you're selected we don't want to have to go

1 all over Charleston County and wherever
2 else -- Dorchester County, rather, wherever
3 else, to get things together for people.

4 THE JUROR: Yes, sir.

5 THE COURT: The SLED agents, of course
6 we've got arrangements made everyone has
7 private rooms and all that business, I'll talk
8 to you about that tomorrow, it's not going to
9 be total isolation or anything like that. As
10 a matter of fact, I've presided in these
11 trials in which jurors actually enjoyed the
12 service even though it's a pretty big
13 imposition.

14 But if you would do that for me,
15 just be here in the morning at nine o'clock in
16 the courtroom here, we'll select a jury and by
17 10:00 or 10:30 we ought to know where we are.
18 Thank you.

19 And don't discuss your testimony
20 today or your views on the death penalty or
21 even the facts of this. And I know you don't
22 know much about the facts of this case, but
23 just don't talk about it with your family. I
24 know you got to tell them where you're going
25 and so forth, but don't get into a discussion

1 of your ideas of the death penalty and so
2 forth. Thank you very much. I'll see you in
3 the morning at nine o'clock.

4 THE JUROR: Thank you, sir.

5 THE COURT: Thank you, sir.

6 (Whereupon, the prospective juror leaves
7 the courtroom.)

8 THE COURT: On that business with the
9 other juror that I disqualified, State versus
10 Plath and Arnold II, death penalty case, 313
11 S.E.2d 619 (1984) case. The court says the
12 mere ability to "consider," consider the death
13 penalty is not sufficient to qualify the jury.
14 He must be able to vote for death penalty.

15 And my idea is that the juror can
16 say, well, I will consider it and he's not
17 qualified. One who says, well, there's a
18 possibility that I could certainly is not
19 qualified. And so that's why I've ruled as I
20 have. Thank you.

21 Okay. All ready to try it one more
22 time? We got six more, I think. Or do we?
23 We've got the sufficient number at this point
24 but I'm willing to do whatever you all say I
25 need to do with this jury panel. Well, how

1 many do we have now?

2 MR. ROBBINS: Thirty-four.

3 THE COURT: Thirty-four. Surely we will
4 get at least one more out. The question is
5 what do we do with the message for the other
6 jurors? That's the first question. And the
7 second question is what do we do with those
8 jurors who did not show up Monday morning and
9 who have shown up since? Or for that matter,
10 those who the sheriff has gone out and tried
11 to locate, can't find, maybe one or two they
12 have located, I'm not sure. I need to get a
13 report on that, but I need some guidance from
14 the State and the defense of what you all want
15 me to do. Of course we got the sufficient
16 number almost to this point, but I'm willing
17 to do whatever you all say I need to do for
18 this jury panel.

19 MR. BAILEY: Your Honor, since we've got
20 an adequate number of jurors to strike from I
21 don't see any need to bring them into this
22 case, I would just suggest they be transferred
23 to another term.

24 THE COURT: What do you say,
25 Mr. Beauford?

1 MR. BEAUFORD: Your Honor, that is a goo
2 solution.

3 THE COURT: That's what you think?

4 MR. BEAUFORD: Yes, sir.

5 THE COURT: All right. What we'll do
6 then is we'll take the list that the clerk
7 has, and I think there were three or four.
8 Seems to me there was one who even came this
9 morning and said they had forgotten about the
10 thing Monday, yesterday.

11 THE CLERK: We had two.

12 THE COURT: Two that did that?

13 THE CLERK: Yes, sir.

14 THE COURT: How you could forget is
15 beyond me, but they do it all the time where
16 come from. But at any rate, if both sides are
17 in agreement then we will just transfer all of
18 the jurors who have come who were supposed to
19 be here and came late today, were not
20 qualified yesterday, transfer them to another
21 term of court.

22 And what about those jurors,
23 Mr. Beauford, Ms. Hardee-Thomas, those jurors
24 whose names we had on the list and we called
25 and they didn't show? And I don't know how

1 many there were, but I think there were
2 several, two or three or four, who had
3 actually sent in a form and -- is that right?
4 And they didn't show either. They sent the
5 form in, but they didn't show up yesterday.
6 There was six or seven of them?

7 THE CLERK: There was seven. Out of
8 those seven two called in.

9 THE COURT: Two called in?

10 THE CLERK: Yes, sir.

11 THE COURT: So we got five that are still
12 missing. You all tell me again, are you
13 satisfied with the panel in the manner in
14 which it was drawn and so forth?

15 MR. BEAUFORD: We are, Your Honor.

16 THE COURT: So we don't need to go out
17 and try to find the others and bring them in?

18 MR. BEAUFORD: No, Your Honor.

19 THE COURT: All right. Let's just do it
20 that way, we're sufficient.

21 THE CLERK: Judge, also number 3 on this
22 panel of ten, he didn't send in the
23 questionnaire.

24 THE COURT: All right. Three on this
25 panel of ten. Mr. Simmons is the third juror

1 on that panel?

2 THE CLERK: Yes, sir.

3 THE COURT: On this panel?

4 THE CLERK: On panel ten.

5 THE COURT: Did not send in a
6 questionnaire, but he's gotten one now so he'
7 number 277, it's Charles Simons, Simons, I'm
8 not sure which, Simons maybe. I think we can
9 tell the jurors then, those who called
10 after -- did I tell them six o'clock or eight
11 o'clock? We'll just tell those jurors then
12 that they do not have to return to the court
13 this week. Hearing no objection, that's what
14 we'll do.

15 All right. Nicole Winchester.

16 (Nicole M. Winchester, called as a
17 potential juror, having first been duly
18 sworn, is examined as follows:)

19 THE COURT: Ms. Winchester, how are you
20 doing today?

21 THE JUROR: Fine, thank you.

22 THE COURT: Thank you, ma'am, for coming
23 back. I know it's late, we appreciate you
24 doing that for us.

25 THE JUROR: Yes, sir.

1 THE COURT: Tell me about your job
2 please, ma'am.

3 THE JUROR: I'm a licensed practical
4 nurse at Summerville Medical Center in
5 Summerville.

6 THE COURT: What is Summerville Medical
7 Center, that's what I call a doctor's office?

8 THE JUROR: No, sir. It's a hospital.

9 THE COURT: Hospital?

10 THE JUROR: Yes, sir.

11 THE COURT: You have a -- do you work
12 just all over, I mean there's no specialty, no
13 particular place you work, or do you --

14 THE JUROR: I work on the third floor
15 which is the medical/surgical floor and we
16 kind of get everything because we're so small.

17 THE COURT: All right. And your husband
18 works for Westvaco?

19 THE JUROR: Yes, sir.

20 THE COURT: He's worked there for a
21 number of years apparently.

22 THE JUROR: Yes, sir. Almost ten.

23 THE COURT: One girl nine years of age.

24 THE JUROR: Son.

25 THE COURT: It's on the line with girls.

1 One son is nine years old?

2 THE JUROR: Nine-year-old son.

3 THE COURT: Is he finishing school this
4 week I guess, or next week?

5 THE JUROR: Next week.

6 THE COURT: Next week. Let me ask you,
7 have you served as a juror before?

8 THE JUROR: No, sir.

9 THE COURT: That paper that I had you
10 read, did you read that?

11 THE JUROR: Yes, sir.

12 THE COURT: Tell me what group you think
13 you would fall into if you were a juror.

14 THE JUROR: I think the third group.

15 THE COURT: And tell me what that means
16 to you, or when you say third group what
17 exactly are you talking about?

18 THE JUROR: The third type, that I think
19 I need to hear both, the whole story and
20 decide whether or not guilty or not guilty and
21 to hear all of it to make the decision of
22 whether or not the death penalty or not the
23 death penalty.

24 THE COURT: All right. Well, you know,
25 what happens is that the State has to prove

1 the person is guilty of murder beyond a
2 reasonable doubt first, that's the first thing
3 that we do, obviously. You know that?

4 THE JUROR: Yes, sir.

5 THE COURT: And so the jury would have to
6 determine, all 12 jurors would have to decide
7 whether or not the State has proved the
8 murder. Assuming, assuming now that the State
9 has proved murder and all jurors including
10 yourself were to vote guilty of murder, then
11 the jury must have another -- we have another
12 trial so to speak, a second trial, and the
13 jury then has to decide what the appropriate
14 punishment would be for that murder that they
15 convicted the person of. You follow me?

16 THE JUROR: Uh-huh (affirmative
17 response).

18 THE COURT: Are you telling me that
19 you -- in group three that you could impose
20 the death sentence if you felt like after you
21 heard everything, if you felt like that was
22 the appropriate sentence to give?

23 THE JUROR: Yes, sir.

24 THE COURT: And you could impose a life
25 sentence if you felt like after hearing all

1 the evidence that that was the appropriate
2 sentence to give?

3 THE JUROR: Yes, sir.

4 THE COURT: You're not one of these
5 people who says, well, if you're guilty of
6 murder you're going to get the death penalty
7 every time in my book?

8 THE JUROR: No, sir.

9 THE COURT: You're not one of these
10 people that says I don't care if he's
11 committed murder, I don't believe in the death
12 sentence, I'm going to give life every time?

13 THE JUROR: No, sir.

14 THE COURT: You're telling me that you
15 could impose death, you could impose life, but
16 you really would have to listen to both sides,
17 not just about the crime itself but all the
18 evidence that comes in about whatever it is
19 the court allows to come into evidence, you
20 would listen to everything in that sentencing
21 phase and then make up your mind as to what is
22 the appropriate sentence?

23 THE JUROR: Yes, sir.

24 THE COURT: And I don't mean to put
25 words, I'm not trying to put words in your

1 mouth; do you follow me?

2 THE JUROR: Yes, sir. I understand.

3 THE COURT: And obviously there are no
4 right or wrong answers, you know, if you fell
5 into one, two, whatever you fall into is fine.
6 Some people believe -- they just believe what
7 they believe and there's nothing wrong with
8 that. You're satisfied that you fall into the
9 third group, that you could give death or you
10 could give life?

11 THE JUROR: Yes, sir.

12 THE COURT: But you would have to listen?

13 THE JUROR: Uh-huh (affirmative
14 response).

15 THE COURT: And you would listen?

16 THE JUROR: Oh, yes.

17 THE COURT: All right.

18 EXAMINATION

19 BY MR. BAILEY:

20 Q. Ms. Winchester, I'm Walter Bailey, I'll
21 be prosecuting the case, I need to ask you a few more
22 questions, and like the judge said there are no right
23 or wrong answers. This is the only chance we can
24 talk to jurors before we pick a jury and start this
25 case hopefully tomorrow.

1 Is the death penalty something that
2 you've ever had any real reason to sit down and think
3 about before yesterday?

4 A. No, sir.

5 Q. Okay. Now that you found out that you
6 might be a juror on a death penalty case, do you
7 think between today and yesterday you've had enough
8 time to think about it and kind of categorize
9 yourself into that third category?

10 A. To tell you the truth I really haven't
11 thought about it much at all.

12 Q. Okay. But you've read over the three
13 different basic types of jurors?

14 A. Yes, sir.

15 Q. And are you pretty firmly in that number
16 three group you think?

17 A. Yes, sir.

18 Q. You understand that we wouldn't even get
19 to that point unless and until the defendant's found
20 guilty of murder beyond a reasonable doubt in the
21 first part of the trial?

22 A. Yes, sir.

23 Q. So anytime a jury is considering life or
24 death, they're dealing with a convicted murderer in
25 the first part of the trial. And that second part of

1 the trial is an opportunity to allow the jury to hear
2 additional evidence that didn't come out in the first
3 part of the trial, evidence in aggravation,
4 mitigation, there would be additional instructions
5 from the judge to guide the jury in making that
6 decision, but the decision is the jury's, not the
7 judge.

8 A. Yes, sir.

9 Q. All the judge does, he orders that jury's
10 verdict to happen and it will happen. So if the jury
11 votes for life, the judge would order a life
12 sentence. And life means life without parole, he
13 would serve the rest of his life in prison. If the
14 jury votes for the death penalty, the judge would
15 order it and it would happen, he would be executed.

16 Now, I'm not going to ask you to
17 predict what you'd do in this case if you get picked
18 because you hadn't heard any of the facts, it
19 wouldn't be fair to ask you that.

20 A. Right.

21 Q. But just in general if you were picked on
22 a death penalty case and the case is bad enough,
23 could you vote for the death penalty knowing that
24 sentence is actually going to be carried out?

25 A. Yes, sir.

1 Q. And there's a process where after the
2 jury, if all 12 jurors vote for the death penalty
3 there's a verdict form, a death verdict form that
4 each juror would be asked to sign their names to.
5 Could you sign that paper if you and the other jurors
6 voted for the death penalty?

7 A. Yes, sir.

8 Q. Could you say out loud that that was your
9 verdict when your name was called?

10 A. Oh, yes, sir.

11 Q. Okay. The jury in this kind of a case is
12 supposed to make all their decisions based on the law
13 and the evidence, what happens inside the courthouse
14 And anything outside, newspapers, magazines, friends
15 or family talking about the case shouldn't enter into
16 it. So to kind of shield a jury from those outside
17 influences the jury's going to have to stay in a
18 motel when they're not in court. We're talking about
19 starting tomorrow possibly, and running several days,
20 maybe up to a week. That's an inconvenience for
21 everybody, nobody wants to do it, but if you get
22 picked is that something that you could handle?

23 A. Yes, sir.

24 Q. Okay. All right. That's all I've got.
25 Thank you very much.

1 THE COURT: Mr. Beauford?

2 EXAMINATION

3 BY MR. BEAUFORD:

4 Q. How are you doing today, Ms. Winchester?

5 A. Fine.

6 Q. Just a few questions. My name is Percy
7 Beauford. As you know that during the sentencing
8 phase the individual's already convicted of murder,
9 and during that phase could you consider other
10 evidence that has nothing to do with the crime itself
11 in determining whether to do death or life?

12 A. Are you talking about in the second
13 trial?

14 Q. In the second phase.

15 A. Yes, sir.

16 Q. And you understand in South Carolina
17 murder means the intentional killing of someone with
18 malice aforethought, it's not manslaughter, it's not
19 by accident, it's not in self-defense?

20 A. Yes, sir.

21 Q. Knowing that, would that change your
22 views or your answers in any way, some of the answers
23 you've already given?

24 A. No, sir.

25 Q. You understand in South Carolina life

1 means life without parole?

2 A. Uh-huh (affirmative response).

3 Q. How would you categorize yourself, as a
4 leader or follower?

5 A. A leader.

6 Q. Thank you.

7 THE COURT: Thank you, ma'am. Would you
8 please step in the hall just about two second
9 and I'll bring you right back.

10 THE JUROR: Okay.

11 THE COURT: Thank you.

12 (Whereupon, the prospective juror leaves
13 the courtroom.)

14 THE COURT: State?

15 MR. BAILEY: Qualified.

16 THE COURT: Defendant?

17 MR. BEAUFORD: Qualified.

18 THE COURT: She's qualified.

19 (Whereupon, the prospective juror returns
20 to the courtroom.)

21 THE COURT: Ms. Winchester, would you
22 please, ma'am, come back tomorrow morning at
23 nine o'clock? What I'm doing is trying to get
24 a pool of about 35 or so jurors out of that
25 huge crowd we had yesterday. Out of those 35

1 we're going to select 12 jurors and two
2 alternates to actually serve, so one out of
3 three is going to end up getting chosen.
4 Could you please pack your clothing, leave
5 them in the car, obviously. You may end up
6 having to pack and unpack in the same hour,
7 but it's the only way I know to do it. It's
8 an inconvenience to you, I know that, but with
9 35 people and 14 now, if I can choose 14, it's
10 going to be difficult to have sheriff deputies
11 running all over the county trying to get
12 people's clothes so if you could just bring
13 those clothes we will make all sorts of
14 arrangements. If you happen to be selected,
15 we will make all sorts of arrangements.

16 Your vehicle, for instance, would be
17 taken home, your vehicle would be impounded.
18 We're going to take care of you. You'll have
19 your own room, you know, SLED agents will be
20 there to protect you and so forth. I mean, we
21 will take good care of you.

22 And we will not have you isolated.
23 You will call home if you would like to do
24 that and that sort of thing, watch television.
25 We're going to do things for you, you're not

1 going to be, you know, held hostage by any
2 means. But it's going to be inconvenient, a
3 little bit inconvenient for you. But I would
4 appreciate it if you would do that for me,
5 come back here at nine o'clock here in the
6 courtroom and we'll select the jury at that
7 time and you'll know where you are.

8 THE JUROR: Okay.

9 THE COURT: Don't discuss what we've gone
10 over here today, don't discuss the death
11 penalty with the husband or this case or
12 anything like that.

13 THE JUROR: I understand, but I haven't.

14 THE COURT: That's right. Thank you.

15 (Whereupon, the prospective juror leaves
16 the courtroom.)

17 (Ellen E. Hyatt, called as a potential
18 juror, having first been duly sworn, is
19 examined as follows:)

20 THE COURT: Ms. Hyatt, how are you doing
21 today?

22 THE JUROR: Very well.

23 THE COURT: Thank you very much for
24 coming back. I know it's late in the
25 afternoon, but I just want to ask you a few,

1 just a few questions. No right or wrong
2 answer, whatever you tell me is fine.

3 THE JUROR: Okay.

4 THE COURT: No problems.

5 THE JUROR: I need to tell you something,
6 too.

7 THE COURT: Yes, ma'am. Do that first
8 then, if you like.

9 THE JUROR: Yes. I became aware of some
10 information this afternoon that might
11 influence my eligibility for this trial.

12 THE COURT: All right.

13 THE JUROR: Do you want the specifics?

14 THE COURT: Yes, ma'am.

15 THE JUROR: I came to find out that in
16 the writer's group I belong to the father of
17 the daughter who is the victim in this case is
18 in the same group as I.

19 THE COURT: All right. The father of the
20 daughter of the victim?

21 THE JUROR: Yes.

22 THE COURT: Is in the same group?

23 THE JUROR: Writer's group, yes.

24 THE COURT: What sort of group is that?

25 THE JUROR: It's a group that shares

1 their writings and their artistic and literar
2 developments, yes.

3 THE COURT: All right. Well, do you know
4 him personally?

5 THE JUROR: I know him to see him.
6 There's a mutual friend of mine that keeps
7 pretty close touch.

8 THE COURT: With him?

9 THE JUROR: With him, yes.

10 THE COURT: Have you talked to her a good
11 bit about -- have you all discussed this
12 situation?

13 THE JUROR: I didn't know, but
14 indirectly.

15 THE COURT: I understand.

16 THE JUROR: Yes. Because some of his
17 writings have been grief release writings
18 about this situation.

19 THE COURT: I see. I see. And do you
20 think then that for what, I understand you
21 don't know him that well, but you've read
22 or --

23 THE JUROR: Heard.

24 THE COURT: -- heard, what he's written
25 in regards to this case, do you feel that that

1 would prevent you from being fair and
2 impartial?

3 THE JUROR: I do at this time, yes.

4 THE COURT: You don't think that you
5 could set that aside and listen to the
6 evidence that's presented and the law that I
7 give to you and render a verdict based just on
8 what you hear?

9 THE JUROR: I think I would have a
10 difficult time being impartial at this point.

11 THE COURT: All right.

12 MR. BAILEY: Your Honor, could I just ask
13 her a couple of questions?

14 THE COURT: Absolutely.

15 EXAMINATION

16 BY MR. BAILEY:

17 Q. Just in regard to that, Ms. Hyatt, do you
18 know the name of the girl's father?

19 A. His name is Carl, his last name begins
20 with an H.

21 Q. Okay. Now, the father of the child here
22 is named Tom Krasae.

23 A. Oh, okay. Maybe it's not the same one
24 after all.

25 Q. Okay.

1 A. This is what happened. Someone said to
2 me that her first name was Susan.

3 Q. Okay. The victim's name is Susan?

4 A. Yes.

5 Q. But you were referring to the daughter of
6 the victim, the father of the daughter of the victim

7 A. I am referring to the father of the
8 victim. At least I thought that's what I was
9 referring to.

10 Q. Okay. His name is Carl Al Hutto.

11 A. Yes.

12 Q. Is that who you're referring to?

13 A. Yes.

14 Q. Okay.

15 A. I don't know the middle name, but the
16 last name begins with an H.

17 Q. Okay. I just wanted to clarify that.
18 Thank you.

19 A. Thank you for asking.

20 Q. And you feel like because of knowing him
21 that you would feel uncomfortable as sitting as a
22 juror in this case?

23 A. Yes, I do.

24 Q. Thank you, ma'am.

25 A. You're welcome.

1 MR. BEAUFORD: No questions.

2 THE COURT: Ms. Hyatt, I'll excuse you.

3 I thank very much for coming, I appreciate you
4 telling us. All we want is 12 impartial
5 jurors. We don't want to put you on the spot,
6 that's not our purpose. Our purpose is to
7 find people who simply don't know anything.
8 And I appreciate coming and letting me know
9 that.

10 THE JUROR: Thank you.

11 THE COURT: Thank you very much for
12 helping us this week. You will not have to,
13 of course, come back so you're free. Thank
14 you very much.

15 THE JUROR: All right.

16 (Whereupon, the prospective juror leaves
17 the courtroom.)

18 THE COURT: I didn't send her out for the
19 record, but I looked to the defense table and
20 they say no problem, excuse. And I assume the
21 State feels the same way?

22 MR. BAILEY: Yes, sir.

23 THE COURT: She should be excused.

24 Mr. Simons, I guess it is.

25 (Charles D. Simons, called as a potential

1 juror, having first been duly sworn, is
2 examined as follows:)

3 THE COURT: Is it Mr. Simons?

4 THE JUROR: Yes, sir.

5 THE COURT: How are you doing, sir? Com
6 on and have a seat, sir. Let me ask you just
7 a few questions and I'll let you go again.
8 Thank you, sir, for coming back late this
9 afternoon and helping us with this case.

10 I see that you are a mechanic at
11 Stelling's shop and perform repair and
12 service, heavy equipment, and tractor
13 trailers. Heavy equipment like bulldozers?

14 THE JUROR: Bulldozers, regular farm
15 tractors. Anything, basically.

16 THE COURT: What I did was I left my
17 bulldozer in the river swamp and the water
18 came up and covered the tracks and that thing
19 probably got inside there. What do I do when
20 that will finally dry back out, take the plug
21 out and drain all the oil out, the back of it,
22 fill it back up and crank it up and go?

23 THE JUROR: Lube it good before you go so
24 all that grease doesn't dry out in there from
25 that water.

1 THE COURT: How about if it got in the
2 engine?

3 THE JUROR: You better drain the pan and
4 get something else to pull it out, that's all
5 I can say. When you get it out, flush it out
6 good with some flush and be real easy on the
7 first crank-up turn.

8 THE COURT: Let me ask you this: You
9 serve as a juror before?

10 THE JUROR: No, sir.

11 THE COURT: Did you read that sheet I
12 sent back there?

13 THE JUROR: Yes, sir.

14 THE COURT: Tell me where you fit in on
15 that thing.

16 THE JUROR: Number three.

17 THE COURT: Which says what, which means
18 what, sir?

19 THE JUROR: Well, I mean, basically if
20 the fellow is guilty of doing it and he is --
21 he done it out of an act of, you know, just
22 pure meanness or just -- you know, he's just a
23 bad person, just want to kill somebody, he's
24 got that will to kill, you know, like them
25 people that went and shot, you know, like in

1 the high school and stuff, they deserve the
2 death penalty without a doubt, you know, with
3 being a menace to society.

4 But now if somebody did it in an ac
5 of where like self-defense, you know, they
6 felt like it was a self-defense thing, or, yo
7 know, they don't know the difference between
8 right and wrong, then they -- you know, that
9 proven that they don't know any better or
10 whatever, then those are a case in which thei
11 emotions were clogged up then they shouldn't
12 have to face death, you know, because it's
13 still a chance that they can get better.

14 THE COURT: So what you're basically
15 saying is that you're a fellow who could give
16 a death sentence in the appropriate situation
17 or you could give a life sentence in the
18 appropriate situation, but you would have to
19 hear all the evidence before you decided?

20 THE JUROR: Yes.

21 THE COURT: You're not one of these
22 fellows that says if they commit murder they
23 got to have the electric chair?

24 THE JUROR: No.

25 THE COURT: Or one of these people that

1 says I don't care if they committed murder,
2 I'm not going to ever give it to them?

3 THE JUROR: Sometimes it depends on how
4 they went about doing the murder.

5 THE COURT: You're willing to listen to
6 all the evidence in the case before you make
7 some decision as to whether or not that person
8 should be given a death sentence or a life
9 sentence?

10 THE JUROR: Yes.

11 THE COURT: They're going to ask you a
12 couple questions.

13 EXAMINATION

14 BY MR. BEAUFORD:

15 Q. Mr. Simons, my name a Percy Beauford, a
16 few questions. You understand in South Carolina that
17 murder is the intentional killing of someone with
18 malice aforethought, and you described it as meanness
19 or depraved heart or that kind of thing.

20 A. Yes, sir.

21 Q. If you, as a juror sitting in a case,
22 find that someone is guilty of murder, would you
23 always give them the death penalty?

24 A. No. Like I said, it would depend on, you
25 know, what caused them to commit the murder.

1 Q. Okay. If I further tell you that murder
2 is not self-defense, it's not manslaughter, it's not
3 by accident, it's intentional with malice, with
4 meanness, would you always give the death penalty?

5 A. If it was with malice and meanness?

6 Q. Yes.

7 A. And they didn't know any better, yeah, I
8 would give them death sentence. If they meant to
9 cause harm and meant to kill somebody, and like I sa
10 they can't prove that they --

11 Q. Let's say it's proven that he
12 intentionally killed them, he meant to do it and he
13 did it with, like your definition meanness, with
14 malice aforethought and he did it, he's convicted of
15 that, would you always give the death penalty?

16 A. No. Like I say, it would depend on the
17 person, you know, whether they -- what exactly is
18 your -- you know, what caused him to kill them, you
19 know, was it a fact that they -- you know, the man
20 mentally -- you know, mental disabled or did he --
21 was it a crime of passion.

22 You know, sometimes, you know,
23 people claim when they're -- and whenever they have a
24 dispute, you know, like a lover's quarrel that they
25 lose their sense of reality.

1 Q. Okay. I understand that saying that
2 those things that you described is not murder, saying
3 that he intended to kill them with malice
4 aforethought and you found him guilty of murder,
5 saying that it's not a like you say a situation where
6 a crime of passion or a lover's quarrel that you
7 said, just he intended to do it with malice, would
8 you give the death penalty?

9 A. Yes.

10 Q. Every time?

11 A. 99 percent of the time if he had no
12 regret, no remorse from what he did.

13 Q. So let me follow that up. So are you
14 saying that he's guilty of murder, but in the second
15 phase where we could either introduce mitigation or
16 aggravating circumstances you say you're willing to
17 listen to those type things?

18 A. I'll willing to listen to those type
19 things.

20 Q. If those things aren't --

21 A. If he doesn't meet what the law in South
22 Carolina, you know, says that he has to meet, you
23 know, then he don't deserve the death penalty. He
24 deserves life or, you know, whatever the crime, you
25 know, suits.

1 Q. If an individual is convicted of murder
2 and let's say another crime, another aggravating
3 situation or -- not in this case but any other case,
4 maybe it could be kidnapping, maybe it could be rape
5 or any other situation, in that scenario convicted of
6 murder --

7 MR. BAILEY: Judge, I want to object to
8 him staking the juror out on specifics.

9 THE COURT: All right, sir. Well, I'm
10 going to allow it. I know he's doing it and
11 I'm doing it and I'm going to allow it because
12 I've used that same example. I'm going to
13 allow it.

14 BY MR. BEAUFORD:

15 Q. Would you like me to repeat the question?

16 A. Yeah, if you don't mind.

17 Q. If you're sitting in the case, not this
18 case, any other case, and a defendant is found guilty
19 of murder and some other crime, whatever it may be,
20 say it's an aggravating crime as we may define it,
21 would you find in every case that -- would you vote
22 for the death penalty?

23 A. If it was aggravated crime?

24 Q. Yes.

25 THE COURT: What he's asking, what he's

1 asking is this: If you find that he's guilty
2 of murder and you find that he's absolutely
3 guilty of some other crime as well as murder
4 in addition to the murder, some other
5 aggravating circumstance, would you in every
6 case, every case impose the death sentence?

7 THE JUROR: No.

8 THE COURT: If you found both. Even if
9 you found both?

10 THE JUROR: No, not every time.

11 BY MR. BEAUFORD:

12 Q. Would you consider other evidence maybe
13 deciding to give a life sentence?

14 A. Yeah. I would hear, you know, all sides.
15 That's all you can do.

16 Q. You understand I'm talking about the
17 defendant's already found guilty and this is just the
18 sentencing phase?

19 A. He's found guilty of the murder on the
20 murder and of the other aggravating circumstance --

21 Q. Yes.

22 A. -- and all, then I would be willing to
23 hear, you know, if he had a reason why he claimed,
24 you know, he didn't deserve the death penalty, I'd
25 love to hear why he didn't think he deserved the

1 death penalty. I would love for him to stand up
2 there and tell me why he don't think he deserves the
3 death penalty for doing an aggravated assault and,
4 you know, that involved killing somebody. Why does
5 he feel like he doesn't deserve to get the death
6 penalty.

7 And if he can stand up there and
8 convince me that he has remorse for what he did, tha
9 he was -- you know, he was sorry and he realized he
10 made one terrible mistake and he means it from his
11 heart and it ain't just something trying to wiggle
12 and squirm his way out of a death sentence, then I'm
13 willing to hear it. And if he means it, no, he
14 wouldn't get the death penalty in his case, I
15 wouldn't vote for the death penalty.

16 But if he was just up there just
17 saying, well, I'm so sorry, I didn't mean to do it
18 and all, then I would say -- you know, you could tel
19 it that he didn't mean it, he was just trying to
20 squiggle and worm his way out of a death sentence,
21 then, no, you know, he deserves the death penalty.
22 If he can prove that, you know, he didn't want to, he
23 didn't actually mean to do it and -- or he has
24 remorse for what he has done, then, you know -- true
25 remorse, not just getting up and say I'm sorry, I

1 didn't mean to kill them, then I would be willing to
2 hear him. If he can convince me otherwise then no
3 problem, let him have life.

4 Q. Okay. Do you know in South Carolina life
5 means life without parole?

6 A. Life without parole.

7 Q. Okay. And if you were a member of a jury
8 and when the majority voted for a particular -- voted
9 in a particular way and you were not within the
10 majority's view, would you change your view just to
11 get the case over with?

12 A. No. I'm going to stick with what I
13 believe. I mean, if I believe he's guilty of it and
14 he deserves it, then, you know, if he hasn't
15 convinced me, why should anybody else. You know, if
16 his lawyers and his witnesses, the people that he's
17 called, you know, got up there and testified for him
18 and him hisself or whatever, you know, once his case
19 is presented and the prosecution's case is presented,
20 I done made up my mind, you know.

21 And once I've made up my mind, it's
22 going to take a whole lot of other changing and a
23 whole lot -- something else is going to have to pop
24 up, nobody else is going to talk me out of my
25 decision that I've made.

1 You're saying like if I'm out there
2 and -- how many is on the jury, 12?

3 Q. Yes.

4 A. And 11 of them said life and I was all
5 for death, then I would be all for death. And until
6 you know, somebody could point out to me a real good
7 reason why I need to change it, other than hurry up
8 and let's get out of here, that don't cut it, you
9 know. He's going to have to give me a hard reason
10 why I should change what I'm thinking and what I feel
11 about the situation.

12 Q. Thank you, Mr. Simons.

13 EXAMINATION

14 BY MR. BAILEY:

15 Q. Mr. Simons, I'm Walter Bailey, I think
16 everything has kind of been covered and I want to run
17 over it a little bit, I think I understand what
18 you're saying.

19 As I understand it you're the third
20 kind of a juror that is not 100 percent for life, not
21 100 percent for death, you want to wait and hear what
22 happens; is that right?

23 A. That's exactly right.

24 Q. Then you would make up your mind?

25 A. Yes.

1 Q. If the case is bad enough then you could
2 vote for the death sentence knowing that sentence
3 would actually be carried out?

4 A. Yes.

5 Q. You understand the judge doesn't make the
6 decision if we get to that point, the jury makes it
7 and all he does is he orders that to happen?

8 A. Yes, sir.

9 Q. The jury all votes for life, the judge
10 orders life and he would go to prison for life
11 without parole. If the jury after hearing all those
12 facts thinks the death penalty's appropriate, the
13 judge would order that, he's going to be executed.

14 A. Yes, sir.

15 Q. I'm not going to ask you what you'd do in
16 this case because you hadn't heard any of the facts
17 and no point in getting into a bunch of what if this,
18 what if that. But just in general if the case is bad
19 enough could you vote for the death penalty knowing
20 that if you do the judge is going to order that
21 execution and he's going to be executed?

22 A. Yes.

23 Q. You could do that.

24 Could you sign your name onto a
25 verdict form with the other jurors that would result

1 in that execution happening if that was your vote?

2 A. Yes, sir. I could put my name on it, yo
3 know, and stand behind it.

4 Q. Okay.

5 A. I can go to bed at night resting assured
6 that, you know, I didn't do anything wrong, I done
7 what was right, you know, in society.

8 Q. Okay. And could you say out loud that's
9 your verdict, could you come out here into open
10 court? And there's a thing called polling the jury
11 where the clerk of court, or somebody from the clerk
12 of court's office, they call everybody's name one at
13 a time and you would be asked is that your verdict
14 and is it still your verdict.

15 A. Yes.

16 Q. Could you say that out loud?

17 A. I could say not guilty or either guilty.

18 Q. We're assuming he's guilty for our talk
19 right now, but as far as the penalty phase you could
20 say out loud death penalty if that was your verdict?

21 A. Yes, sir.

22 Q. Okay. The only other thing I want to
23 bring to your attention is that in a case like this
24 the jury has to make their decision based strictly on
25 what happens here in court. The judge will tell you

1 what the law is, the witnesses would tell you what
2 the facts are and the jury would decide what those
3 true facts are from the witnesses and the exhibits.
4 But the jury can't look at television, can't read the
5 newspaper, can't talk to friends and neighbors about
6 this case so they're put in a motel until the trial's
7 over. We're talking about the trial starting
8 tomorrow, last be maybe up to a week, I don't think
9 it will go past that.

10 Nobody wants to do that, they've got
11 things to do, they got work, they got home and all
12 that. But if you got picked for this jury, is being
13 put up in a motel at County expense for maybe five
14 days up to a week going to cause you any kind of
15 unusual problems?

16 A. I could get over it.

17 Q. Okay. All right.

18 A. I could live with it.

19 Q. Thank you. That's all I've got.

20 THE COURT: Thank you, sir. I'll bring
21 you right back. If you don't mind just step
22 out with him one second and I'll bring you
23 right back.

24 (Whereupon, the prospective juror leaves
25 the courtroom.)

1 MR. BAILEY: Qualified.

2 MR. BEAUFORD: Your Honor, I don't think
3 he qualified. Basically what this witness ha
4 said is that if in a murder case he would onl
5 do life if the defendant himself testified,
6 which the defendant doesn't have to testify.
7 He has shifted the burden on the defendant to
8 testify to tell him why he should not give hi
9 the death penalty, so basically I don't think
10 he qualified. Because he said he will give
11 death unless the defendant testifies and
12 convinces him and shifts the burden on the
13 defendant.

14 THE COURT: What he's done, of course, is
15 that he has -- as each question was asked he
16 has himself staked out, told you basically
17 what would cause him to vote in a certain way.
18 Starts off by saying, well, if he doesn't have
19 any remorse you're going to get the death
20 penalty. To be perfectly honest with you,
21 when you started questioning him I thought
22 he's got a fellow on his side, I don't know
23 why the defendant wants to pick on this
24 fellow, I believe I would leave him alone, I
25 believe I'd like to have him.

1 But the further you went he kept
2 adding to, seemed to me, what it was that
3 he -- that he -- that would -- he would
4 require in order to find one way or the other.
5 You got someone who's -- you know, who could
6 convince me that he's truly sorry, then I
7 would give him life. Sounds pretty good to me
8 if I was a defendant.

9 Then he goes on to say, well, you
10 know, I would give him death, I could give
11 death easy enough. I mean, he really goes
12 both ways. Seemed like to me the more
13 questions you asked the worse it got in terms
14 of a juror who I thought in the beginning
15 would have been -- my opinion, which doesn't
16 amount to a thing, it's your decision of
17 course what to do.

18 What about the fact that he says
19 that the defendant ought to testify, though,
20 Solicitor?

21 MR. BAILEY: Your Honor, he did say that,
22 but of course none of these jurors have been
23 instructed on the law and I think it's unfair,
24 really, to disqualify a juror because they
25 misunderstand the law when it hasn't been

1 explained to him.

2 THE COURT: Suppose I bring him back and
3 say to him, I'm going to tell you all this,
4 this man doesn't have to say a word, he
5 doesn't have to say a word. And if he does
6 not testify, are you telling me that if he
7 does not testify and does not give you that
8 that you want to hear, that he's remorseful
9 and so forth, that you would give him the
10 death sentence? If he says yes, that's what
11 I'm telling you, then I think he is
12 disqualified.

13 If he says no, then I could go on
14 ahead and ask him, well, then are you telling
15 me that you would listen to the law that I
16 give you and apply the law and your finding of
17 the facts? And if he says he can do that,
18 then I think he is qualified.

19 I really think that's where we are
20 with this case. I think you're right,
21 Mr. Beauford, probably at this point it's --

22 MR. BAILEY: I think in all fairness to
23 him he kind of more or less got led into that
24 because of facts and the scenario --

25 THE COURT: Well, I know. That's why I

1 say what he did was he started on one thing
2 and the next thing he knew he shouldn't have
3 asked another question and he was just sort of
4 given another scenario, and he just keeps
5 going and going.

6 MR. BAILEY: Right.

7 THE COURT: And as he talks he changes
8 the facts himself, you know. Mr. Beauford
9 really didn't do it, it's just he asked
10 another question and the fellow just adds to
11 it as he goes along. I think that's what
12 happened.

13 Let's ask him to come back just a
14 minute.

15 (Whereupon, the prospective juror returns
16 to the courtroom.)

17 THE COURT: Mr. Simons, let me ask you
18 one or two things if you don't mind, sir. If
19 I were to tell you all, first of all, if you
20 were a juror I would say to the jury and to
21 you, you have to take the law that I give to
22 you, you're obligated, you're required to take
23 the law that I give to you all as correct. In
24 other words, what my instruction of the law
25 is, is what it is. You follow me? If I told

1 you all that, and I told you all as a jury
2 this defendant does not have to testify for
3 himself, he doesn't have to say anything, he
4 doesn't have to convince anybody of anything.
5 First of all, he doesn't have to convince the
6 jury that he's not guilty. He doesn't even
7 have to testify and you can't even hold that
8 against him, you can't even talk about that
9 fact.

10 Or in the penalty phase if I were to
11 say, ladies and gentlemen of the jury, this
12 defendant is not required to testify in this
13 case, he doesn't have to say anything, it's
14 the State's burden to prove that he's guilty,
15 it's the State's burden to prove that he's
16 committed some offense for which the death
17 penalty might be an appropriate sentence.

18 If I were to tell you that would you
19 then give him -- and it's a little unfair
20 because you haven't heard the facts of the
21 case, but would you give a defendant a death
22 sentence if he didn't testify and convince you
23 that he was -- you used the word remorseful, I
24 don't think that question was asked. You said
25 he needs to come and tell me and convince me

1 that he's sorry, that he's really remorseful
2 and so forth, so are you saying that --

3 THE JUROR: Not him so much. You know,
4 somebody needs to prove that he -- somehow or
5 another that he ain't -- or is sorry for what
6 he did. Somebody needs to prove that he is
7 sorry of it, or somebody needs to sit down and
8 prove, no, he ain't sorry. Because I got the
9 proof right here and he's not sorry for what
10 he did.

11 THE COURT: All right. So you're saying
12 then it's up to him to prove on his part that
13 he's remorseful for what has taken place?

14 THE JUROR: I think that should be in his
15 defense if he doesn't.

16 THE COURT: Well, suppose that isn't in
17 his defense. Suppose in his defense is maybe
18 something else, like he doesn't have the
19 ability to be remorseful, he doesn't have the
20 ability to be sorry, suppose that was
21 something in his defense? You see where I'm
22 coming from?

23 THE JUROR: I follow what you're saying.
24 If his doctor, I guess in that case you would
25 have to have a doctor.

1 THE COURT: Yeah.

2 THE JUROR: Some big daddy doctor with
3 all those degrees to put it on paper and stuff
4 and stand behind it, that if he's got the
5 accreditation to say this man doesn't know any
6 better what he's doing, he at the time nor
7 now, then it's my professional opinion that's
8 how he is and that's how he's going to remain
9 you know, for this period of time, then, you
10 know, if he could prove, you know, that man
11 can prove that he's legitimate to say that and
12 that what he's saying is the truth, you know,
13 that he's done enough experimentation, he's
14 got enough experience to back up -- you know,
15 in other words, he ain't fresh, he's not one
16 day out of school so to speak, he's had a
17 little bit of experience behind him to back up
18 his opinion.

19 THE COURT: Well, my point is this: I'm
20 not trying to get you to tell me what you
21 would have to hear. I don't want -- you don't
22 need to tell me what you would have to hear,
23 or from whom, or how much experience, I'm not
24 interested in anything like that.

25 What I'm interested in is whether or

1 not you could listen to the law. And if I
2 said the law is he does not have to testify
3 against himself, he does not have to testify
4 period, he doesn't have to say anything,
5 that's what the law says, and if he does not
6 testify then, will you follow the law?

7 THE JUROR: I'll follow the law. I mean,
8 that's no problem.

9 THE COURT: And you would not give him --
10 would you give him a death sentence if he, or
11 somebody else, doesn't come forward and say
12 he's -- you see where I'm coming from? You're
13 the one that brought up he needs to come and
14 convince you.

15 THE JUROR: He doesn't have to
16 necessarily himself to do it, that's his
17 right. Like you said, that's his right.

18 THE COURT: All right, sir.

19 THE JUROR: If his defense is going to
20 sit there and just say okay, you know, we have
21 no proof of any kind, no kind of defense at
22 all, we ain't opening our mouths --

23 THE COURT: But he doesn't have the
24 burden. He doesn't have to prove anything.
25 The law says --

1 THE JUROR: The State has to prove it.

2 THE COURT: The law says that the State
3 has to prove it. He doesn't have to do a
4 thing. He doesn't have to get out of his
5 seat. Nobody has to put up any evidence over
6 there. Are you saying that if the defendant
7 doesn't do anything then --

8 THE JUROR: No. I mean, the State got to
9 prove that what he did --

10 THE COURT: I understand that.

11 THE JUROR: -- was wrong and what he did
12 if in that case deserves the death penalty,
13 they got to prove to me that he did deserve
14 it, you know, because of how he went about
15 doing it. And if the State can prove that,
16 okay, since that time, you know, here's proof
17 that he's not mentally disabled, and here's
18 proof or here's proof that he has no remorse,
19 he was writing things up on the prison wall
20 about, you know, ha, ha, I'm glad I did it, or
21 you know what I mean? Or produce a videotape,
22 audiotape of him in his cell, you know,
23 talking to another inmate about how he -- how
24 happy he was, how good it made him feel about
25 what he did.

1 THE COURT: Let me ask you to step out if
2 you don't mind, sir. I'll call you right back
3 in one more time.

4 THE JUROR: All right.

5 (Whereupon, the prospective juror leaves
6 the courtroom.)

7 MR. BAILEY: Judge, me and Mr. Beauford
8 decided we couldn't take any more of this.

9 THE COURT: That's what you call a little
10 education is a dandy thing.

11 MR. BEAUFORD: Your Honor, could you
12 imagine him working on your tractor?

13 THE COURT: I wonder about that now. He
14 might be able to turn that crank shaft, but he
15 can't sit on this jury, I can tell you that.
16 He is not competent as a juror. I'm going to
17 excuse him.

18 (Whereupon, the prospective juror returns
19 to the courtroom.)

20 THE COURT: Mr. Simons, thank you, sir.
21 I appreciate you coming. I'm going to let you
22 go home. Hey, I might call you next week to
23 come to Kingstree with me.

24 THE JUROR: All right. That will work.
25 Just give me a call. The number's right there

1 on that sheet.

2 THE COURT: Thank you.

3 THE JUROR: Yes, sir.

4 (Whereupon, the prospective juror leaves
5 the courtroom.)

6 THE COURT: Mr. Canaday, elderly white
7 gentleman sitting right back there. He was
8 about three or four back yesterday when he was
9 called. He's the next one, number 60.

10 (James D. Canaday, called as a potential
11 juror, having first been duly sworn, is
12 examined as follows:)

13 THE COURT: Mr. Canaday, how are you
14 doing, sir?

15 THE JUROR: All right.

16 THE COURT: Thank you very much for
17 coming, I know it's late, we're going to get
18 out of here in just a minute or two. We've
19 been at it for two days as hard as we can go,
20 we're just about at the end of it and I need
21 to ask you a few questions, these lawyers will
22 ask you a few questions, and you'll be out of
23 here.

24 Tell us a little bit, sir, about
25 your work, if you don't mind.

1 THE JUROR: I am a maintenance
2 coordinator for Blue Circle Cement Company,
3 been there 25 years, went over there as a
4 shift foreman, been production foreman and now
5 for the last ten years I've been the mobile
6 maintenance coordinator.

7 THE COURT: And doing what? What is this
8 business? Oh, you did run a dairy and so
9 forth?

10 THE JUROR: Right. I was self-employed
11 until I was 36 years old, I got tired of that
12 dairy business, couldn't make any money.

13 THE COURT: Yes, sir. Let me ask you,
14 Mr. Canaday, have you served as a juror
15 before?

16 THE JUROR: Never have.

17 THE COURT: In your whole life?

18 THE JUROR: No, sir.

19 THE COURT: This sheet that I left back
20 there for you all, you to read, did you read
21 that?

22 THE JUROR: Yes, sir.

23 THE COURT: Tell me what type juror you
24 think you would be.

25 THE JUROR: I think I would be a number

1 three juror.

2 THE COURT: Which says what, sir?

3 Basically what does it mean to you when you
4 say a type three juror?

5 THE JUROR: Well, it pretty well
6 describes it in the thing there. I could
7 listen and not make no pre-decision until I
8 heard all the information. I think I could
9 come up with a fair and applicable decision of
10 the evidence that I had.

11 THE COURT: All right. You're not a
12 fellow who would always, always impose a life
13 sentence in every case even though you found
14 somebody guilty of murder?

15 THE JUROR: I wouldn't think so, no, sir.

16 THE COURT: Would you be one who would
17 always, always in every case give the death
18 sentence if you found someone guilty of
19 murder?

20 THE JUROR: No, sir. I don't think so.

21 THE COURT: You're telling me that you
22 could give death, you could give life, but you
23 would have to listen to all of the
24 circumstances before you could make up your
25 mind on that?

1 THE JUROR: Yes, sir.

2 THE COURT: And you -- again, you could
3 impose a death sentence, but the case would
4 have to be an appropriate one?

5 THE JUROR: Right.

6 THE COURT: And by the same token you
7 could impose life sentence, but then that
8 would have to be an appropriate case?

9 THE JUROR: Yes, sir.

10 THE COURT: Fair enough.

11 EXAMINATION

12 BY MR. BAILEY:

13 Q. Mr. Canaday, I'm Walter Bailey, I'll be
14 prosecuting this case, I need to ask you a few more
15 questions. Is the death penalty something that
16 you've ever thought about in any real detail before
17 yesterday?

18 A. No, sir.

19 Q. Okay. Do you have any particular
20 religious beliefs or personal beliefs about the death
21 penalty that you think might carry into this case if
22 you got picked as a juror?

23 A. No, sir. I don't think so.

24 Q. All right, sir.

25 A. I'm a Baptist and I go to church each

1 Sunday, but, you know, I don't have any religious
2 belief that would sway me either way on that.

3 Q. Okay.

4 A. I would have to hear all the evidence and
5 make my mind up at the end of that.

6 Q. All right, sir. And we're kind of
7 putting the cart before the horse because we're
8 talking about the penalty. And of course the
9 defendant hadn't been convicted of anything and he's
10 presumed to be not guilty unless the State can prove
11 to your satisfaction that he is guilty beyond a
12 reasonable doubt; you understand that?

13 A. Yes, sir.

14 Q. That we wouldn't even get to that point
15 unless and until the jury finds him guilty of murder,
16 then we go into that second part of the trial. And
17 you understand that the judge said that the way it
18 works, if we get to that point, the judge doesn't
19 decide what the penalty is, all he's going to do,
20 he's going to order whatever that jury's verdict is
21 to happen and it will happen.

22 So if the jury votes for life, the
23 judge would order life and he would serve life
24 without parole. If the jury verdict is the death
25 sentence, the judge is going to order that to happen

1 and it will happen, he'll actually be executed by
2 lethal injection or the electric chair based on that
3 jury's decision. So that's how it works.

4 I'm not going to ask you to tell us
5 what you would do in this case because you hadn't
6 heard any of the facts.

7 A. No, sir.

8 Q. It wouldn't be fair to ask you or anybody
9 else that. But my question is if the facts were bad
10 enough, could you vote for the death penalty knowing
11 that fellow is actually going to get executed based
12 on that jury's vote?

13 A. If you could prove and it was enough
14 evidence, then, yes, sir.

15 Q. All right, sir. And if all 12 jurors
16 vote for the death penalty, then they would be asked
17 to sign their name to a death verdict form. Could
18 you sign your name to a paper like that along with
19 the other jurors if you'd already voted for the death
20 penalty?

21 A. Yes, sir.

22 Q. Could you say out loud that was your
23 verdict if that was your verdict?

24 A. Yes, sir.

25 Q. Okay. Last thing I want to bring to your

1 attention is that the jury is going to be kept in a
2 motel at night when they're not in court until the
3 trial's over. And we're looking at the trial
4 starting tomorrow, maybe running up to a week,
5 probably no longer than that. And the reason that
6 you do that is the jury's supposed to make their
7 decision based on what happens in court and not what
8 happens outside, the newspaper, TV, whatever. Nobod
9 is looking forward to going to a motel for a week,
10 but it will be at County expense.

11 If you get picked, is that something
12 that you can work out, I mean as far as your work and
13 your home life?

14 A. I don't see any reason I couldn't, no,
15 sir. No problem.

16 Q. You don't see any reason at all that
17 would keep you from serving as a juror in this case?

18 A. No, sir.

19 Q. Thank you, Mr. Canaday. That's all I've
20 got.

21 THE COURT: Mr. Beauford?

22 EXAMINATION

23 BY MR. BEAUFORD:

24 Q. How are you doing today, Mr. Canaday?

25 A. All right.

1 Q. My name is Percy Beauford, just a few
2 questions. You understand in South Carolina murder
3 is the intentional killing someone with malice
4 aforethought, it's not by accident, it's not
5 self-defense, it's not manslaughter. Knowing that,
6 would that change your views on how you would vote on
7 those three questions of --

8 A. No, sir. I don't think so.

9 Q. Okay. And if someone is convicted of
10 intentionally killing someone with malice
11 aforethought and we're in the second phase which is
12 the sentencing phase, could you consider other
13 evidence that has nothing to do with the crime in
14 determining whether to vote for a death or life
15 sentence?

16 A. I would have to take and look at the
17 evidence that was brought to the trial. You know,
18 you can be a super good fellow and then get off on
19 the wrong leg is what I'm saying. And I would have
20 to consider that, what's brought out in the trial.

21 Q. You say that during the guilt phase you
22 found him guilty of the murder, he did it.

23 A. Right.

24 Q. He intentionally did it with malice
25 aforethought, and then we're in the sentencing phase.

1 A. Right.

2 Q. Could you consider other factors like
3 background, how he was raised, things like
4 aggravation of the crime itself, how bad it was or
5 harsh it was, would you consider factors like that,
6 could you factors like that in determining whether
7 death or life sentence?

8 A. I would consider it, yes.

9 Q. You sound a little hesitant. Would you
10 want to add something to that? Like a but, there wa
11 a but behind that.

12 A. Yes, sir. I feel a juror should listen
13 at the facts and he would have to make that
14 determination as he heard the facts. And if he was
15 guilty and the judge give us the charge of what the
16 law is, I would abide by what the law said.

17 Q. Okay. And you understand in South
18 Carolina life means life without parole?

19 A. Sir?

20 Q. You understand in South Carolina a life
21 sentence means life without parole?

22 A. He would have to serve his full life,
23 right?

24 Q. Correct.

25 Knowing that, would that change any

1 of your other answers which you've given prior to the
2 answer to that question?

3 A. I don't think so, no, sir.

4 Q. How would you consider yourself, a leader
5 or follower?

6 A. I figure myself as a leader.

7 Q. Okay. Thank you.

8 THE COURT: Thank you, sir. Mr. Canaday,
9 if you'll step right there just for a second
10 I'll bring you right back, sir.

11 (Whereupon, the prospective juror leaves
12 the courtroom.)

13 THE COURT: State?

14 MR. BAILEY: Qualified.

15 THE COURT: Defendant?

16 MR. BEAUFORD: Qualified.

17 MS. HARDEE-THOMAS: Qualified.

18 THE COURT: He's qualified.

19 (Whereupon, the prospective juror returns
20 to the courtroom.)

21 THE COURT: Mr. Canaday, if you don't
22 mind, sir, I'm going to ask you to come back
23 in the morning, please, sir, if you will at
24 nine o'clock into the courtroom. What we're
25 going to do is get 35 or so jurors out of that

1 big crowd that we had yesterday, we're going
2 to take 35 jurors and then we're going to
3 choose 12 and two alternates to serve. You
4 follow me?

5 THE JUROR: Yes, sir.

6 THE COURT: I'm not saying you're going
7 to be selected obviously, I don't know that.

8 THE JUROR: Yes, sir.

9 THE COURT: But you would just be one of
10 the 35 or so that we would talk to. Would
11 you, please, sir, I hate to I impose on you,
12 would you mind packing your bags, put them in
13 your car, leave them in your car? You may end
14 up going right back home and unpacking your
15 bags.

16 THE JUROR: All right.

17 THE COURT: But if you are selected and
18 we get started into the trial I don't want the
19 SLED agents to have to go all over the county
20 getting people's clothing for them. I just
21 feel like if everybody could bring their
22 things when they come. And, again, you know,
23 I'm not saying that you're going to be
24 selected, but if you are I would appreciate it
25 if you could have about, you know, enough for

1 several days, a week, whatnot. If you run
2 short of anything we're going to have people
3 that will do anything for you so that's not
4 going to be a problem.

5 THE JUROR: All right.

6 THE COURT: Thank you very much. Don't
7 discuss your views on the death penalty or
8 this case or anything with your family. I
9 know you've got to tell your wife and so forth
10 what you're going to be doing tomorrow, but
11 just don't get into the facts of the case or
12 the death penalty discussion. Thank you, sir.

13 THE JUROR: You're welcome.

14 (Whereupon, the prospective juror leaves
15 the courtroom.)

16 (Eula N. Shuler, called as a potential
17 juror, having first been duly sworn, is
18 examined as follows:)

19 THE COURT: All right. It's Eula Shuler.

20 Ms. Shuler, how are you doing? Come
21 on and have a seat, ma'am. How are you making
22 it today?

23 THE JUROR: Scared.

24 THE COURT: Scared, ma'am?

25 THE JUROR: Yes, sir.

1 THE COURT: Nervous. Well, don't be.
2 Don't be nervous, I'm just going to ask you
3 couple questions and I'll let you go.

4 Tell me, first of all, please,
5 ma'am, your work. You've been working there
6 at Ferrel for how long?

7 THE JUROR: About 11 months.

8 THE COURT: Eleven months now cleaning.
9 You're taking care of the place?

10 THE JUROR: Yes, sir.

11 THE COURT: What is Ferrel Company, what
12 is that?

13 THE JUROR: It's like a --

14 THE COURT: Talk a little bit louder.

15 THE JUROR: I don't know. They just do
16 secretary work.

17 THE COURT: I see. And you are separate
18 now. You got seven boys and seven girls?

19 THE JUROR: Yes, sir.

20 THE COURT: Fourteen children?

21 THE JUROR: Yes, sir.

22 THE COURT: How many do you have home?

23 THE JUROR: Five.

24 THE COURT: Who's taking care of them
25 now?

1 THE JUROR: They have a 15-year-old
2 sister.

3 THE COURT: Fifteen-year-old sister?

4 THE JUROR: Yes.

5 THE COURT: How old's the youngest one?

6 THE JUROR: He's five years old.

7 THE COURT: Well, if you have to serve on
8 this jury and spend the night in a motel for a
9 week, who's going to take care of them?

10 THE JUROR: I guess my daughter have to
11 because she 15, because I ain't got nobody
12 else to take care of them.

13 THE COURT: Do you think they can get
14 along with the 15 year old taking care of
15 them?

16 THE JUROR: I don't know. They gets
17 pretty rough sometimes, I have to be back
18 home.

19 THE COURT: You mean fussing and fighting
20 and want to pick at each other?

21 THE JUROR: Yeah.

22 THE COURT: Who's going to cook?

23 THE JUROR: She can cook. Some things,
24 now, she ain't no good at cook or nothing.

25 THE COURT: I wouldn't figure she would

1 be too swift at 15.

2 THE JUROR: No.

3 THE COURT: Well, you want to serve as a
4 juror in this case?

5 THE JUROR: No, not really.

6 THE COURT: Not really?

7 THE JUROR: No.

8 THE COURT: Would you serve, or could you
9 serve if you were selected?

10 THE JUROR: I'll try to do my best, you
11 know, but....

12 THE COURT: Well, is it going to be a
13 hardship on you all? How many you say, five
14 at home?

15 THE JUROR: Yes.

16 THE COURT: The youngest one's five?

17 THE JUROR: Yes.

18 THE COURT: What's the next one?

19 THE JUROR: She's seven. That's the two
20 youngest of all of them.

21 THE COURT: Then the rest of them are on
22 up a little bit?

23 THE JUROR: Yes.

24 THE COURT: Well, are they all in school
25 now?

1 THE JUROR: Yes, sir.

2 THE COURT: Well, how about the five,
3 what do they do ride the bus?

4 THE JUROR: Yes.

5 THE COURT: The five here, they all get
6 on the bus in the morning, go to day-care and
7 whatnot?

8 THE JUROR: No, he goes all day. He in
9 kindergarten, but he be there all day.

10 THE COURT: Well, when he comes --

11 MR. BEAUFORD: Your Honor, could we
12 approach?

13 THE COURT: Yeah, sure.

14 (Whereupon, a bench conference was held
15 off the record.)

16 THE COURT: When he comes home from
17 kindergarten is there somebody there to take
18 care of the child?

19 THE JUROR: My mother, but she's 75. But
20 she can't do too much because she got
21 arthritis.

22 THE COURT: I understand.

23 THE JUROR: She gets around poorly.

24 THE COURT: Let me ask you this: What
25 relationship are you to Stroma Lee Shuler?

1 THE JUROR: Second cousin.

2 THE COURT: Second cousin.

3 Where do you live?

4 THE JUROR: Rosinville.

5 THE COURT: Okay. You know him, though,
6 hey?

7 THE JUROR: Yeah, well, known.

8 THE COURT: What kind of fellow is Strom
9 Lee?

10 THE JUROR: He's kind of rowdy, but far
11 as, you know, getting in trouble, I ain't
12 never known him to get -- not me, I ain't
13 never known him to get in nothing.

14 THE COURT: He was in here. He has a
15 brother, I believe it was, one that was in
16 here not too long ago seemed like to me
17 testified in a case with a tractor, he was
18 driving a tractor. What's his name? Preache
19 ran into him.

20 OFFICER SMITH: He live in Orangeburg
21 right now.

22 THE JUROR: Stroma Lee the one in
23 Orangeburg right now? Allen the one here now.
24 Allen is his brother. I think that's the one.
25 Stroma Lee, I think he's in Columbia, I think.

1 I ain't sure.

2 OFFICER SMITH: One of them stay in
3 Bowman.

4 THE JUROR: Oh, I'm sorry.

5 THE COURT: Well, anyway, you all are not
6 too close of kin?

7 THE JUROR: No.

8 THE COURT: You don't want to claim them
9 too close.

10 THE JUROR: No.

11 THE COURT: I'm going to excuse you, Ms.
12 Shuler. I'm going to excuse you because I'm
13 scared for those children. I don't want
14 anybody to get on your case for being down
15 here with us and leaving those children by
16 themselves, I've got to let you go, but I
17 thank you very much for helping us.

18 THE JUROR: All right. Thank you, sir.

19 THE COURT: Thank you, ma'am.

20 (Whereupon, the prospective juror leaves
21 the courtroom.)

22 THE COURT: All right. How is it you
23 want to select these jurors, ladies and
24 gentlemen?

25 MR. BAILEY: Judge -- go ahead.

1 MR. BEAUFORD: Your Honor, strike them
2 the order that we already pulled them out of
3 just strike them from the same order, that
4 would be my --

5 THE COURT: What do you want to do?

6 MR. BAILEY: Judge, I've done it both
7 ways and I think there is some logic to a
8 random scramble after they're qualified, but
9 as I said I've done it both ways. I just
10 defer to the court on that.

11 THE COURT: Well, you know, what's
12 occurred in the past is that most of the time
13 the defendant has -- and I don't know why, I
14 mean it doesn't make any difference to me, but
15 most of the time the defendant wants them to
16 scramble. Kind of different in this one, but
17 if they want to do it that way and you don't
18 have any real problem, I don't see any reason
19 why we can't just strike them the way they
20 came, I don't have any problem with that.

21 Before we leave let me ask again, I
22 want this record to be very clear on these
23 jurors, this is a big part of it, and I want
24 to say this, too: I have tried to be on
25 purpose, tried to be a little lighthearted,

1 and I have a reason for it. First of all,
2 these people are scared to death. They are
3 asked to come here and do an unnatural thing.
4 They're here to come -- we give them a sheet
5 of paper, ask them to read that thing and come
6 in here and they're faced in a witness chair
7 with lawyers and court reporters and judge
8 sitting two feet from them, the officers and
9 everyone else, and they are scared. I would
10 be scared. I would be scared knowing the
11 system, I still would be afraid to come and do
12 what they have.

13 And I have, I know, probably been
14 lighthearted maybe too much so from time to
15 time, but I don't know any other way to talk
16 to people who are in the situation they're in
17 and try to calm them down. You know, we can
18 put on a facade, we might can ask an
19 appropriate question, it might sound good on
20 the record, but I don't know that it does much
21 to reassure someone.

22 I think that when they see that
23 you're human and that you can laugh and have
24 some conversation with them, whether it's
25 about a bulldozer, whatever it's about, it's

1 not that I'm trying to be cute in any way or
2 that I -- you know, that I'm trying to
3 entertain someone. My purpose solely in doi
4 what I've done is to try to reassure these
5 folks and let them know that I'm just like
6 they are, I just happen to be sitting here
7 with a black robe on. And I -- the record is
8 the record and it speaks for itself. And so
9 if mistakes have been made, then they've been
10 made.

11 But before we leave I would just
12 like to ask again today whether there's
13 anything that you all know that I've done or
14 whatever, I know you haven't objected to
15 anything, but, you know, the inflection of th
16 voice sometimes causes people to answer
17 questions one way or the other and it really
18 depends I think a lot on how you ask a
19 question rather than so much what you say.
20 And I want to be sure that there isn't any
21 problem with anything that I have said or don
22 during the course of this voir dire. If ther
23 is, I feel like I need to know it today and
24 clear that up with these jurors before we
25 begin a selection process tomorrow morning.

1 Could I ask the State whether you
2 all have any problem?

3 MR. BAILEY: Your Honor, the State is
4 totally satisfied with the way the voir dire
5 has been conducted by the court and by the
6 defense. And I just think for the record that
7 both sides have not been denied the
8 opportunity to ask any juror any question they
9 wanted to ask throughout the entire process,
10 so I'm totally satisfied on behalf of the
11 State.

12 MR. BEAUFORD: Your Honor, from the
13 defense I'm in concurrence with that opinion.

14 MS. HARDEE-THOMAS: Concur, Your Honor.

15 THE COURT: All right. Thank you both.
16 I thank you very much for your hard work. I
17 think we've probably just set a record. I
18 think it's occurred because the jurors really
19 had their minds made up and I think that
20 they've given straight answers to us, I really
21 feel like they did when we went through this
22 thing.

23 I suppose we need to be here in the
24 morning at 9:00 and ready to go.

25 MR. BAILEY: Your Honor, as far as the

1 procedure tomorrow, I would prefer to go ahead
2 and do a paper strike out of the presence of
3 the jury in the event that there is -- I don't
4 anticipate a Batson motion or reverse Batson
5 motion.

6 THE COURT: We could do that. That would
7 probably be the best way to do it.

8 MR. BEAUFORD: That would be fine.

9 THE COURT: If we're going to have that
10 list just let you all, you know, one, two,
11 three, four like. Of course, I think what
12 we've got to do is to -- are you saying then
13 you're going to strike the first -- in other
14 words, if you all selected the first 12 juror
15 out of the box they're going to be the first
16 12 names on the list, that's basically what
17 you're saying?

18 MR. BEAUFORD: Correct.

19 MR. BAILEY: Yes, sir. The jurors
20 wouldn't have to know if they're being struck
21 in the event that we have to use them at the
22 end.

23 THE COURT: Well, then can we -- should
24 we just do -- you all need some time to look
25 at it now I'm sure, wouldn't you?

1 MR. BAILEY: I need some time. I think
2 we ought to also make it -- could be they all
3 don't show up tomorrow, or somebody could call
4 in with some last-minute excuse like
5 Mr. McCann did, so it may be safer to wait and
6 see who shows up tomorrow first thing in the
7 morning.

8 THE COURT: First thing.

9 MR. BEAUFORD: Yes, Your Honor.

10 THE COURT: That will give you time to
11 look over the list to be sure you know what
12 you want to do. Fair enough. Nine o'clock.
13 Nine o'clock.

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STATE OF SOUTH CAROLINA)
: C E R T I F I C A T E
COUNTY OF DORCHESTER)

I, Robin L. Keil, Registered Merit Reporter and First Judicial Circuit Court Reporter, certify that the preceding pages are a true and correct transcript of the proceedings had at the aforesaid time and place.

I certify that the same was reduced to typewritten form from my original stenograph notes by computer-aided transcription.

I further certify that I am not of counsel or kin to any of the parties to this cause of action, nor am I interested in any manner in its outcome.

IN WITNESS WHEREOF I have hereunto set my hand this the 17th day of November 2000.


Robin L. Keil, RMR
Resident Court Reporter
First Judicial Circuit

STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF DORCHESTER) CASE NOS. 98-GS-18-749, 750

STATE OF SOUTH CAROLINA,) VOLUME VI
Plaintiff,) TRANSCRIPT OF RECORD
-versus-) May 26, 1999
JOHN EDWARD WEIK,) St. George, South Carolina
Defendant.)

B E F O R E:

The Honorable M. Duane Shuler, Judge; and a Jury

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

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B. Harrison Bell, Jr., Esquire

Maité Murphy, Esquire

Darlene Simmons

For the State of South Carolina

Percy Beauford, Esquire

Marva A. Hardee-Thomas, Esquire

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A L S O P R E S E N T:

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I N D E X

Opening Statement by Mr. Bailey.....	1299
Opening Statement by Mr. Beauford.....	1315

<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
RONALD HALL				
Mr. Bailey.....	1320			
Mr. Beauford.....		1323		
JULIE FORTE				
Mr. Bailey.....	1325			
Mr. Beauford.....		1328		
REBECCA VINCENT				
Mr. Bailey.....	1330			
JENNYE W. ADAMS				
Mr. Bailey.....	1340			
Mr. Beauford.....		1351		
THOMAS C. ADAMS, II				
Mr. Bailey.....	1354			
Mr. Beauford.....		1364		
ALICE L. HILTON				
Mr. Bailey.....	1367			
ANDREW M. MCGAUVVRAN				
Mr. Bailey.....	1371			
HUBERT T. PRINCE				
Mr. Bailey.....	1377			
Mr. Beauford.....		1383		
MICHAEL J. GIGLIO				
Mr. Bailey.....	1386			
CHRISTOPHER D. NISBET				
Mr. Bailey.....	1390			
DONALD P. K. GAMACHE				
Mr. Bailey.....	1392			
Mr. Beauford.....		1407		
JOSEPH D. BURNETTE, II				
Mr. Bailey.....	1409			1417
Mr. Beauford.....		1417		
KIM A. COLLINS				
Mr. Bailey.....	1428			1450
Mr. Beauford.....		1449		
THERESA A. CAMPBELL				
Mr. Bailey.....	1451			
BRIAN S. BILLS				
Mr. Bailey.....	1454			
THOMAS M. MARSHALL				
Mr. Bailey.....	1458			
EARL V. ASBELL, JR.				
Mr. Bailey.....	1464			
Mr. Beauford.....		1487		

DENISE H. MERRITT
Mr. Bailey.....1490
JOHN P. BLACK
Mr. Bailey.....1494
KENNETH H. WHITLER
Mr. Bailey.....1500 1517
Mr. Beauford.....1516
DONALD P. K. GAMACHE
Mr. Bailey.....1518
TERRENCE A. VAN DORAN
Mr. Bailey.....1520
THOMAS M. MARSHALL
Mr. Bailey.....1526 1549
Mr. Beauford.....1542 1550
DANIEL W. KRASAE
Mr. Bailey.....1552
Mr. Beauford.....1566

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-01	Telephone Record.....		1327
S-02	Truck Photo.....		1349
S-03	Truck Photo.....		1349
S-04	Truck Photo.....		1349
S-05	Truck Photo.....		1349
S-06	Audiocassette Tape.....		1369
S-07	Transcription of Tape.....		1369
S-08	Map.....		1372
S-09	Evidence Report Sheet.....		1398
S-10	Miranda Form.....		1400
S-11	Photograph.....		1405
S-12	Shotgun Shells.....		1406
S-13	ATM Receipts.....		1407
S-14	Videotape.....		1414
S-15	Transcription.....		1414
S-16	Vehicle Custody Protection Form.....		1416
S-17	Female Drawing Form.....		1438
S-18	through 27 Photographs.....		1441
S-28	through 37 Items Removed During Autopsy		1445
S-38	Evidence Transfer Sheet.....		1454
S-39	Photograph.....		1456
S-40	Shotgun.....		1457
S-41	through 45 Photographs.....		1466
S-46	Computerized Sketch.....		1468
S-47	through 52 Photographs.....		1472
S-53	Photograph.....		1475
S-54	through 57 Spent Shell Casings.....		1477
S-58	Lead Pellet.....		1478
S-59	Lead Pellet.....		1478
S-60	Two Live Shotgun Shells.....		1480
S-61	Evidence Transfer Sheet.....		1482
S-62	SLED Lab Request.....		1484
S-63	Statement of Miranda Rights.....		1525
S-64	Microcassette Tape.....		1531
S-65	Audiocassette Tape.....		1532
S-66	Transcription of Statement.....		1535
S-67	Handwritten Statement.....		1537

1 (May 26, 1999.)

2 (Roll call.)

3 THE COURT: What we'll do is go ahead and
4 draw the jury, and then even though the jurors
5 are not here, I think we should go ahead, draw
6 the jury and then if we have to send the
7 sheriff after them we'll send the sheriff
8 after them. That's all there is to it.

9 Ladies and gentlemen, what I intend
10 to do, we're going to do this a little
11 differently than we usually do in criminal
12 court, what we usually do is this: We usually
13 have your names scrambled, and as the name is
14 called the juror walks forward and then the
15 State or the defense would strike the juror or
16 whatnot, or take the juror.

17 We're not going to do it that way
18 today. We're going to do it outside of your
19 presence, you won't know. The lawyers have
20 all agreed to do it this way. And rather than
21 asking you all to leave, we'll leave, we'll
22 just simply go back into the jury room that
23 you were in yesterday, the court reporter can
24 bring her machine back, the defendant will
25 come, and we'll just strike the jury back

1 there and then we can come out and I'll just
2 announce -- the clerk will announce who's been
3 drawn. It's really done basically in the same
4 way.

5 What occurs is that the State and
6 the defense have so many jurors that they may
7 excuse for whatever reason. And I think it
8 might be a quicker process now for us just to
9 go back and let them strike the jury in that
10 fashion.

11 MR. BAILEY: Judge, can we approach
12 briefly before we do that?

13 THE COURT: Sure. Absolutely.

14 (Whereupon, a bench conference was held
15 off the record in the presence of the
16 jury panel but out of the hearing of the
17 jury panel.)

18 THE COURT: Ladies and gentlemen, if I
19 haven't imposed on you enough, I'll tell you
20 what we all should do. It's been suggested
21 that we just say in here since all the
22 machinery and so forth is in here, it may take
23 longer to move. What I would ask you to do,
24 if you don't mind, is step out in the hall
25 outside. It will take just about five minutes

1 to do this, then I'll bring you all back in
2 and tell you who's on the jury. I hate to do
3 that to you, but if you don't mind, just step
4 out there then. We'll bring you right back.

5 (Jury panel excused.)

6 THE COURT: All right. You may call the
7 first juror and then the State would either
8 present or strike and we'll go from there.

9 THE CLERK: Douglas W. Judy. What says
10 the State?

11 MR. BAILEY: Present the juror.

12 THE CLERK: Defense?

13 MR. BEAUFORD: Seat the juror.

14 THE CLERK: Number 2, Allen F. Bates.
15 What says the State?

16 MR. BAILEY: Present the juror.

17 THE CLERK: Defense?

18 MR. BEAUFORD: Excuse this juror.

19 THE CLERK: Number 3, Robert W. Lawson.
20 What says the State?

21 MR. BAILEY: Present the juror.

22 THE CLERK: Defense?

23 MR. BEAUFORD: Please excuse this juror.

24 THE CLERK: Number 4, Angela Washington,
25 and who's not here at this time.

1 THE COURT: That's right.

2 THE CLERK: What says the State?

3 MR. BAILEY: Excuse the juror.

4 THE CLERK: Number 5, Margaret James.

5 What says the State?

6 MR. BAILEY: Present the juror.

7 THE CLERK: Defense?

8 MR. BEAUFORD: Please excuse the juror.

9 THE CLERK: Number 6, Thomas A. Nichols,
10 Jr. What says the State?

11 MR. BAILEY: Excuse the juror.

12 THE CLERK: Defense? Oh, excuse me, I'm
13 sorry.

14 Number 7, Daisy G. Smalls. What
15 says the State?

16 MR. BAILEY: Present the juror.

17 THE CLERK: Defense?

18 MR. BEAUFORD: Seat the juror.

19 THE CLERK: Number 8, Carolyn S.
20 Kirkland. What says the State?

21 MR. BAILEY: Present the juror.

22 THE CLERK: Defense?

23 MR. BEAUFORD: Seat the juror.

24 THE CLERK: Number 9, Ronald Tyrell.

25 What says the State?

1 MR. BAILEY: Present the juror.

2 THE CLERK: Defense?

3 MR. BEAUFORD: Excuse the juror.

4 THE CLERK: Number 10 --

5 MR. BEAUFORD: Just one minute. Please
6 seat the juror.

7 THE COURT: All right.

8 THE CLERK: Number 10, Jerry E. Bryan.

9 What says the State?

10 MR. BAILEY: Present the juror.

11 THE CLERK: Defense?

12 MR. BEAUFORD: Please seat the juror.

13 THE CLERK: Number 11, Marvin E. Ladson.

14 What says the State?

15 MR. BAILEY: Present the juror.

16 THE CLERK: Defense?

17 MR. BEAUFORD: Seat the juror.

18 THE CLERK: Number 12, David R. Willhoit.

19 What says the State?

20 MR. BAILEY: Present the juror.

21 THE CLERK: Defense?

22 MR. BEAUFORD: Excuse this juror.

23 THE CLERK: Number 13, Lisa L. Wallace.

24 What says the State?

25 MR. BAILEY: Present the juror.

1 THE CLERK: Defense?

2 MR. BEAUFORD: Excuse this juror.

3 THE CLERK: Number 14, Susan B. Jarvis.

4 What says the State?

5 MR. BAILEY: Excuse the juror.

6 THE CLERK: Number 15, Jaime M. Bele.

7 What says the State?

8 MR. BAILEY: Present the juror.

9 THE CLERK: Defense?

10 MR. BEAUFORD: Please seat the juror.

11 THE CLERK: Number 16, Albert A. White,

12 Jr. What says the State?

13 MR. BAILEY: Excuse the juror.

14 THE CLERK: Number 17, Dane F. Wiggins.

15 What says the State?

16 MR. BAILEY: Present the juror.

17 THE CLERK: Defense?

18 MR. BEAUFORD: Please seat the juror.

19 THE CLERK: Number 18, Johnny B. Britt.

20 What says the State?

21 MR. BAILEY: Present the juror.

22 THE CLERK: Defense?

23 MR. BEAUFORD: Please seat the juror.

24 THE CLERK: Number 19, William E.

25 DeLonge. What says the State?

1 MR. BAILEY: Present the juror.

2 THE CLERK: Defense?

3 MR. BEAUFORD: Please excuse this juror.

4 THE CLERK: Number 20, Ronald G. McGuire.

5 What says the State?

6 MR. BAILEY: Present the juror.

7 THE CLERK: Defense?

8 MR. BEAUFORD: Please seat the juror.

9 THE CLERK: Number 21, James W. Young.

10 What says the State?

11 MR. BAILEY: Present the juror.

12 THE CLERK: Defense?

13 MR. BEAUFORD: Please excuse this juror.

14 THE CLERK: Number 22, Christopher S.

15 Hehn. What says the State?

16 MR. BAILEY: Indulge me a second, I just
17 want to count something, please.

18 THE CLERK: Ten jurors.

19 THE COURT: We got ten so far?

20 THE CLERK: Yes, sir. Seven defense,
21 four State.

22 MR. BAILEY: I've got one, two, three,
23 four, five, six, seven strikes for the
24 defense, four for the State. Am I correct?

25 THE COURT: Seven for the State?

1 MR. BAILEY: Seven for the defense.

2 THE COURT: Excuse me. Seven for the
3 defendant, four for the State.

4 MR. BAILEY: Present the juror.

5 THE CLERK: What says the defense?

6 MR. BEAUFORD: Excuse this juror.

7 THE CLERK: That was number 22?

8 THE COURT: That's correct.

9 A JUROR: Number 23, William Grady
10 Matthews. What says the State?

11 MR. BAILEY: Present the juror.

12 THE CLERK: Defense?

13 MR. BEAUFORD: Please excuse this juror.

14 THE CLERK: Number 24, Scott A.

15 Atcherson. What says the State?

16 MR. BAILEY: Present the juror.

17 THE CLERK: Defense?

18 MR. BEAUFORD: Seat the juror.

19 THE CLERK: Number 25, Teodoro

20 Encarnacion. What says the State?

21 MR. BAILEY: Excuse the juror.

22 THE CLERK: Number 26, Michael E. Black.
23 What says the State?

24 MR. BEAUFORD: Excuse this juror.

25 MR. BAILEY: Present the juror.

1 THE COURT: He didn't have any more
2 strikes anyway. He didn't have any more
3 strikes anyway, so it would really be the
4 defendant.

5 MR. BEAUFORD: Excuse the juror.

6 THE CLERK: That's Michael Black?

7 THE COURT: That's correct.

8 THE CLERK: 27, Sarah M. Horne. What
9 says the State?

10 MR. BAILEY: Present the juror.

11 THE CLERK: Defense?

12 MR. BEAUFORD: Seat the juror.

13 THE COURT: That's 12. All right. Now
14 we're going to strike alternates. Ladies and
15 gentlemen, how do you all propose we do that,
16 two and one?

17 MR. BAILEY: Yes, sir.

18 THE COURT: In other words, the State
19 will strike one, the defendant may strike two
20 in order to get the first juror.

21 All right. Sarah Horne -- excuse
22 me. Daniel Owens would be the next one, 28?

23 THE CLERK: 28, Daniel E. Owens. What
24 says the State?

25 MR. BAILEY: Present the juror.

1 THE CLERK: Defense?

2 MR. BEAUFORD: Excuse the juror.

3 THE CLERK: Number 29, Linda S. Barclay.

4 What says the State?

5 MR. BAILEY: Present the juror.

6 THE CLERK: Defense?

7 MR. BEAUFORD: Seat the juror.

8 THE COURT: All right. That's juror one,

9 that's alternate number one. All right. Now

10 we go to number 30 for alternate number two.

11 THE CLERK: Number 30, Robert C. Adams.

12 What says the State?

13 MR. BAILEY: Present the juror.

14 THE CLERK: Defense?

15 MR. BEAUFORD: Excuse this juror.

16 THE CLERK: Number 31, Thomas R. Thorpe.

17 What says the State?

18 MR. BAILEY: Present the juror.

19 THE CLERK: Defense?

20 MR. BEAUFORD: Seat the juror.

21 THE COURT: Alternate number two. All

22 right. That's it. You may bring the jury,

23 please, sir.

24 MR. BAILEY: Your Honor, before they come

25 back could --

1 THE COURT: Hold it one second. Hold it
2 a minute, sir, I'm sorry.

3 MR. BAILEY: I just wondered if you
4 wanted to inquire for the record if there were
5 any motions before we swear the jury?

6 THE COURT: Any motions before I swear
7 the jury?

8 MR. BEAUFORD: Just a minute.

9 (Pause in proceedings.)

10 MR. BEAUFORD: Just one minute.

11 MR. BAILEY: Indulge us one second,
12 please, Judge.

13 THE COURT: Yes, sir.

14 (Pause in proceedings.)

15 MR. BAILEY: State has no motions.

16 MR. BEAUFORD: No motions.

17 THE COURT: All right. You may bring the
18 jury then, please.

19 (Jury panel present.)

20 THE COURT: All right. Ladies and
21 gentlemen, thank you very much, the clerk will
22 now call the names of those jurors who have
23 been selected. If you don't mind, just come
24 around and have a seat here in the jury box to
25 my right.

1 **THE CLERK:** Number one, Douglas W. Judy;
2 number two, Daisy G. Smalls; number three,
3 Carolyn S. Kirkland; number four, Ronald
4 Tyrell; number five, Jerry E. Bryan; number 6,
5 Marvin E. Ladson; number seven, Jaime M. Bele;
6 number eight, Dane F. Wiggins; number nine,
7 Johnny B. Eritt; number ten, Ronald G.
8 McGuire; number 11, Scott S. Atcherson; number
9 12, Sarah M. Horne.

10 **THE COURT:** And then two.

11 **THE CLERK:** Alternates Linda S. Barclay,
12 that's alternate number one. Alternate number
13 two, Thomas R. Thorpe.

14 **THE COURT:** All right. Ladies and
15 gentlemen, if you'll stand, please, at this
16 time and raise your right hands and be sworn.

17 (Whereupon, the jury is sworn.)

18 **THE COURT:** Thank you very much. You may
19 be seated.

20 Ladies and gentlemen not involved
21 now, I want to thank all of you. I know this
22 has been a tremendous imposition for everyone
23 here to come. You have served your county
24 well and I appreciate what you've done for us.

25 You may come anytime during this

1 trial process, stay as long as you want, come
2 back anytime you'd like to listen to any of
3 it, it's your right. This courthouse belongs
4 to you all. And of course you're free to go
5 back to your jobs and so forth, you certainly
6 are not required to do anything other than
7 what you've already done.

8 You will receive a check next week,
9 probably. Probably next week in payment of
10 your days' service, several days' services
11 here. It won't come close to paying you, but
12 we do appreciate what you've done for us.
13 Thank you very much, ladies and gentlemen.

14 (Jury panel excused.)

15 THE COURT: Ladies and gentlemen, let me
16 make a few opening remarks and then we'll get
17 started. First of all, let me say that you
18 all, of course, have been sworn now as fair
19 and impartial jurors in this trial. You all
20 will be -- you, as I understand it, have your
21 baggage with you. If you do not, we can make
22 arrangements for that. I'm going to -- as
23 I've indicated all along, I'm going to bend
24 over backwards to do whatever I can to make
25 this service convenient for you.

1 We do things a little differently in
2 South Carolina than in most states, you
3 probably have already seen that. If you were
4 in California or some other states they work
5 about two hours a day, it takes about six
6 months to try a case. We work long days, we
7 work hard, and we get the business done,
8 finished.

9 I don't know that that's a bad
10 system. I'm not sure that it is. I
11 personally think it's the best system. It's
12 the best for everybody. And certainly to ask
13 you all to come and to serve on a case, any
14 case, in a case like this we feel that we need
15 to utilize our time and your time and work as
16 hard as we can and finish the thing and get
17 you back home and back to your jobs and
18 families and so forth.

19 But there are some problems,
20 obviously. When we have a court reporter who
21 sits there and has to take every word down
22 that's said in this courtroom, she has a
23 tremendous job. And I can't -- I just can't
24 overload her, I've got to let her work as hard
25 as she can work and then when she gets to a

1 point she needs a break, she's just going to
2 have to tell me that. And she knows, she
3 knows me well enough that she can do that.

4 And the same is true of these
5 lawyers. It's a tremendous strain to try a
6 case, believe me, in any setting. And to go
7 hour after hour after hour, it's a strain on
8 you all to sit there because I know most of
9 you aren't even used to sitting in a chair for
10 a very long time. You know, a church service
11 is about as long as most people can stand it,
12 I understand that.

13 So we're asking you to do something
14 that you aren't -- probably aren't accustomed
15 to doing. The point I'm trying to make is
16 this: If you all become uncomfortable and
17 need to take a break, do not sit there with
18 your back aching in pain. Hold your hand up
19 and I'll stop and I'll let you take a break.
20 I don't want any of you to be so uncomfortable
21 that you can't listen to what we're doing. Do
22 not be embarrassed, we're all, you know, here
23 together to serve one purpose and that is to
24 seek justice. And that can't be done if you
25 aren't at your best and these lawyers aren't

1 at their best, the court reporter isn't at her
2 best and I'm not at my best. And so I just
3 simply say at the outset, please hold your
4 hand up if you have a problem and we'll stop.

5 But I intend to work. And if it
6 suits you all, and you can tell me otherwise,
7 when you get to a point you don't think we
8 ought to be doing that all you got to do is
9 tell me. But we think we can move this case,
10 I do at least, fairly quickly if we really
11 stay at it. And I'd like to try to do that if
12 we can.

13 You all are the judges of the facts
14 of this case. You're the only judges in this
15 courtroom of the facts. I can't tell you what
16 I think, I can't do anything to indicate that
17 I've got an opinion about the facts of the
18 case, I can't even raise -- I won't raise an
19 eyebrow, I won't do anything. To my knowledge
20 I won't do anything to indicate that I've got
21 an opinion about what somebody says what the
22 facts are. That's your job. You decide what
23 the truth is.

24 My job's a little different. I have
25 to basically rule on the admissibility of some

1 evidence and so forth. And you've seen that
2 business on television. Let me say this: You
3 know this is not a stage production, this is
4 not television, this is Dorchester County,
5 South Carolina.

6 And these lawyers will make -- they
7 may make an objection. If they do, they are
8 asking me to rule right there, right then on
9 the spot. I've got to call it. If I call it
10 and I call it against one side or the other
11 side, don't read anything into my ruling. I
12 may miss it. I intend to try the perfect
13 case. I don't think it's ever been done in
14 the history of our system, but I'll guarantee
15 you I'm going to try to try the perfect case.

16 But the point of it is, I'm not
17 perfect nor is anyone else. And I may miss
18 it. Do not read anything into my ruling. I
19 don't favor one side or the other just because
20 I happen to rule one way or the other. I'm
21 going to do the best I can to rule as the law
22 requires me to rule and move on.

23 You all listen to the facts of the
24 case. The State has the burden of proving the
25 defendant guilty. He's charged with murder,

1 he's charged with burglary in the first
2 degree. Two separate offenses he's charged
3 with. He's pled not guilty to those two
4 charges and has sought a trial at your hands.
5 And you all have to decide whether or not the
6 State has proven at the conclusion, whether or
7 not the State has proven his guilt beyond a
8 reasonable doubt on either or both of those
9 charges.

10 There are certain elements to every
11 offense, it's just like baking a cake. You
12 have to have every element in the cake, you
13 have to have every element proved in a crime.
14 Burglary in the first degree, there are four
15 or five elements to that crime.

16 In some states the judge tells the
17 jury ahead of time what those elements are.
18 In South Carolina we wait until all the
19 evidence is in and then the judge tells you
20 what the elements are, a little different.

21 So basically you have to listen to
22 everything that's presented, and then when the
23 judge says, okay, burglary first degree means
24 A, B, C, D, you have to think back, well, was
25 A proven? How was it proven? What was that

1 element? Who said what to prove that element?
2 B, C, D, are all elements present? So you
3 have to listen. It may be better if we give
4 it to you ahead of time; we don't. We do it
5 just the opposite, we give it to you after the
6 trial or after the evidence is in.

7 But the State presents evidence
8 first, they bring their witnesses and their
9 testimony and the other evidence and they --
10 of course, I say "they," I mean the State has
11 the burden of proof and so the State has to go
12 first.

13 The defendant does not have to prove
14 anything. He's presumed to be innocent, he
15 comes here innocent, he sits there innocent,
16 he is innocent until the State proves that
17 he's guilty. It's just that simple.

18 And the State must prove that guilt
19 beyond a reasonable doubt. It's not beyond
20 every single doubt that you can imagine, it's
21 not -- you know, you can doubt anything, doubt
22 the sun comes up tomorrow morning. The point
23 of it is it's beyond a reasonable doubt. And
24 the State has to prove beyond a reasonable
25 doubt each and every element of the offenses

1 to which this gentleman is charged.

2 So what you do basically is you
3 listen to the evidence as it's presented, make
4 a mental note of it. Some of you may want to
5 take notes, I don't know whether you do or
6 not. And I can tell you this, that in federal
7 court, they go to the federal courthouse they
8 give you pen and paper. Come to the state
9 court, this state court the judges in most of
10 these cases will tell you not to take notes.

11 Most state judges say we don't
12 believe in taking notes, we think you ought to
13 listen, when you're taking notes you may make
14 a mistake, if you're taking notes you aren't
15 watching the witness, if you take notes you're
16 too busy writing and you may write the wrong
17 thing down. If you take notes you'll share
18 them with your neighbor, because you may be
19 wrong and your neighbor may be right, he
20 doesn't have any notes, she doesn't have a
21 note. So there's an argument both ways
22 whether you should take notes or not.

23 But if you want to take them I don't
24 have a problem with it. I don't have a
25 problem with it provided you keep the notes to

1 yourself. I don't want you to go into the
2 jury room and say, well, I've got it written
3 this way, I've got to be right. Because you
4 may not be. And the other thing that occurs
5 when you take notes is that you write one
6 thing down that's important, while you're
7 doing that another fact comes out that's just
8 as important and you miss that one.

9 And so there's an argument, as I
10 say, both ways. But I don't have a problem if
11 you want to take notes provided you keep those
12 notes to yourself and bear in mind that you,
13 you know, are subject to making a mistake when
14 it comes to writing down a fact and so forth.

15 This business -- I'm sure maybe the
16 first thing you're worried about this morning
17 is this business where you're going to stay
18 and so forth, and clothes in the car and what
19 happens to the car, how long you're going to
20 be here. If I was sitting there that's what I
21 would be worried about, I know.

22 Let me assure you of a couple of
23 things. First of all, we have SLED agents who
24 will be here at ten o'clock, some are here
25 now. They're going to take care of you,

1 number one. Holiday Inn has been called,
2 everyone has a room to themselves, all of you
3 will be together in an area together, SLED
4 agents will be there, they have rooms. There
5 will be a SLED agent all the time, all night
6 long up making sure that you all are safe,
7 nobody bothers you and so forth. You will be
8 fed together, you will be provided
9 transportation.

10 All I can tell you is you can make
11 it a good experience or a bad one, you know,
12 really and truly you can. You can enjoy and
13 eat what you want to eat at the county's
14 expense pretty much. I don't mind you even --
15 if you're used to having alcohol in the
16 afternoon I don't mind you doing that, but the
17 limit is two. And you've got to pay for that.
18 The State's not going to pay for your liquor.

19 Some people just have to have a
20 drink when they go to eat upper. If you do
21 that, you know, I'm just not one who's going
22 to say you're not going to do it, I'm not
23 going to hold you captive. I think it's up to
24 you to decide. But I do think there ought to
25 be a limit to it and so that's what I've set.

1 The only thing that I would require you to pay
2 for would be that. Anything else, you have to
3 pay for nothing.

4 You're going to be able to make
5 telephone calls home if you need to.
6 Obviously we don't want you to just call all
7 over the countryside and visit with everybody
8 and all your neighbors. We would like for you
9 to make the calls you need to make. There
10 will be somebody there, they're not going to
11 be listening in on the other end, but they
12 will be there so there won't be any
13 conversation about this trial or anything like
14 that, obviously.

15 The worst thing to me that may occur
16 is the fact that you will not have a
17 television in your room. I know you'd like to
18 have one. And the only thing is that if you
19 do, it's just some newscast may come on and I
20 don't know that anybody's going to report this
21 trial, but I just -- that's the reason we have
22 you in the hotel there, motel there.

23 But we do have rooms, we're going to
24 have two smoking and nonsmoking rooms with
25 televisions, telephone, you go there and, you

1 know, watch television as long as you want, do
2 whatever you want to do. You're free to walk
3 about and that sort of thing, just not going
4 to obviously be able to let you go up and down
5 the road wherever you want to go. It's just
6 you have to be confined for that period of
7 time.

8 To tell you the truth, I hope that
9 you all would agree that we work hard so that
10 when you get there, kind of like when my mama
11 said, you know, I'll get you up in the morning
12 and you work all day you won't have to worry
13 about what you're going to do when you get off
14 of work, you'll go to bed when you get home.
15 You may be so tired that you'd like to just go
16 home -- or go to your room and not worry about
17 anything else for a while. But we'll just
18 play that by ear, because I'm not intending to
19 wear you out like that. But it may work that
20 you would watch television a little while and
21 you want to be by yourself and go get some
22 rest.

23 At any rate, your meals will be paid
24 for, you will go from place to place and
25 you'll find these SLED agents are fine in this

1 sense: They will in a lot of instances let
2 you all tell them what you want and so forth.
3 And I think you'll find the experience to be
4 not nearly so bad as you might think.

5 All I can tell you is we appreciate
6 what you're doing. This is an important case.
7 Every case is important, this is an important
8 one. And I know that you are asked to go
9 beyond the call of duty, but we will make it
10 go as smoothly as we can, and I will
11 accommodate you any way that I possibly can.

12 What I thought you'd do is at
13 lunchtime we'd just go ahead and have opening
14 statements and get started. But I thought at
15 lunchtime what we could do is we could have
16 you all either drive your vehicles, or maybe
17 their plan is that they would take your
18 clothing, put them in a van and carry you all
19 out there.

20 Some of you might not want to leave
21 your car here. You know, you may want it
22 impounded, you may want to carry it home. I'm
23 not sure exactly how you all will work that
24 out, but it will be worked out. Wherever you
25 want your car to be is where it will be. And

1 they would just take you out there and put
2 your things in your room and then you all can
3 go get something to eat and come back and
4 we'll move this afternoon, get this thing down
5 the road.

6 I am going to give the SLED agents
7 an oath. They're not all here, but they will
8 be before too long, ten o'clock or so, and I'm
9 going to require them to take an oath as well.
10 And I'm going to tell them what I expect of
11 them so that there won't be any
12 misunderstanding about telephone calls and
13 television and what you can drink and not
14 drink so forth. If I think of anything else
15 obviously during the course of the trial, I'll
16 talk to you about that.

17 You all bear with me just one minute
18 before we get started. Ladies and gentlemen,
19 let me ask you one thing before we get
20 started.

21 (Whereupon, a bench conference was held
22 off the record in the presence of the
23 jury but out of the hearing of the
24 jury.)

25 **THE COURT:** Ladies and gentlemen, I

1 wanted to clear up one thing that occurred
2 yesterday, and I thought of telling you
3 yesterday and I just thought, well, I'd just
4 wait until you all were sworn. Mr. Beauford,
5 when I asked -- I went through this list of
6 questions yesterday morning of the solicitor,
7 have you given an indictment within three
8 days, if you've done one thing or the other
9 all of which the State complied with, I asked
10 Mr. Beauford how the defendant pled. I think
11 just maybe in his nervousness or whatever he
12 misspoke and said he pleads guilty, but
13 mentally ill. He didn't mean to say that. He
14 meant to say not guilty, but he's going to
15 present evidence of mental illness in the case
16 when that times comes.

17 I don't want you all to get the
18 wrong impression about his statement. He
19 simply misspoke, and as I say, the defendant's
20 pled not guilty. The State has to prove his
21 guilt as you all have been told from the
22 outset. And so the State will go first in
23 this regard.

24 And if that's the worst thing that
25 occurs in the case we are fine, it's just a

1 misspoken word, that's all. That happens all
2 the time.

3 All right. The lawyers are going to
4 make their opening statements. They can tell
5 you basically what the case is about. What
6 the lawyers tell you is not evidence.
7 Evidence comes from these people who testify
8 and from the exhibits, nothing else.

9 Your decision comes from these
10 people who testify and from the exhibits and
11 from the law. Because what you do is you
12 apply the law that I give to you to your
13 finding of the facts. That's how you arrive
14 at a verdict. What we're concerned with,
15 obviously, is guilty or not guilty, no guilt,
16 of the crime of murder and the crime of
17 burglary in the first degree.

18 Mr. Solicitor?

19 MR. BAILEY: May it please the Court,
20 Mr. Beauford. I have introduced myself
21 yesterday to you all as a group, I'm Walter
22 Bailey, I'm solicitor for this circuit that
23 includes Dorchester County and Calhoun and
24 Orangeburg counties. In most state that's
25 called district attorney, but my job's to

1 prosecute criminal cases.

2 And some of the other people that
3 are at the table with me, I introduced them
4 also, I'll do that again now. This is
5 Harrison Bell who's a senior assistant
6 solicitor with the Dorchester County office,
7 Maité Murphy is a lawyer in our office, and
8 Darlene Simmons is a secretary that's going to
9 be helping out with some of the paperwork we
10 got here.

11 The defendant in this case, John
12 Edward Weik, as you all know now is charged by
13 the State of South Carolina with the murder of
14 Susan Krasae. Ms. Krasae, you'll find, was
15 the mother of two children, one of whom was
16 Mr. Weik's son. He's also charged with first
17 degree burglary of Ms. Krasae's home.

18 And as the judge said this is a
19 serious case, it doesn't get any more serious
20 than this. Some of you all have had some
21 prior jury service in magistrate's court or
22 civil court, but this, as I said, is the most
23 serious case that any of you all can sit as a
24 juror on.

25 I have the two indictments here.

1 And the indictments are not evidence. These
2 are the charging papers, they're what brings
3 Mr. Weik into court to face the judge and
4 jury. And they set out the official charge of
5 burglary in the first degree and the charge of
6 murder.

7 And I'm going to read those
8 indictments to you now. The judge read them
9 earlier. The burglary indictment charges that
10 John Edward Weik did in Dorchester County on
11 or about April 30th, 1998, willfully and
12 unlawfully enter the dwelling of Susan Krasae
13 without consent and with the intent to commit
14 a crime therein, to-wit: murder. And when
15 effecting entry and while in the dwelling and
16 while in immediate flight therefrom he was
17 armed with a deadly weapon, a shotgun, caused
18 physical injury, the death of Susan Krasae,
19 who was not a participant in the crime and
20 used a dangerous instrument, to-wit: a
21 shotgun, and displayed the shotgun.

22 The indictment for murder states
23 that John Edward Weik did in Dorchester County
24 on or about April 30th, 1998, feloniously and
25 willfully and with malice aforethought kill

1 one Susan Krasae by means of shooting her four
2 times with a shotgun, and the said Susan
3 Krasae did die as a proximate result thereof
4 on or about April 30th, 1998.

5 Now, these are two separate offenses
6 that are being tried together because they
7 occurred at the same time. And the same
8 evidence is used to support both of these
9 charges, they are all part and parcel of the
10 same transaction.

11 Judge Shuler explained to you all a
12 little bit about the trial procedure. I like
13 to think of the trial as being divided into
14 five parts. We start out with opening
15 statements, which is of course what I'm doing
16 now. What I'm telling you all is not
17 evidence. It's basically a preview or road
18 map of where the State is heading in its
19 evidence. I'm just going to give you an
20 indication, a preview of what I anticipate the
21 State's evidence will be and I'm going to
22 touch on the law.

23 The indictments state these crimes
24 in a lot of legal jargon, I'm going to try to
25 just briefly explain to you in layman's terms

1 what burglary is and what murder is. At the
2 end of the trial the judge will give you a
3 much more detailed charge on the law and on
4 the facts.

5 After the opening statements we have
6 part two, that's the trial itself. And that
7 is the meat of the whole thing, that's where
8 the witnesses get up there and they're sworn
9 to tell the truth. They testify under oath.
10 Some of those witnesses are going to identify
11 photographs, other documents that will go into
12 evidence. That is what -- that is the facts,
13 that is what you all listen to and base your
14 decision on, not the opening statements, not
15 the closing statements, not the indictments,
16 but the evidence of the sworn witnesses.

17 After the witnesses finish
18 testifying, the lawyers get another chance to
19 get up here and give a closing statement.
20 That's not evidence either. That's a summary
21 or wrap-up of what we think the important
22 parts of the trial are. We'll direct your
23 attention to certain pieces of evidence that
24 we think you should be thinking about.

25 After the closing statements, Judge

1 Shuler will instruct you on the law, he'll
2 tell you whatever you need to know about the
3 law. He'll tell you about the elements of
4 murder, the elements of burglary, he'll tell
5 you about reasonable doubt, he'll tell you
6 about burden of proof, presumption of
7 innocence, everything you need to know.

8 Final stage is that you all go back
9 into that jury room taking the knowledge
10 you've gained in this case with you, you apply
11 the law the judge gives you, it's your duty to
12 accept the law as he gives it to you and apply
13 it to the facts as you find those true facts
14 to be and bring back a just and true verdict
15 as to each one of these two indictments.

16 The trial is a search for the truth,
17 as simply as I can state it. It's a search
18 for the truth and the jury are the finders of
19 the truth.

20 Murder is the unlawful killing of a
21 human being with malice aforethought. And
22 malice refers to an evil state of mind, a
23 depraved heart. And the judge will instruct
24 you that you can infer malice in certain
25 situations, such as the intentional doing of a

1 wrongful act, the intentional use of a deadly
2 weapon. And the aforethought means that that
3 state of mind has to exist at some point. It
4 could be a split second prior to the act of
5 murder. Premeditation as the judge may have
6 mentioned to you, is not part of the
7 definition of murder in South Carolina. But
8 the aforethought just means that state of mind
9 which makes the homicide murder has to occur
10 before the murder happens. There's no
11 particular time.

12 Burglary. You think a burglary is
13 somebody prying a window open and sneaking in
14 somebody's house at night and stealing. And
15 that's a form of burglary. But in South
16 Carolina burglary in the first degree is
17 entering somebody's home without their
18 permission with the intent to commit a crime,
19 any crime. And when the entering is -- a
20 person who enters the home has a weapon, or a
21 person inside that home is injured are killed,
22 those elements make it first degree burglary.

23 We all have our jobs to do other
24 than the spectators out here. The bailiffs,
25 the SLED agents are here to maintain order to

1 assist you all in getting to and from the
2 courtroom, to take care of you in the hotel
3 and that kind of thing.

4 The court reporter here is going to
5 type out every single word that's said
6 throughout the entire trial, make a permanent
7 record of it. We have people from the clerk's
8 office here that are handling paperwork here.

9 My job, of course, is to present
10 evidence on behalf of the State of South
11 Carolina relating to the murder of Susan
12 Krasae, to prove to your satisfaction that
13 Mr. Krasae (sic) is guilty of these two crimes
14 that he's charged with beyond a reasonable
15 doubt. And I accept that burden in this and
16 every case that I try.

17 Mr. Beauford, Ms. Hardee-Thomas over
18 there, of course, represent the defendant,
19 Mr. Weik.

20 Judge Shuler has two roles. He's
21 told you about what he does. And his first
22 role is he presides over the trial, he'll rule
23 on evidentiary matters. He may break from
24 time to time, he may send you all back to the
25 jury room and take up a matter of law out of

1 your presence, but at the end of the trial
2 he's going to assume his second role as an
3 instructor. He'll tell you what the law is.
4 As I said earlier, it's your duty to take the
5 law as he gives it to you.

6 Your job as jurors is the most
7 important job of anybody in the courtroom,
8 it's more important than the lawyers' jobs,
9 more important than the judge's jobs. Because
10 you are judges also. You are the only judges
11 of the facts, you and only you can decide what
12 those true facts are. The judge can't decide
13 the facts, I can't decide them. The jury are
14 the fact finders.

15 And remember, a trial, as I said, is
16 a search for the truth. You find the truth.
17 And the way you do that is you use your good
18 everyday common sense, you look at these
19 witnesses when they get up and testify, you
20 look them in the eye, you judge their
21 creditability, believability, you ask
22 yourselves whether or not it's -- what that
23 witness is saying, does it have a ring of
24 truth about it, is it consistent with other
25 testimony that I believe, is it consistent of

1 the physical facts, does it just make sense to
2 me.

3 We want you to use your common
4 sense, that's the beauty of the jury system.
5 We don't want you to leave your common sense
6 at home, we want you to bring it to court with
7 you and use it.

8 Now, I expect that before this
9 trial's over you'll hear testimony from expert
10 witnesses. When you judge the credibility of
11 a witness, the mere fact that that person's
12 got a PhD or an MD doesn't make him any
13 smarter than anybody else, doesn't give him
14 any unique insight.

15 You judge their credibility the same
16 way you judge the credibility of any other
17 witness. Look them in the eye, ask yourselves
18 does that fellow know what he's talking about,
19 does it make sense, is what he's saying
20 consistent with the physical facts in this
21 case that other people testified about that I
22 believe.

23 You don't have to take -- merely
24 because somebody's qualified as an expert
25 witness, doesn't mean you've got to accept

1 that 100 percent at face value. You can
2 accept part, all, or none of what any witness
3 says, including an expert witness.

4 Now, as I said earlier, what I'm
5 saying, getting ready to tell you all now is
6 not evidence, this is a summary of what I
7 expect the State's case will show. And the
8 State's case will be that the defendant in
9 this case, Mr. Weik, had a relationship with
10 the victim, Susan Krasae, when she was about
11 17 years old. And as a result of that
12 relationship they had a child, Daniel, who's
13 now ten years old.

14 Susan Krasae has always had custody
15 of Daniel, she later married, had another
16 child, Amber, and was divorced from Amber's
17 father. Ms. Krasae, her son Daniel, and her
18 daughter, Amber, lived with her fiancé, John
19 Thompson, in a mobile home in Dorchester
20 County next door to her father's house. Her
21 (sic) name is Carl Al Hutto. Their address is
22 on Sedgewick Drive in Dorchester County, or
23 was on Sedgewick Drive in Dorchester County.

24 The evidence is going to show that
25 later in the afternoon on April 30th of last

1 year John Weik, who at that time lived in
2 Moncks Corner with his parents, called Daniel
3 on the telephone at Ms. Krasae's trailer.
4 They had a conversation on the telephone.
5 After making the phone call, Mr. Weik got into
6 his Chevrolet S-10 pickup truck, drove to
7 Ms. Krasae's trailer, he encountered
8 Ms. Krasae, they argued in front of the
9 trailer. Ms. Krasae went back inside of the
10 mobile home with the two children.

11 Weik went to his truck which was
12 parked a short distance from the front of the
13 trailer, got a 12-gauge semiautomatic shotgun
14 out of the truck that was loaded, ran back
15 into the trailer, opened the door that
16 Ms. Krasae had closed, the front door of the
17 trailer, and shot Ms. Krasae four times with
18 double aught buckshot. She died as a result
19 of being shot.

20 He then got in the truck, drove off.
21 He drove a short distance, was stopped by
22 deputies and almost immediately got out and
23 surrendered himself to the deputies. He was
24 ultimately charged with these two crimes that
25 he's standing here in front of you accused of.

1 The State's case against John Weik
2 basically is going to consist of witness
3 statements, witnesses that were around when
4 this thing occurred and saw portions of what
5 happened, heard portions of what happened.
6 You'll have law enforcement officers that
7 arrested Mr. Krasae (sic).

8 And you're going to find, and there
9 will be in evidence, statements or confessions
10 that Mr. Krasae (sic) gave after he was
11 arrested. One of them is a videotape on the
12 side of the road where he was arrested, the
13 other one was an audiotape that was taken back
14 at the sheriff's office that same evening.

15 The sound quality on these tapes is
16 poor, so we have typed transcripts of the
17 tapes that you all will have copies of so you
18 can follow the transcript as you listen to the
19 tapes. Because just listening to the tapes by
20 themselves you're probably not going to pick
21 up everything that's said because of the
22 quality of these tapes. There will be other
23 evidence, but these are just sort of the
24 highlights of what the State's case consists
25 of.

1 When Judge Shuler gives you his
2 instructions at the end of the case, depending
3 on what testimony comes out, he may, in
4 addition to other sentencing options such as
5 guilty or not guilty, give you a verdict
6 option of guilty but mentally ill. I
7 anticipate there may be expert testimony in
8 regard to Mr. Weik's mental state. Of course,
9 I've got no crystal ball, I don't know what's
10 going to come up, but I anticipate that may
11 happen.

12 A guilty but mentally ill verdict is
13 not the same as a defense of insanity. If the
14 person knows right from wrong they're legally
15 sane, they're responsible for their actions.
16 And nobody will contend that Mr. Weik is
17 legally insane and therefore irresponsible for
18 his actions.

19 Guilty but mentally ill has the
20 specific legal meaning the judge will instruct
21 you on. It's a more narrow thing than maybe
22 you all think of as generally being mentally
23 ill. I'm not going to get into that to any
24 great extent now, but I just want to alert you
25 all that it may come up. And when you start

1 listening to the stuff, remember that when all
2 the testimony's over Judge Shuler is going to
3 talk to you all and instruct you about what
4 that guilty but mentally ill verdict form is
5 all about, what the legal definitions are that
6 you're sworn to accept and apply when you go
7 back to deliberate.

8 One of the things that he will tell
9 you that it is the defense, like it's my
10 burden to prove guilt beyond a reasonable
11 doubt, the defense has the burden to prove
12 mental illness which would support a guilty
13 but mentally ill verdict.

14 I'm confident, ladies and gentlemen,
15 that at the end of this trial you all will
16 find that the evidence will establish
17 Mr. Weik's guilt to both charges beyond a
18 reasonable doubt. Guilt and innocence are all
19 we're concerned with at this point, did he do
20 it. That's basically what we're looking at.

21 This trial is not going to be like
22 on television where it's over in an hour, hour
23 and a half. I'm going to do my best to try,
24 we're going to have to work late, to try to
25 get the State's case in chief done today. It

1 may go into tomorrow, but I'm going to do my
2 best to get this thing done today. There are
3 going to be probably somewhere in the
4 neighborhood of 20 witnesses. That sounds
5 like a lot, but some of these are very short.
6 And I don't want to leave anything out that I
7 think you all need to know, but I don't want
8 to prolong this thing any longer than I have
9 to either. Hopefully a day, possibly into
10 tomorrow morning.

11 Each witness has something to say or
12 they wouldn't be called. And what a witness
13 is saying at a particular time may not sound
14 that significant by itself, but at the end of
15 the trial what you all have to do is kind of
16 put it all together, then it will make sense
17 and form a picture.

18 So please listen carefully to all of
19 them. Use your common sense to determine
20 based on the evidence and the law whether or
21 not the defendant in this case, Mr. Weik, is
22 guilty.

23 My sole purpose here is to present
24 the truth to you. And I can only ask that
25 when this case is given to you, when all the

1 testimony's done, that your verdict speak the
2 truth. Thank you.

3 THE COURT: Mr. Beauford?

4 MR. BEAUFORD: May it please the Court,
5 counsel. Again, I would like to introduce
6 myself. My name is Percy Beauford, I along
7 with Marva Hardee-Thomas represent the
8 defendant, John Weik. During the trial you
9 may hear me refer to him as Eddie, because
10 I've become accustomed to refer to him as
11 that.

12 Eddie is charged with murder and
13 burglary. He's charged with intentionally
14 killing someone. He's charged with burglary,
15 breaking and entering to commit a crime. And
16 I will tell you right from the start, before
17 anything is said, we would not deny that Eddie
18 fired the gun that shot and killed Susan
19 Krasae. I'll tell you that right now.

20 So we're not coming in here to say
21 he didn't fire the gun, so you know that right
22 up front. But we're saying that he did not
23 murder her and there was not a burglary. And
24 that's what we're saying he's not guilty of.

25 The judge has told you there's

1 certain elements of each crime. Certain
2 elements of murder, certain elements of
3 burglary. So the burden is on the State to
4 prove every element beyond a reasonable doubt.
5 And that's what we ask you to do, to listen to
6 all the evidence. Nothing that I say, nothing
7 that the solicitor said; the evidence that
8 comes through that chair. Listen to that
9 evidence. And then after the trial is over
10 with then make a decision.

11 It's just like I show you my hand
12 and I ask you, do you see my hand? You may
13 say, yes, I see your hand. But that's not
14 totally correct because there's another side
15 of it. Until you hear the solicitor's side,
16 you hear the defense side.

17 Again, I tell you again, Eddie does
18 not have to present any evidence. But we will
19 present evidence, you will hear Eddie testify,
20 you will hear what happened. You have the
21 opportunity to listen to the confession. But
22 that's very important, the confession. When
23 he give it, the time he give it and what he
24 said is consistent the first time, the second
25 time, the third time, the fourth time. How

1 many times did he say it is consistent.

2 Again, opening statement, we're just
3 trying to give you an overview. At this point
4 the State has said what they're going to do.
5 I don't know what they're going to present.
6 But I know one thing, I know what the State is
7 not going to show you. They're not going to
8 show you a scenario where Eddie went through a
9 back door, broke in the back door, that Eddie
10 went in the middle of the night and went
11 through a window. They're not going to show
12 you that Eddie sat outside and waited for
13 someone to come home, they're not going to
14 show you anything like that.

15 You will hear the relationship of
16 Eddie and Susan. They had a child. When the
17 child was nine months old, this is what you'll
18 hear, nine months old the relationship ended.
19 You will hear that Eddie had not heard from
20 his son, Danny, for a period of eight years.
21 Daniel, now nine, you will hear calls Eddie,
22 happy Father's Day.

23 Almost nine years he hasn't seen his
24 son. You'll also hear during that point in
25 time that relationship developed, they bonded,

1 a father and son. You'll hear how they did
2 everything together, fishing, camping, he
3 helped him in school, they went everywhere
4 together. You'll hear about that.

5 You'll hear about Eddie losing his
6 job. You'll also hear about his mental makeup
7 at the time, what he was thinking, how he got
8 into Christianity, how he got into the church,
9 you'll hear about all that, how Eddie's life
10 somewhat changed. You'll hear about the joy
11 that Daniel brought to his life. That's very
12 important when you look at the entire picture,
13 look at the entire puzzle.

14 Then you will hear about that day.
15 For some reason Daniel said, "I can't see you
16 anymore, Dad." You're going to hear about
17 that. You're going to hear about when Eddie
18 went over to try to talk to Susan about this
19 situation. You're going to hear about that.
20 Then you're going to hear about what happened
21 when he was told he couldn't never see his son
22 anymore. You'll hear about that. And that's
23 very important in this case.

24 But the evidence as the State's
25 going to present to you, it's not murder, it's

1 not burglary. You're going to hear that Eddie
2 during the course of period of time when him
3 and Daniel was reunited went over there
4 several times, he's not a stranger to that
5 house, to pick Daniel up to go fishing, go
6 hunting, do all of those things. You'll hear
7 it's not the first time that Eddie was over
8 there. And that's very important in this
9 case.

10 But I ask you to listen to all of
11 the facts, all of the facts from this chair,
12 and you will see that the State will not meet
13 its burden beyond a reasonable doubt that
14 there was a murder and a burglary.

15 You took an oath, you took an oath
16 to listen to all the evidence, the evidence
17 provided by the State and by the defendants.
18 And I know that you will. And I ask that you
19 listen to all the evidence, and when the case
20 is over with render your verdict according to
21 your conviction, your feelings. And I know
22 that will be just and proper. Thank you.

23 THE COURT: Thank you, sir.

24 Solicitor?

25 MR. BAILEY: The State calls Ronald Hall.

1 THE CLERK: I need you to raise your
2 right hand, put your left hand on the Bible.

3 (Ronald Hall, called as a witness by the
4 State, having first been duly sworn, was
5 examined and testified as follows:)

6 THE CLERK: Come around and have a seat,
7 please. Give us your full name and spell your
8 last name.

9 THE WITNESS: Ronald Hall, H-a-l-l.

10 THE CLERK: Thank you.

11 DIRECT EXAMINATION

12 BY MR. BAILEY:

13 Q. Mr. Hall, would you tell the jury,
14 please, where you live at this time?

15 A. Orange Beach, Florida.

16 Q. All right, sir. Prior to that where did
17 you live?

18 A. Summerville, South Carolina.

19 Q. Okay. Are you employed now?

20 A. Yes.

21 Q. Where do you work?

22 A. Sea Ray.

23 Q. I'm sorry?

24 A. Sea Ray, Sea Ray boats.

25 Q. Where did you work when you lived in

1 Summerville?

2 A. American Skiff.

3 Q. What did you do at American Skiff?

4 A. We built boats, and I was a plant
5 manager.

6 Q. All right, sir. Were you working at
7 American Skiff back in April of last year?

8 A. Yes.

9 Q. All right, sir. And where is American
10 Skiff located?

11 A. Charleston, South Carolina.

12 Q. Okay. And would you state whether or not
13 the defendant in this case, John Edward Weik, was
14 employed at American Skiff during April 1998?

15 A. Yes, he was.

16 Q. All right, sir. What shift did he work
17 on?

18 A. Day shift.

19 Q. Okay. What time did the day shift end?

20 A. Four o'clock.

21 Q. And calling your attention to Thursday,
22 April the 30th, 1998, was he at work that day?

23 A. Yes, he was.

24 Q. All right, sir. And did you see him at
25 work?

1 A. Yes.

2 Q. Would you state whether or not you had a
3 conversation with Mr. Weik that evening as the shift
4 was ending about 4:30?

5 A. Yes, we did.

6 Q. Or four o'clock, 4:30, somewhere in that
7 time period.

8 A. About four o'clock, yes.

9 Q. Would you go ahead tell the jury, please,
10 as best you can remember, how that conversation went.

11 A. He said that he was troubled with events
12 going on in his personal life about his son and that
13 he may not be into work the following day because he
14 didn't know what would happen, he planned on going
15 over to his son's house and to try to resolve the
16 problem that they were having.

17 Q. Okay. So he said that he did not know
18 what was going to happen, but he planned on going to
19 his son's house?

20 A. Yes.

21 Q. And he may not be at work the following
22 day?

23 A. Yes, sir.

24 Q. All right, sir. And was he at work the
25 following day?

1 A. No, he was not.

2 Q. Did you ever see him again in the next
3 couple days?

4 A. No, sir.

5 Q. Just for the record, can you point
6 Mr. Weik out, please?

7 A. Yeah. He's seated over here at my left.

8 Q. Okay. In between Ms. Hardee-Thomas and
9 Mr. Beauford; is that correct?

10 A. Yes, sir.

11 Q. All right, sir. Thank you, Mr. Hall,
12 that's all I have. Please answer any questions the
13 defense may have.

14 CROSS-EXAMINATION

15 BY MR. BEAUFORD:

16 Q. How are you doing today, Mr. Hall?

17 A. Okay.

18 Q. You had occasion to talk to Eddie about a
19 lot of things, didn't you, about what's going on in
20 his personal life?

21 A. Not a lot, no.

22 Q. And you and Eddie talked about Daniel and
23 how he was being disciplined by the fiancé, John?

24 A. He didn't give me specifics, but he said
25 that he felt the boy might be being abused.

1 Q. Being abused?

2 A. Yeah.

3 Q. And you also had -- and that was by John
4 and not Susan; am I correct?

5 A. Yes, sir.

6 Q. And you also had a discussion with him
7 about a situation that was in school which Eddie was
8 concerned about, about a bully messing with Daniel;
9 am I correct?

10 A. He didn't say a bully. He said there was
11 a problem in school.

12 Q. Yeah.

13 A. I didn't know what it was.

14 Q. Were you aware that he had called the
15 vice principal and the principal to try to get that
16 matter resolved?

17 A. Yes.

18 Q. And during your conversation with Eddie,
19 he never talked about anything bad about Susan, did
20 he?

21 A. No.

22 Q. Okay. No further questions.

23 THE COURT: Anything else?

24 MR. BAILEY: No redirect.

25 THE COURT: Thank you. You may be

1 excused.

2 Why don't you all come to the jury
3 room, you won't have to listen to that.

4 (Jury excused.)

5 (Recess taken.)

6 THE COURT: All right. We can bring the
7 jury.

8 (Jury present.)

9 THE COURT: All right, Solicitor.

10 MR. BAILEY: State calls Julie Forte.

11 THE CLERK: I need you to stand here,
12 please, place your left hand on the Bible and
13 raise your right.

14 (Julie Forte, called as a witness by the
15 State, having first been duly sworn, was
16 examined and testified as follows:)

17 THE CLERK: Come around here and have a
18 seat, please. Would you give us your full
19 name, spell your last name.

20 THE WITNESS: Julie Forte, F-o-r-t-e.

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q. Ms. Forte, would you please tell the jury
24 where you're employed?

25 A. Home Telephone Company in Moncks Corner,

1 South Carolina.

2 Q. All right. How long have you worked
3 there?

4 A. Twenty-four years.

5 Q. Can you tell the jury what your job title
6 is there now?

7 A. Yes, sir. I'm office manager of the
8 commercial operations.

9 Q. Okay. And in your capacity with Home
10 Telephone, are you the records custodian for the
11 billing records for Home Telephone Company?

12 A. That is correct. That is correct.

13 Q. All right. And are the billing records
14 that you're in charge of kept in the normal course of
15 business of Home Telephone Company?

16 A. Yes, sir.

17 Q. Okay. And would you state whether or not
18 in April of 1998 was Weik's Locksmith Service at 350
19 St. John Bethel Road, Moncks Corner, a customer of
20 Home Telephone Company?

21 A. Yes, sir. That is correct.

22 Q. All right. And pursuant to a subpoena
23 were you requested to produce the Home Telephone
24 Company records for Weik's Locksmith Service?

25 A. Yes, sir.

1 Q. All right. And I'm going to hand you a
2 document several pages long and ask if you can
3 identify that as being records from your file from
4 the telephone at Weik's Locksmith Service in Moncks
5 Corner?

6 A. Yes, sir. That is correct.

7 MR. BAILEY: Your Honor, I would offer
8 this as State's 1.

9 THE COURT: All right. Any objection?

10 MR. BEAUFORD: No objections, Your Honor.

11 THE COURT: All right, sir.

12 (Entered into evidence was

13 State's Exhibit 1, telephone record.)

14 BY MR. BAILEY:

15 Q. Ms. Forte, I want to call your attention
16 to looks like item 56 here. And would you please
17 give the date of that phone call?

18 A. April 30th.

19 Q. Okay. 1998?

20 A. That is correct.

21 Q. Okay. And was that a call placed from
22 that address in Moncks Corner for Weik's Locksmith
23 Service?

24 A. Yes, sir.

25 Q. And what number was the call placed to?

1 A. 803-851-3796.

2 Q. What was the duration of that call?

3 A. Six minutes.

4 Q. Thank you, ma'am. Ms. Forte, please
5 answer any questions if the defense has any.

6 CROSS-EXAMINATION

7 BY MR. BEAUFORD:

8 Q. How are you doing today, Ms. Forte?

9 A. Just fine.

10 MR. BEAUFORD: May I approach, Your
11 Honor?

12 THE COURT: Yes, sir.

13 BY MR. BEAUFORD:

14 Q. Could you look at transaction number 10
15 on that document? And what is that date?

16 A. April 19th.

17 Q. And what calls were made to what numbers
18 on that date?

19 A. To Summerville, area code 803-851-3796.

20 Q. That is the same number that was made on
21 April 30th?

22 A. Yes, sir. That is correct.

23 Q. And would you look at number 11?

24 A. Yes, sir.

25 Q. What is that date?

1 A. April the 19th.

2 Q. And what numbers were made to what
3 numbers (sic)?

4 A. 803-851-3796.

5 Q. Would you look at number 24, what numbers
6 were made at that date?

7 A. 803-851-3796.

8 Q. And would you look at number 35, what
9 numbers were made at that --

10 A. 803-851-3796.

11 Q. Would you look at number 38, what numbers
12 were made on that date?

13 A. 803-851-3796.

14 Q. Would you look at number 45, what numbers
15 were made at that date?

16 A. 803-851-3796.

17 Q. Okay. No further questions.

18 MR. BAILEY: No redirect, Your Honor.

19 THE COURT: Thank you, ma'am. You may be
20 excused.

21 MR. BAILEY: State calls Rebecca Vincent.

22 THE CLERK: Place your left hand on the
23 Bible, raise your right hand.

24 (Rebecca Vincent, called as a witness by
25 the State, having first been duly sworn,

1 was examined and testified as follows:)

2 THE CLERK: Come around and have a seat.

3 Will you give us your full name and spell your
4 last name?

5 THE WITNESS: Yes. My name is Rebecca
6 Vincent, V-i-n-c-e-n-t.

7 DIRECT EXAMINATION

8 BY MR. BAILEY:

9 Q. If you would, please, pull your chair up
10 just a little more, because you're soft spoken and
11 when that air conditioner comes on it drowns out all
12 the noise. Okay?

13 A. Okay.

14 Q. You're Rebecca Vincent?

15 A. Yes, sir.

16 Q. All right. Ms. Vincent, would you please
17 tell the jury where you live at this time?

18 A. At this time I live in Georgia.

19 Q. And before moving to Georgia, where did
20 you live?

21 A. I lived at 114 Poplar Circle in Scotch
22 Range Subdivision in Summerville.

23 Q. Okay. And was Susan Krasae your sister?

24 A. Yes, sir.

25 Q. Was she older or younger than you?

1 A. She was my baby sister.

2 Q. What was the age difference, how old?

3 A. Six years' difference between the two of
4 us.

5 Q. Okay. And back in April of 1998, how old
6 was Susan?

7 A. She was 27.

8 Q. Did she have any children?

9 A. Yes, sir.

10 Q. Would you tell the jury, please, those
11 children's names and ages back in April of last year.

12 A. Her son is Daniel, he's the oldest, he
13 was nine years old, and Amber is her youngest
14 daughter, and she was seven.

15 Q. All right. And who was -- who is
16 Daniel's father?

17 A. There was never any definite blood tests
18 taken or proof, but John Edward Weik was determined
19 to be the father.

20 Q. All right. Now, back when Daniel was
21 born, how old was Susan?

22 A. Susan was 18 -- well, she actually was
23 17. She was right at 18. She turned 18 just within
24 a month from the time of his birth.

25 Q. And did Susan and John Edward Weik ever

1 get married?

2 A. No, sir.

3 Q. Are you aware of the relationship that
4 they had after Daniel was born?

5 A. Yes, sir. I am.

6 Q. Please tell the jury what that
7 relationship was.

8 A. Well, Susan moved in with me during the
9 time of her pregnancy until Daniel was about a year
10 and a half old. And they had no contact. He
11 basically got out of her life when he found out that
12 she was pregnant. When Daniel turned a year old we
13 were planning a birthday party and she had contacted
14 his family and tried to get Eddie --

15 MR. BEAUFORD: Objections, Your Honor.

16 MR. BAILEY: Your Honor, if I may, in
17 Mr. Beauford's opening statement he alluded to
18 background and so forth, and I think this
19 is --

20 THE COURT: Well, I'm not sure what the
21 objection is. Is it hearsay?

22 MR. BEAUFORD: Hearsay. And even under
23 the dead man statute.

24 THE COURT: And she's going to testify
25 you're saying -- who's doing the talking? Who

1 do you understand she's saying?

2 MR. BEAUFORD: Susan.

3 MR. BAILEY: Your Honor, let me -- if I
4 maybe could rephrase the question.

5 THE COURT: Rephrase, yes, sir.

6 BY MR. BAILEY:

7 Q. Ms. Vincent, if you would, just describe
8 the relationship that you observed between -- the
9 relationship, if any, between Susan and John Edward
10 Weik at approximately the time Daniel was one year
11 old. She was living with you; is that correct?

12 A. Yes, sir. She was. They had no contact.

13 Q. Okay. Now, did Susan later get married?

14 A. Yes, sir. She did.

15 Q. Who did she marry?

16 A. She married Tom Krasae. His total name
17 is Vasun, his first name V-a-s-u-n, but everybody
18 called him Tom and that's who she married.

19 Q. Did she and Tom Krasae have a child?

20 A. Yes, they did.

21 Q. Was that Amber?

22 A. Yes, they did.

23 Q. Okay. How old was Amber back in April of
24 last year?

25 A. She was seven.

1 Q. And did Tom Krasae and Susan eventually
2 get divorced?

3 A. Yes, they did.

4 Q. Would you state whether or not Susan had
5 custody of both children?

6 A. Yes, she did.

7 Q. Daniel and Amber?

8 A. Yes, sir.

9 Q. Has she always had custody of both
10 children?

11 A. Yes, sir.

12 Q. How long did Susan live with you?

13 A. With me, sir?

14 Q. Yes, ma'am.

15 A. Until Daniel was about a year and a half.

16 Q. Okay.

17 A. So she lived with me until -- about two
18 and a half years at that point. She had lived with
19 me at other times prior, but during that time.

20 Q. Is that the point in time when she and
21 Tom Krasae were married, she moved out at that time?

22 A. She moved out after -- she moved in with
23 Tom when she left my place, yes, sir.

24 Q. Okay. Then they got married and had
25 Amber; is that correct?

1 A. Yes, sir. They actually had Amber and
2 then they got married.

3 Q. Were you living in town, in the
4 Summerville area, after she and Tom got married?

5 A. I was living at 315 River Drive at the
6 time.

7 Q. How frequent was your contact with Susan
8 after she and Tom were married?

9 A. At least on a weekly basis, at least once
10 a week.

11 Q. Okay. During that period of time, say
12 from the time Daniel was a year old up until April of
13 last year, or let's say up until 1997, what was the
14 relationship, if any, that you observed between
15 Mr. Weik and his son, Daniel?

16 A. I'm sorry, can you repeat that, please?

17 Q. During the period of time between the
18 time that Susan moved out from your house and moved
19 in and eventually married Mr. Krasae, starting from
20 that time up until, say, 1996, '97, what
21 relationship, if any, did you observe between Susan
22 and Mr. Weik?

23 A. They had no contact.

24 Q. Okay. And did Mr. Krasae eventually
25 establish contact with Daniel -- excuse me, Mr. Weik

1 establish contact with Daniel?

2 A. Yes, he did.

3 Q. Okay. Approximately when was that?

4 A. Approximately June of '97.

5 Q. Okay. And how did that come about, to
6 your knowledge? We're going to need to wait for that
7 train to come by.

8 (Pause in proceedings.)

9 I think before the train came by I
10 asked you if you knew how that relationship
11 developed.

12 A. Yes, sir. Part was due to the fact of my
13 father encouraging my sister --

14 MR. BEAUFORD: Objection, Your Honor.

15 Hearsay.

16 THE COURT: She's not saying what he
17 said. It's really not being offered for the
18 truth of the matter, but just to show what
19 occurred. I think it's all right. Don't go
20 into all the details about what he said, just
21 you say he encouraged her. Go ahead.

22 THE WITNESS: My father was encouraging
23 her to allow Daniel to spend some time with
24 Eddie due to Eddie speaking to my father on a
25 number of occasions. And also Daniel

1 inquiring on that Father's Day of who his real
2 father was.

3 BY MR. BAILEY:

4 Q. Okay. And did Susan agree to let there
5 be a relationship between Daniel and his father?

6 A. Yes, sir. She did.

7 Q. Okay. And after she agreed to do that,
8 what, did a relationship develop that you observed
9 between Daniel and his father?

10 A. They started slowly, just phone calls and
11 then an occasional coming by the house and visiting.
12 And it got to the point where they all felt
13 comfortable enough to allow Daniel to spend weekends
14 with him and it was going very well.

15 Q. All right. Now, back in April of 1998,
16 where did Susan live?

17 A. She lived in Summerset Acres on Summerset
18 Lane.

19 Q. Okay. Is that a house or a mobile home?

20 A. A mobile home.

21 Q. Okay. What size mobile home, single
22 wide, double wide?

23 A. It was a single wide, approximately 12
24 wide by 60 feet long.

25 Q. And who else lived in the immediate

1 vicinity there?

2 A. As far as in the mobile home with Susan,
3 or...?

4 Q. Yes.

5 A. Susan and her boyfriend, John, and Daniel
6 and Amber.

7 Q. Okay. And where did your father live?

8 A. My father lived directly next door.

9 Q. Okay. About how far was the trailer
10 where Susan and her children lived and John Thompson
11 and the house where your father lived?

12 A. Roughly I would say between two to
13 300 feet.

14 Q. Okay. And would you state whether or not
15 Susan's telephone number back then was 851-3796?

16 A. Yes, sir. That's correct.

17 Q. You called that number before, you know
18 the number?

19 A. Oh, yes, sir.

20 Q. Okay. What kind of work did Susan do in
21 Summerville?

22 A. Susan was working with me. I had a
23 cleaning service and she had started working with me
24 because she wanted to -- her schedule to allow her to
25 be able to fluctuate to the children's school

1 schedule.

2 Q. And on April 30th, 1998, did Susan work
3 with you that day?

4 A. Yes, sir. She did.

5 Q. How did she get home from work?

6 A. I used to pick her up and drive her home
7 every day.

8 Q. Did you do that on that day, April 30th,
9 1998?

10 A. Yes, sir. I did.

11 Q. And do you recall about what time you
12 dropped her off at the house, at the trailer?

13 A. Yes, sir. It was roughly between 5:30
14 and 6:00.

15 Q. Okay. And when you dropped her off, what
16 did she do?

17 A. The children met her out in the yard.
18 She got out, gave them both a hug and they all walked
19 in the house together and I pulled out of the
20 driveway and left. I did not get out that day with
21 her.

22 Q. Okay. And was John Weik or anybody else
23 present when you dropped Susan off when she and the
24 kids went in the trailer?

25 A. No, sir.

1 Q. Okay. And is that the last time you ever
2 saw her?

3 A. Yes, sir.

4 Q. Please answer any questions that
5 Mr. Beauford may have for you.

6 MR. BEAUFORD: No questions of this
7 witness.

8 THE COURT: Thank you, ma'am. You may be
9 excused. Thank you.

10 MR. BAILEY: Call Jenny Adams.

11 THE CLERK: I need you to raise your
12 right hand, place your left hand on the Bible.

13 (Jennye W. Adams, called as a witness by
14 the State, having first been duly sworn,
15 was examined and testified as follows:)

16 THE CLERK: Come around and have a seat.
17 Okay. Would you give us -- pull your seat up
18 a little bit and give us your full name and
19 spell your last name.

20 THE WITNESS: Jennye W. Adams, A-d-a-m-s.

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q. Ms. Adams, first of all, would you tell
24 the jury where you work?

25 A. I work for Palmetto Plastic Surgery in

1 Charleston.

2 Q. What do you do there?

3 A. Surgical first assistant with the
4 surgeons.

5 Q. Are you an RN?

6 A. RN.

7 Q. And are you licensed as an RN in South
8 Carolina?

9 A. Yes, sir.

10 Q. How long have you been an RN?

11 A. Twenty-six years.

12 Q. Where do you live?

13 A. Summerset Acres on Sedgewick Road.

14 Q. Okay. How long have you lived there?

15 A. Nine years.

16 Q. Okay. Did you know Susan Krasae and her
17 children?

18 A. I've seen her at her house, and her
19 children and I talked together some.

20 Q. Okay. And where was her trailer in
21 relation to your house as far as how far apart?

22 A. About 100 yards.

23 Q. And calling your attention to the early
24 evening of Thursday, April 30th, were you at home
25 that evening?

1 A. Yes, sir. I was.

2 Q. Okay. What had you been doing?

3 A. I had been to the grocery store and I was
4 getting ready to take groceries out of my car.

5 Q. Okay. And would you state whether or not
6 you saw or heard anything occurring over at the
7 Krasae trailer as you were taking groceries out of
8 your car?

9 A. I heard them arguing.

10 Q. Okay. When you say "them," could you
11 tell the jury who you heard arguing?

12 A. Susan and a man on her front porch.

13 Q. Okay. Did you recognize the man, did you
14 know who he was?

15 A. No.

16 Q. Okay. And how far were you from where
17 Susan and this man were, her front porch from where
18 you were unloading the groceries, do you think?

19 A. Approximately 100 yards.

20 Q. And were you close enough to where you
21 could hear anything that was being said between Susan
22 and this man?

23 A. Yes, sir.

24 Q. All right. Tell the jury the best you
25 can remember what you heard.

1 A. They seemed to be arguing about Daniel.
2 And she was trying to tell him something about not
3 touching Daniel, not hurting Daniel, and she kept
4 saying for him to leave.

5 Q. Okay. And would you state whether you
6 heard any profanity from either the man or Susan
7 during the course of the argument that you can
8 recall?

9 A. I didn't hear any.

10 Q. And you say you heard Susan tell him to
11 leave?

12 A. Yes.

13 Q. Did you hear that on more than one
14 occasion?

15 A. Yes, sir.

16 Q. About how many times did you hear Susan
17 ask the man to leave?

18 A. Three to four times.

19 Q. Okay. Now, what, if anything, did you
20 see or hear next?

21 A. I went back to my car and he was walking
22 away from Susan to the truck and I was getting ready
23 to walk into my house, as I turned to look back he
24 was running back into the house.

25 Q. Okay. Did you observe anything about him

1 as you saw him running towards the house from the
2 pickup truck?

3 A. He had a gun in his hand.

4 Q. What kind of gun, handgun, long gun?

5 A. Long gun.

6 Q. Okay. And did you observe him as he ran
7 toward the house with the gun?

8 A. Yes, sir.

9 Q. Okay. What did you observe him do, if
10 anything?

11 A. He appeared to be running into the house.

12 Q. Okay. And did he enter the house?

13 A. Yes.

14 Q. Just tell us what you -- I'm not trying
15 to lead you, just tell the jury, please, what you
16 saw.

17 A. Yes, sir. As far as I could tell, you
18 know, the tree -- you know, I mean, when he got to
19 the porch, you know, it was kind of blocked, but it
20 looked like he was running into the house and went
21 into the house.

22 Q. Okay. And did you then lose sight of
23 him, did you not see him any longer?

24 A. Yes, sir.

25 Q. After you saw him running toward the

1 house then you couldn't see him anymore, did you hear
2 anything?

3 A. Shotgun sound.

4 Q. Okay. Do you recall about how many times
5 you heard the shotgun fire?

6 A. Once, and then two more after that.

7 Q. Okay. You say once and two more. Why do
8 you phrase it that way?

9 A. Because there was a time between one
10 shotgun blast and then two more. It was a brief
11 period of time.

12 Q. Okay. About how much time do you think
13 went by between the first shotgun blast and the
14 second shotgun blast?

15 A. A minute to a minute and a half.

16 Q. And what was the sequence of the second
17 two shots that you heard after the minute to minute
18 and a half went by from the first?

19 A. One right after the other.

20 Q. Okay. All right. Did you hear anything
21 else coming from the house other than the shotgun
22 shells, shotguns going off?

23 A. No, sir.

24 Q. Okay. Did you -- could you hear voices
25 or screaming at that point?

1 A. No, sir, because I was preoccupied with
2 where my son was.

3 Q. Okay. Where was your son?

4 A. He was out by the pond directly across
5 from the house.

6 Q. Okay. Was your son closer to the Krasae
7 house than you were where he was at the pond?

8 A. Yes, sir.

9 Q. And that's Tommy, is your son?

10 A. Yes, sir.

11 Q. All right. Did you observe anything else
12 after you heard -- the last time that you heard the
13 gun go off?

14 A. The truck leaving.

15 Q. Okay. What did you do after the truck
16 left?

17 A. I went to the house.

18 Q. Okay. And did you go inside?

19 A. Yes, sir.

20 Q. Did you -- would you tell the jury what
21 you saw when you went inside the house?

22 A. Susan was laying on the floor and it
23 looked like between the kitchen and the living room,
24 and she appeared to be dead.

25 Q. Okay. And you're an RN, you've seen dead

1 people before?

2 A. Yes, sir.

3 Q. Did you do anything to determine whether
4 or not in your mind she was dead at that point when
5 you went in?

6 A. I walked over to her and basically I
7 didn't touch her, but I was checking to see if she
8 was breathing. And her color was already starting to
9 be a bluish color.

10 Q. Okay. Was anybody else in the house when
11 you went in?

12 A. No, sir.

13 Q. Okay. Where were the children?

14 A. They had come out as I was going in.

15 Q. Okay. And what door did you enter when
16 you went into the trailer?

17 A. Front door.

18 Q. Okay. And when you entered the front
19 door, what room did you go into?

20 A. It looked like the living room or the
21 den.

22 Q. Okay. And was Susan's body in the first
23 room that you --

24 A. Yes, sir.

25 Q. When you went into the front door, was

1 she in that room?

2 A. Yes, sir.

3 Q. And is that door you went into the same
4 door the children came out of?

5 A. Yes, sir.

6 Q. So they came out of the room where
7 Ms. Krasae's body was; is that correct?

8 A. Yes, sir.

9 Q. After you observed Ms. Krasae on the
10 floor and determined that in your mind she was dead,
11 what did you do then?

12 A. Went back outside to see how the children
13 were.

14 Q. Okay. And how were the children?

15 A. Hysterical.

16 Q. And what did you do with the children, if
17 anything, at that point?

18 A. I tried to comfort them and talk to them.

19 Q. And did you wait for EMS and the police
20 to arrive?

21 A. No, sir. Actually the children were
22 really upset and they thought they heard the truck
23 coming back, so I took them and put them on my front
24 porch.

25 Q. All right. Now, I'm going to show you

1 three pictures and ask if you can identify these
2 pictures.

3 A. Yes, sir. That's the truck.

4 Q. Okay. When you say "that's the truck,"
5 is that the truck that you saw this man get into and
6 leave after Ms. Krasae was shot?

7 A. Yes. Yes, sir.

8 MR. BAILEY: Your Honor, I would offer
9 these.

10 THE COURT: Any objection? Would you
11 like to see them?

12 MR. BEAUFORD: I would like to see the
13 pictures.

14 THE COURT: Yes, sir.

15 MR. BEAUFORD: No objections.

16 THE COURT: All right. Thank you.

17 (Entered into evidence was
18 State's Exhibit 2, truck photo.)

19 (Entered into evidence was
20 State's Exhibit 3, truck photo.)

21 (Entered into evidence was
22 State's Exhibit 4, truck photo.)

23 (Entered into evidence was
24 State's Exhibit 5, truck photo.)

25

1 BY MR. BAILEY:

2 Q. Ms. Adams, I'm not going to get you to
3 come around here, but just for the record are these
4 four different angles of the truck you saw,
5 photographs taken of four different angles?

6 A. Yes, sir.

7 MR. BAILEY: Your Honor, what I would do
8 is just display these to the jury with the
9 monitor, if I could.

10 THE COURT: Sure.

11 MR. BAILEY: State's 2, State's 3,
12 State's 4, and State's 5.

13 BY MR. BAILEY:

14 Q. Ms. Adams, you testified that when the
15 children ran out of the trailer they were hysterical;
16 is that correct?

17 A. Yes, sir.

18 Q. Specifically what do you recall about how
19 they were acting that led you to be of the opinion
20 they were hysterical?

21 A. Daniel was screaming "My daddy shot my
22 mommy, my daddy shot my mommy and she's dead." And
23 Amber was just in shock, she was just very quiet and
24 she would every now and then scream "Where's my
25 mommy?" or -- but they were both just hysterical,

1 just saying over and over and over about their mommy.

2 Q. Please answer any questions Mr. Beauford
3 may have for you.

4 CROSS-EXAMINATION

5 BY MR. BEAUFORD:

6 Q. How are you doing today, Ms. Adams?

7 A. Good.

8 Q. Just a few questions. You said you saw
9 Susan and Eddie arguing outside the trailer?

10 A. I heard them arguing.

11 Q. You heard them arguing?

12 A. Yes, sir.

13 Q. You said you saw a man walking back to
14 his truck?

15 A. Yes, sir.

16 Q. At that time you were walking back to
17 your house?

18 A. Yes, sir.

19 Q. And did you see when he entered the
20 truck?

21 A. No, sir.

22 Q. How soon after you saw him walking back
23 to the truck did you see him going back toward the
24 trailer?

25 A. Less than five minutes. I mean, a very

1 short period of time.

2 Q. You're using five minutes and one minute.
3 Are you sure about the time when you're saying five
4 minutes or -- I noticed you testified earlier about
5 another time, a minute and a half. Are you sure
6 about that time?

7 A. No, sir. I'm not sure about the amount
8 of time from the time he went to the truck to the
9 house, no, sir.

10 Q. I mean, it could have been five seconds?

11 A. It was longer than five seconds. It was
12 a matter of minutes. Exactly how many minutes I
13 don't know.

14 Q. So are you saying that it took you -- you
15 were walking back to the house, you saw a man going
16 back to his truck, so you're saying it took you five
17 minutes to walk to your trailer?

18 A. Me or him?

19 Q. You. What were you doing, you were going
20 back to your trailer?

21 A. I was going back to my house, I was
22 walking very slowly from my car to my house.

23 Q. Your house. And you said it took you
24 several minutes from the mailbox to your house?

25 A. Yes, sir. I was walking slowly.

1 Q. And your house is approximately, maybe
2 30 yards from the mailbox?

3 A. Approximately.

4 Q. And you're sure you only heard three
5 shots?

6 A. Yes, sir. I only heard three shots.

7 Q. Could it have been more, or less?

8 A. There was three shots.

9 Q. No further questions.

10 MR. BAILEY: No redirect. ma'am.

11 THE COURT: Thank you. You may be
12 excused. Thank you very much.

13 MR. BAILEY: State calls Thomas Adams
14 next.

15 THE CLERK: Raise your right hand, place
16 your left hand on the Bible.

17 (Thomas C. Adams, II, called as a witness
18 by the State, having first been duly
19 sworn, was examined and testified as
20 follows:)

21 THE CLERK: Okay. Come around and have a
22 seat. Would you give us your full name, spell
23 your name? Speak into the microphone, please.

24 THE WITNESS: Thomas C. Adams, II.
25

DIRECT EXAMINATION

BY MR. BAILEY:

Q. Okay. Thomas, how old are you?

A. Twenty-two.

Q. Okay. And where do you live?

A. 373 Sedgewick Road.

Q. Do you live with your parents?

A. Yes.

Q. Is Jennye Adams who just testified your mother?

A. Yes, she is.

Q. I want to talk to you about what happened on April 30th, 1998, a little over a year ago. Were you home that evening?

A. Yes, I was.

Q. Okay. Tell the jury what you were doing that afternoon.

A. That afternoon I was in my backyard fishing in my pond. I had noticed next door someone, you know, pull up in the yard, and just kind of noticed it just like you do any other person, seeing somebody pull up. And then after a few minutes I heard some arguing.

Q. Let me slow you down just a second. When you say somebody pulled up into the yard, are you

1 referring to Ms. Krasae's yard?

2 A. Yes.

3 Q. Okay. Where the trailer is?

4 A. Yes, sir.

5 Q. Okay. And when you saw the person pull
6 up, what kind of vehicle were they driving?

7 A. Driving a rusty kind of blue older
8 Chevrolet truck.

9 Q. Okay. And had you ever seen the truck
10 before?

11 A. No, I haven't.

12 Q. Okay. How far from the trailer did the
13 truck park?

14 A. Pulled right in the driveway, straight to
15 the left of it.

16 Q. Okay. In terms of like feet or yards,
17 the distance between you and me, how far was the
18 truck parked from the trailer?

19 A. From the trailer? Maybe another five
20 yards behind you, that's about it.

21 Q. Okay. About where that speaker is maybe?

22 A. Yeah.

23 Q. That was about the rough distance?

24 A. Yes, sir.

25 Q. I'm going to show you State's 2, 3, 4,

1 and 5 already in evidence, and ask if you can
2 identify those pictures for us.

3 A. Yes. That's the truck that was in the
4 yard that day.

5 Q. And you saw the truck pull up and park
6 about from you to that speaker over there?

7 A. Yes, sir.

8 Q. All right. And at that time you were
9 fishing in the pond?

10 A. Yes, sir.

11 Q. What was your mother doing at that time?

12 A. I believe she was bringing in some
13 groceries out of the car. Something in the backyard,
14 I really wasn't paying much attention to her.

15 Q. Okay. Now, from where you were fishing
16 in your pond, were you closer to the Krasae house,
17 the Krasae trailer than your mother was?

18 A. Yes, I was.

19 Q. Okay. About how far away were you from
20 the trailer?

21 A. I was roughly between 50, 75 yards from
22 the front door.

23 Q. Okay. Now, from where you were, was
24 there anything to block your view of the front porch
25 of Susan Krasae's trailer?

1 A. No, there wasn't.

2 Q. Okay. After the truck pulled up and
3 parked, did you kind of pay attention to what was
4 going on over there?

5 A. After a few minutes after he pulled up I
6 heard some arguing and then I started just, you know,
7 looking over there, just glancing over there.

8 Q. Where was the arguing taking place?

9 A. Right on the front porch.

10 Q. Okay. And did you recognize Ms. Krasae
11 as being one of the people that was involved in the
12 argument?

13 A. Yes, sir.

14 Q. Okay. And she had been your neighbor for
15 a while?

16 A. I guess a little over a year.

17 Q. Okay. And were you close enough to hear
18 what was being said during the course of this
19 argument?

20 A. Not really. About all I could understand
21 is that they were arguing over the boy.

22 Q. Okay.

23 A. I wasn't really paying attention to what
24 they were saying.

25 Q. Okay. Is there anything at this time, I

1 know it's been a little more than a year, that you
2 can remember, any specific words or anything?

3 A. The main thing I remember is she said
4 don't ever touch my child like that again and then
5 told the kids to go inside, told him to leave --

6 Q. Okay.

7 A. -- a few times and then she went inside.

8 Q. You said a few times. How many times did
9 Ms. Krasae tell the man to leave?

10 A. At least three.

11 Q. Okay. And what, did the kids go inside.
12 when Ms. Krasae told them to?

13 A. Yes, sir.

14 Q. Okay. And after the argument stopped,
15 what happened then?

16 A. She went inside and he went to walk
17 toward -- he was going towards the truck and I
18 figured he was leaving, and then after he got to the
19 truck --

20 Q. When he went toward the truck, could you
21 tell the jury how he was moving towards the truck?

22 A. When he was going to the truck he was
23 walking as if he was just leaving the house to leave.

24 Q. Okay. When he got to the truck, did you
25 continue to look at him from where you were fishing?

1 A. No, I thought he was leaving. And then
2 the time I figured it took to get in to crank the
3 truck up didn't happen. I heard just some commotion
4 over there and I glanced over there and the door was
5 open and he was standing --

6 Q. You're talking about the door to the
7 truck?

8 A. The driver's side door, yes, sir.

9 Q. Okay. Did you ever see him get inside
10 the truck, sit down behind the wheel like he was
11 leaving?

12 A. No, sir. He never did.

13 Q. Okay. So you saw him walking to the
14 truck and then you saw him standing outside the
15 truck?

16 A. Yes, sir.

17 Q. Okay. Could you -- what did you see as
18 you observed him standing outside the truck door?

19 A. I just saw that he was messing with
20 something inside the cab of the truck. I knew at
21 that time I couldn't tell what it was.

22 Q. Okay. And what happened next, what did
23 you see next?

24 A. And the next thing I know I heard
25 something and I looked over and he pulled a shotgun

1 out of the truck and was -- and as -- then he was
2 running or walking very fast towards the front door
3 of the trailer.

4 Q. Okay. Now, when Ms. Krasae had gone into
5 the trailer earlier, do you know whether or not she
6 shut the door to the trailer?

7 A. Yes, it was shut.

8 Q. Okay. So the door was shut after she and
9 the kids went inside?

10 A. Yes, sir.

11 Q. Okay. Go ahead and tell us again. You
12 saw the man retrieve a gun, long gun from the truck
13 and run toward the trailer; is that correct?

14 A. He ran towards the trailer and just went
15 straight in.

16 Q. Okay. From where you were, could you
17 hear anything inside the trailer after the man ran
18 inside?

19 A. Yeah. As soon as he ran in I heard her
20 scream and say "Don't shoot my kids," and the first
21 shot and she screamed again and it's two more quick
22 shots.

23 Q. Okay. Let me see if I got this straight.
24 You heard a scream first; is that correct?

25 A. Yes, sir.

1 Q. You heard a shot?

2 A. She said, "Don't shoot my kids" before he
3 shot the first time.

4 Q. Okay. Before the first shot "Don't shoot
5 my kids." Then you heard a shot, right?

6 A. Yes, sir.

7 Q. What's the next thing you heard after the
8 first shot?

9 A. I heard another scream, a faint scream,
10 and then two more quick shots after that.

11 Q. All right. And did you continue to look
12 toward the trailer?

13 A. Yes, sir.

14 Q. What did you see next?

15 A. As soon as the last two shots were shot,
16 the person exited the trailer, ran straight to the
17 truck. And I guess it was her father came running
18 over and he got -- jumped in the truck and left.

19 Q. Okay. Now, what did you do when you saw
20 this man run into the house with the gun?

21 A. I just stayed right there. Actually I
22 screamed to my dad to call 911.

23 Q. Yelled for him to dial 911?

24 A. Yeah.

25 Q. Your father was inside your house?

1 A. I didn't know where he was. I saw him at
2 the back door so I figured he was there, I just out
3 of shock, fright, just screamed it.

4 Q. All right. Tommy, do you see the man in
5 court here today that you saw that evening on
6 April 30th run into the trailer with a shotgun?

7 A. Yes, sir.

8 Q. And run back out again?

9 A. Yes, sir.

10 Q. Would you point him out, please?

11 A. Sitting right there between the two, the
12 man and the lady.

13 Q. Between the man and the lady. For the
14 record, that's the defendant --

15 A. Yes, sir.

16 Q. -- John Edward Weik.

17 You had never seen him before that
18 day?

19 A. No, sir.

20 Q. Let me ask you this: Was he dressed in a
21 coat and tie like that back when you saw him?

22 A. No, sir.

23 Q. How was he dressed? Tell the jury.

24 A. Dressed in some type of shorts, maybe
25 jean shorts and a tee shirt from what I can remember.

1 Q. Okay. After the man left in the truck,
2 what did you do?

3 A. After he left I went to go to the
4 trailer, and went over there and my mama came over.
5 And as I got there the kids come running out.

6 Q. They come running out the front door?

7 A. Yes, sir.

8 Q. And did your mother go inside the
9 trailer?

10 A. Yes, sir. She did.

11 Q. Did you go in or did you stay outside
12 with the kids?

13 A. I stayed outside.

14 Q. Okay. When the children ran out you were
15 out there with them; is that right?

16 A. Yes, sir.

17 Q. What kind of -- how were the children
18 acting?

19 A. They were very frantic, scared,
20 screaming, just not really -- the girl was just
21 screaming, yelling, and the boy was just saying "My
22 daddy killed my mommy, my daddy killed my mommy" over
23 and over.

24 Q. Please answer any questions Mr. Beauford
25 might have for you.

CROSS-EXAMINATION

BY MR. BEAUFORD:

Q. Mr. Adams, when you said that you saw him go to the truck and then he started going back toward the trailer, did you see him open the door?

A. I mean, I heard him open the door, but I didn't see him. I wasn't looking right at him. I figured he was getting in to leave.

Q. Did you --

A. I didn't see him physically open the door, no.

Q. The door to the trailer, going back toward the trailer.

A. Oh, to the trailer, I thought you meant the truck. Yeah, I saw him just pull it open and go right in.

Q. You saw him open -- how many doors are on the trailer?

A. Screen door and the front door.

Q. So you saw him open the screen door and then open the other door?

A. He opened the screen door and just pushed the front door open.

Q. You saw that clearly?

A. I was just right there.

1 Q. Had you ever seen him before?

2 A. No, sir.

3 Q. Did you see when he arrived at the
4 trailer?

5 A. I saw him as he pulled up and got -- I
6 mean, pulled up initially.

7 Q. And were the children in the yard playing
8 at the time, Daniel and Amber?

9 A. Yes, they were. They were somewhere
10 around the vicinity. I mean, I wasn't -- you know,
11 at the time I wasn't paying attention to where
12 anybody was.

13 Q. Did you see where he was talking to
14 Daniel and Amber when he came up?

15 A. He came up and I just saw him pull up,
16 and I didn't -- you know, then I wasn't looking over
17 there, I just figured he was somebody -- a friend or
18 somebody that was coming over to visit. Then once I
19 started hearing the argument that's when I started to
20 pay attention.

21 Q. When you said you heard the argument.
22 Susan was not there at the house at the time when he
23 got there, was she?

24 A. As far as I know she was. I mean, like I
25 said, I wasn't paying attention.

1 Q. Are you sure you only heard three shots?

2 A. That's all I heard, three.

3 Q. And what was the sequence of the shot,
4 how far were the shots apart?

5 A. The first shot I'd say maybe enough time
6 for her to scream again, ten, 15 seconds at the most
7 maybe, and then two more quick shots.

8 Q. Are you sure the shot was that quick
9 behind each other, ten to 15 seconds?

10 A. I mean, you know, I wasn't timing it,
11 but, yeah, it was -- I mean, there was a little pause
12 in between the first and the second and the third.

13 Q. So it could have been quicker than ten to
14 15 seconds; are you saying that?

15 A. I don't know. I mean, it could have
16 been. I wasn't looking at my watch timing it.

17 Q. Okay. No further questions.

18 MR. BAILEY: No redirect, Your Honor.

19 May he be excused?

20 THE COURT: The witness may step down and
21 be excused.

22 MR. BAILEY: Call Alice Hilton.

23 THE CLERK: Raise your right hand, place
24 your left hand on the Bible.

25 (Alice L. Hilton, called as a witness by

1 the State, having first been duly sworn,
2 was examined and testified as follows:)

3 THE CLERK: Okay. Come around right
4 here. Would you give us your full name, spell
5 your last name?

6 THE WITNESS: Alice L. Hilton,
7 H-i-l-t-o-n.

8 DIRECT EXAMINATION

9 BY MR. BAILEY:

10 Q. Ms. Hilton, would you tell the jury,
11 please, where you work?

12 A. Dorchester County Sheriff's Office in the
13 dispatch.

14 Q. Okay. And how long have you been a
15 dispatcher at the sheriff's office?

16 A. Four years.

17 Q. Okay. And were you a shift supervisor
18 back in April of 1998 as a dispatcher?

19 A. Yes, sir.

20 Q. Okay. And would you state whether or not
21 a fellow named William Frank Russell worked as a
22 dispatcher under your supervision at that time?

23 A. Yes, sir. He volunteered.

24 Q. Okay. And when somebody makes a 911
25 call, do you all receive that where you work at

1 dispatch?

2 A. Yes.

3 Q. Okay. And are all those calls taped?

4 A. Yes.

5 Q. And when you dispatch a deputy over the
6 radio, is that taped?

7 A. Yes.

8 Q. Now, before this trial did I ask you to
9 listen to part of a Dorchester County dispatch tape
10 the early evening of April 30th, 1998?

11 A. Yes, sir.

12 Q. Okay. And did you initial that tape
13 after you listened to it?

14 A. Yes.

15 Q. Let me hand you this tape and ask if
16 that's the tape you listened to?

17 A. Yes, sir.

18 Q. Okay. Did you also review a transcript
19 of the tape that was typed out while you listened to
20 the tape at the same time?

21 A. Yes, sir.

22 Q. Okay. And I'm going to hand you this
23 transcript and ask if that appears to be a transcript
24 of the tape that you reviewed?

25 A. Yes, sir.

1 Q. Okay. And would you state whether or not
2 this transcript is a reasonably accurate transcript
3 of the tape, dispatch tape?

4 A. Yes, sir.

5 Q. Okay. Now, the tape is sort of bad
6 quality, is it not, you've heard it?

7 A. Yes.

8 Q. Would it be necessary to follow along
9 with the transcript really to tell what's on the
10 tape?

11 A. Yes.

12 Q. Okay.

13 MR. BAILEY: Your Honor, I would offer
14 both of these.

15 MR. BEAUFORD: No objections, Your Honor.

16 THE COURT: All right, sir.

17 (Entered into evidence was
18 State's Exhibit 6, audiocassette tape.)

19 (Entered into evidence was
20 State's Exhibit 7, transcription of
21 audiocassette tape.)

22 MR. BAILEY: Your Honor, I would like to
23 play the tape for the jury, it's about five
24 minutes. I've got extra copies of transcript,
25 if I can pass those out to the jury so they

1 can follow it.

2 THE COURT: That's fine.

3 BY MR. BAILEY:

4 Q. While they're passing that around,
5 Ms. Hilton, the male voice that we hear on the tape,
6 the male dispatcher, do you recognize that as being
7 William Frank Russell, the dispatcher that worked
8 under your supervision?

9 A. Yes.

10 Q. Okay. And would you state whether or not
11 you recognize your voice on that tape as being the
12 female dispatcher?

13 A. Yes, sir.

14 THE COURT: All right, sir.

15 (Dispatch audiocassette tape, State's
16 Exhibit 6, played for the jury.)

17 MR. BAILEY: Ms. Hilton, that's all I've
18 got. Thank you very much.

19 MR. BEAUFORD: No questions of this
20 witness.

21 THE COURT: Thank you, ma'am. You may be
22 excused. Thank you very much.

23 Call your next witness.

24 MR. BAILEY: Call Mr. McGauvran.

25 THE CLERK: Would you raise your right

1 hand, place your left hand on the Bible?

2 (Andrew M. McGauvran, called as a witness
3 by the State, having first been duly
4 sworn, was examined and testified as
5 follows:)

6 THE CLERK: Come around and have a seat.
7 I need you to give us your full name, spell
8 your last name.

9 THE WITNESS: Andrew Martin McGauvran,
10 M-c-G-a-u-v-r-a-n.

11 DIRECT EXAMINATION

12 BY MR. BAILEY:

13 Q. Mr. McGauvran, you're obviously in law
14 enforcement, you're in uniform. Where do you work
15 now?

16 A. North Charleston Police Department.

17 Q. All right, sir. And back in April of
18 last year were you employed as a deputy sheriff for
19 the Dorchester County Sheriff's Office?

20 A. Yes, sir. I was.

21 Q. All right, sir. Were you a uniform
22 deputy?

23 A. Yes, sir. I was.

24 Q. Were you on duty on April 30th, 1998?

25 A. Yes, sir. I was.

1 Q. And calling your attention to roughly
2 6:00 p.m. on April 30th, 1998, were you dispatched to
3 the 533 Summerset Lane for a possible shooting call?

4 A. Yes, I was.

5 Q. All right, sir. And about what time did
6 you arrive at that location?

7 A. Approximately 15 minutes after 6:00.

8 Q. All right, sir. And is the location that
9 you went to at Summerset Lane in Dorchester County?

10 A. Yes, sir. It is.

11 Q. Within your department's jurisdiction?

12 A. Yes, sir.

13 Q. All right, sir. You've got a map here,
14 part of a map. And let me show you that and I'll
15 give you a minute or two to get familiar with it.
16 Does this map include the location that you were
17 dispatched to?

18 A. Yes, sir. It does.

19 MR. BAILEY: I would offer this, Your
20 Honor.

21 THE COURT: Any objection?

22 MR. BEAUFORD: No objection, Your Honor.

23 THE COURT: State's 8, I believe it is.

24 (Entered into evidence was

25 State's Exhibit 8, a map.)

1 BY MR. BAILEY:

2 Q. I'm going to hand you back State's 8, ask
3 if you'll just step up here and point out to the
4 jury. We have Sedgewick and Summerset, and show the
5 jury the approximate location of the house you went
6 to, or the mobile home you went to.

7 A. Right here is Summerset Road, Sedgewick
8 here, Summerset.

9 Q. That's in Dorchester County?

10 A. Yes, sir.

11 Q. All right. You can have a seat.

12 A. (The witness complied.)

13 Q. Now, that location, is that a mobile
14 home?

15 A. Yes, sir. It is.

16 Q. Did you go inside the mobile home?

17 A. Yes, sir. I did.

18 Q. And what observations did you make when
19 you entered the front door of the trailer?

20 A. When I first entered I observed an
21 individual lying on the floor in a pool of blood.

22 Q. And was this in the first room that you
23 entered?

24 A. Yes, sir.

25 Q. Through the front door?

1 A. Yes, sir. It was.

2 Q. Were you the first law enforcement
3 officer to arrive at that address?

4 A. Yes, sir. I was.

5 Q. All right, sir. And did anybody arrive
6 after you, shortly after you?

7 A. Officer Prince.

8 Q. Okay. And were you present when EMS got
9 to the scene?

10 A. Yes, sir. I was.

11 Q. Okay. And what's it mean to secure a
12 crime scene?

13 A. I couldn't hear you, sir.

14 Q. What does it mean to secure a crime
15 scene?

16 A. It means to prevent any entry into the
17 location for any non law enforcement officers or
18 anybody to investigate the scene to prevent any
19 contamination or removal of evidence.

20 Q. Would you state whether or not you and
21 Officer Prince secure the crime scene to keep any non
22 official people out of there?

23 A. Yes, sir.

24 Q. Okay. EMS did arrive and check the body;
25 is that right?

1 A. Yes, sir. They were escorted in.

2 Q. Okay. By law enforcement?

3 A. Yes, sir. They were.

4 Q. Other than EMS coming in, did any non law
5 enforcement people arrive and come into the room
6 while you were there?

7 A. No, sir.

8 Q. Were you still present when the crime
9 scene man from the sheriff's office --

10 MR. BEAUFORD: I'm going to object, he's
11 leading this witness.

12 MR. BAILEY: I'll rephrase it, Judge.

13 THE COURT: All right.

14 BY MR. BAILEY:

15 Q. State whether or not you were still there
16 when Mr. Asbell arrived.

17 A. Yes, sir. I was.

18 Q. What's Mr. Asbell's position with the
19 sheriff's office?

20 A. He's the crime scene investigator --

21 Q. Okay.

22 A. -- officer.

23 Q. Between the time you arrived as the first
24 law enforcement officer there and the time Sergeant
25 Asbell the crime scene man got there, did anybody

1 besides law enforcement and the EMS people go in
2 there?

3 A. No, sir.

4 Q. All right, sir. Thank you. Please
5 answer any questions that Mr. Beauford might have for
6 you.

7 MR. BEAUFORD: No questions.

8 THE COURT: Thank you, sir. You may be
9 excused.

10 MR. BAILEY: May he be excused?

11 THE COURT: Yes, sir.

12 MR. BAILEY: All right. Hubert Prince.

13 THE CLERK: Stand here, please. Raise
14 your right hand, place your left hand on the
15 Bible.

16 (Hubert Prince, called as a witness by
17 the State, having first been duly sworn,
18 was examined and testified as follows:)

19 THE CLERK: Come around and have a seat.
20 Would you give us your full name, spell your
21 last name?

22 THE WITNESS: Hubert T. Prince,
23 P-r-i-n-c-e.

24

25

DIRECT EXAMINATION

BY MR. BAILEY:

Q. Okay. Mr. Prince, you're a deputy with
Dorchester County?

A. Yes, sir.

Q. And how long have you worked for
Dorchester County with the sheriff's office?

A. Been on patrol since about a year and a
half now, sir.

Q. All right, sir. And were you a deputy
back on April 30th of last year?

A. Yes, sir.

Q. Okay. Were you on duty that day?

A. Yes, sir.

Q. I want to call your attention to a little
past 6:00 p.m. on April 30th, 1998, and ask whether
or not you heard something on your police radio?

A. Yes, sir.

Q. Okay.

A. Between 18:00, 18:30, 18:05 got a call
about a shooting in progress. At that time myself
and Deputy Gamache was together on Old Orangeburg and
Butternut.

Q. Hold on one second, let me show you
something here. This is a map which is State's 8, I

1 believe, and ask whether or not that shows Butternut
2 Road there?

3 A. Yes, sir.

4 Q. Okay. And if you could just step up a
5 minute and show that to the jury where Butternut Road
6 is.

7 A. Butternut is right here.

8 Q. Okay. And would Old Orangeburg Road be
9 up above here?

10 A. Yes, sir.

11 Q. Okay. You can have a seat.

12 A. (The witness complied.)

13 Q. Were you and Deputy Gamache in two
14 separate cars?

15 A. Yes, sir.

16 Q. Okay. You all were kind of in the same
17 general location; is that correct?

18 A. Yes, sir.

19 Q. Was Deputy Gamache familiar with
20 Dorchester County at that time?

21 A. Somewhat, sir. Not too familiar, sir.

22 Q. He just moved from a different --

23 A. Yes. Yes.

24 Q. All right. Now, did you get any
25 information over the radio about what kind of vehicle

1 may have been involved?

2 A. Yes, sir. A call came out and said it
3 was a blue faded light Chevy pickup truck.

4 Q. Okay. And did you observe a pickup truck
5 that fit that general description?

6 A. Yes, sir.

7 Q. Where did you see it at?

8 A. Coming up West Butternut headed toward
9 Old Orangeburg right between the vicinity of Marie
10 Lane and Butternut, West Butternut.

11 Q. All right. Now, let me direct your
12 attention to this map again. Is this Marie Lane
13 right here?

14 A. Yes, sir.

15 Q. This is Butternut here?

16 A. Yes, sir.

17 Q. Okay. And that's the vicinity you saw
18 the truck?

19 A. Yes, sir.

20 Q. Okay. Now, when you saw the truck, were
21 you meeting the truck?

22 A. Yes, sir.

23 Q. It was coming in the opposite direction
24 you were in?

25 A. Yes, sir.

1 Q. Whose car was first?

2 A. Deputy Gamache.

3 Q. Deputy Gamache. And you were behind him?

4 A. Yes, sir.

5 Q. When Deputy Gamache passed this pickup
6 truck, what happened?

7 A. Deputy Gamache passed the pickup truck
8 and he saw the truck that fit the description that
9 dispatch gave out, he immediately --

10 MR. BEAUFORD: Objection, Your Honor.

11 He's telling what Deputy Gamache saw.

12 BY MR. BAILEY:

13 Q. What did you see Deputy Gamache do when
14 you saw the truck?

15 A. Passed the truck and initiated blue
16 lights, did the traffic stop, turned around and did
17 the traffic stop on the truck.

18 Q. Where were you when you observed
19 Mr. Gamache make the traffic stop of the truck?

20 A. Right behind him, sir.

21 Q. Okay. And approximately where was the
22 truck stopped?

23 A. Right at Marie Lane, sir.

24 Q. Okay. And you've already indicated that
25 location on the map; is that correct?

1 A. Yes, sir.

2 Q. That's in Dorchester County?

3 A. Yes, sir.

4 Q. And did you observe what happened after
5 Deputy Gamache stopped the truck?

6 A. Yes, sir. We got out, ordered the
7 subject out of the truck. He kneeled to his knees
8 right beside his truck, put his hand on his head. At
9 that time Officer Gamache ordered him to lay down. I
10 covered Officer Gamache while he put him in
11 handcuffs.

12 Q. You saw Officer Gamache handcuff him; is
13 that right?

14 A. Yes, sir.

15 Q. And after Deputy Gamache handcuffed this
16 person that was in the blue truck, what happened
17 next?

18 A. At that time, sir, Officer Burnette
19 pulled up, he secured the subject, put him inside the
20 vehicle. I left the scene, dispatcher was -- EMS was
21 called to see whether they could enter the residence.
22 At that time I left the scene to go to the residence
23 where the incident took place to make sure that EMS
24 could enter inside the residence.

25 Q. Okay. And did you then go to Summerset

1 Lane?

2 A. Yes, sir.

3 Q. Okay. What did you do when you got to
4 the trailer?

5 A. At that time I met up with Corporal
6 McGauvran. We went to the door of the residence,
7 looked in, entered, saw the victim. Immediately
8 backed out, commanded me to back out. We went back
9 out. At that time we secured the scene, got
10 everybody away from the residence.

11 Q. Let me back up a minute. When you first
12 arrived at the trailer, was anybody outside that you
13 saw besides Mr. McGauvran?

14 A. No, sir. There was no one at that
15 trailer.

16 Q. Okay.

17 A. It was the complainant or the father of
18 the victim was at his trailer which is beside the
19 trailer.

20 Q. Okay. Don't tell me anything that he
21 said, but what, if anything, did you observe him
22 doing, what was he...?

23 A. I observed him yelling and very
24 emotional.

25 Q. Okay. All right. And you said that you

1 helped Mr. McGauvran secure the crime scene?

2 A. Yes, sir.

3 Q. And were you still there at the crime
4 scene when Sergeant Earl Asbell arrived?

5 A. Yes, sir.

6 Q. Okay. During the period of time between
7 when you and Mr. McGauvran as the first law
8 enforcement officers got to the trailer, saw this
9 lady's body in there and the time Mr. Asbell got
10 there, did anybody besides EMS come in there and do
11 anything, move anything around or anything of that
12 nature?

13 A. No, sir.

14 Q. Okay. Mr. Prince, please answer any
15 questions Mr. Beauford might have for you.

16 CROSS-EXAMINATION

17 BY MR. BEAUFORD:

18 Q. Officer Prince, when you saw the blue
19 pickup truck, did the truck apply its brakes before
20 you all activated your blue lights?

21 A. Sir, I can't say, because we was heading
22 two different directions.

23 Q. But he stopped before you did, before you
24 turned around his truck was stopped?

25 A. Sir, I can't say on that, because like I

1 said, Deputy Gamache made the first turn. When I
2 turned around, got my vehicle straight behind him,
3 the truck was stopped.

4 Q. Okay. When he got out of the truck -- he
5 got out of the truck before you got out of your car;
6 am I correct?

7 A. Yes, sir.

8 Q. Okay. When he got out he immediately
9 went on the ground, he was on the ground?

10 A. In a kneeling position, yes, sir.

11 Q. He told you to shoot him. He told you to
12 shoot him, "Go ahead shoot me, shoot me"; didn't he
13 tell you that?

14 A. No, sir. I didn't hear that, sir.

15 Q. And did you remember him telling you "I
16 killed the only woman I ever loved"?

17 A. I didn't hear that, sir.

18 Q. Did you do a report?

19 A. Yes, sir.

20 Q. Do you have a copy of your report with
21 you?

22 A. Yes, sir.

23 Q. Would you review your report for me,
24 please?

25 A. (The witness complied.) Sir, that's not

1 in my report.

2 Q. Did you remember him making any statement
3 while he was there?

4 A. Not at the time, sir, we made the arrest
5 on him, no, sir.

6 Q. He didn't say anything when he got out of
7 the truck?

8 A. Not when we made the arrest, sir. No,
9 sir. I didn't hear him saying anything.

10 Q. How long were you at the scene?

11 A. Time enough for Officer Burnette to
12 arrive and they secured the subject to put inside the
13 vehicle, sir.

14 Q. And Burnette was the individual that was
15 driving the Mustang?

16 A. No, sir.

17 Q. What was he driving?

18 A. A regular cruiser, Crown Victoria, sir.

19 Q. Did he have a camera in his car,
20 Burnette?

21 A. Yes, sir. If I'm not mistaken he did,
22 sir.

23 Q. And you don't remember him making any
24 statement prior to Burnette getting there?

25 A. Not -- no, sir. No, sir. Not directly.

1 Q. Did you remember -- No further questions.

2 MR. BAILEY: No redirect, Your Honor.

3 THE COURT: Thank you, sir. You may be
4 excused. Thank you very much.

5 MR. BAILEY: Mike Giglio.

6 (Michael J. Giglio, called as a witness
7 by the State, having first been duly
8 sworn, was examined and testified as
9 follows:)

10 THE CLERK: Come right around here and
11 have a seat. Would you give us your full name
12 and spell your last name?

13 THE WITNESS: First name is Michael,
14 middle initial is J. for John, last name is
15 Giglio, G-i-g-l-i-o.

16 DIRECT EXAMINATION

17 BY MR. BAILEY:

18 Q. Mr. Giglio, please tell the jury where
19 you're employed.

20 A. I am currently employed with Dorchester
21 County EMS.

22 Q. What basically, I don't need a lot of
23 detail, what training have you had to have your
24 position there?

25 A. I'm currently a paramedic. Roughly to

1 become a paramedic it takes approximately two years
2 worth of schooling. I'm trained in advanced cardiac
3 type support, EKG interpretation, travel life
4 support.

5 Q. All right. Were you on duty on April 30
6 of last year?

7 A. Yes, sir. I was.

8 Q. Dorchester County EMS. Were you alone,
9 or do you all have two of you together?

10 A. We work as a pair.

11 Q. Okay.

12 A. That particular day it was myself and
13 another paramedic who is Mike Copack.

14 Q. Were you the senior person out of the two
15 of you all?

16 A. Yes, sir. I was. I was the crew chief.

17 Q. About 6:00 p.m. that day did you receive
18 a call to go to 533 Summerset Lane?

19 A. Yes, sir. I did.

20 Q. And do you have a run report?

21 A. Yes, sir. I do.

22 Q. Okay. Approximately what time did you
23 all get to that address?

24 A. I don't have the report with me now.

25 Q. Okay. Let me give you a copy to refresh

1 your memory.

2 A. Okay.

3 Q. Is this the report you prepared?

4 A. Yes, sir. It is. This is a formal
5 document required to submit to DHEC, it's a report of
6 everything we observed or did.

7 Q. All right, sir. And referring to that to
8 refresh your memory, what time did you all get to
9 that address?

10 A. We arrived at the scene at 18:28, which
11 would be 6:28 p.m.

12 Q. Okay. Did you go inside the mobile home?

13 A. Yes, sir. I did.

14 Q. Tell the jury, please, what you observed
15 when you got there.

16 A. When we walked inside the residence, it
17 was a mobile home, and we found a victim, female,
18 referring to the report, her age I believe it says 27
19 and she was found in what I would describe as a fetal
20 position, she was curled up on the floor and she
21 sustained multiple gunshot wounds.

22 And we determined she had injuries
23 incompatible with life at which point we did cut her
24 shirt to expose more of her chest. And when we did
25 that, we placed electrodes or leads to read an EKG on

1 her just to reconfirm that she was dead.

2 When we placed the monitor on her it
3 confirmed that she was in asystole, there was no
4 pulse or anything present.

5 Q. So you confirmed that she was, in fact,
6 dead when you arrived?

7 A. Yes, sir.

8 Q. About 8:26 -- 6:26?

9 A. 6:28 p.m.

10 Q. 6:28, okay.

11 A. At which point we notified the coroner
12 and the scene was secured by the sheriff's office.

13 Q. Okay. Please answer any questions
14 Mr. Beauford may have.

15 MR. BEAUFORD: No questions.

16 MR. BAILEY: May he be excused, Judge?

17 THE COURT: Yes, he may.

18 MR. BAILEY: Call Chris Nisbet.

19 (Christopher D. Nisbet, called as a
20 witness by the State, having first been
21 duly sworn, was examined and testified as
22 follows:)

23 THE CLERK: Come on around, please.
24
25

DIRECT EXAMINATION

BY MR. BAILEY:

Q. You're the elected coroner for Dorchester County; is that correct?

A. That's correct.

Q. All right. You held that position back April 30th, 1998?

A. That's correct.

Q. All right, sir. And what are your -- briefly what are your duties and responsibilities as coroner?

A. The major thing of my job is just to determine the cause and manner of death.

Q. Okay. If somebody is killed in a violent manner, are you generally called out to the scene where that person was killed?

A. Yes, sir.

Q. And did you go out to 533 Summerset Lane on April 30th of last year?

A. Yes, sir.

Q. All right, sir. And did you take photographs, do you normally take photographs of the scene?

A. Yes, sir.

Q. And would you state whether or not

1 Sergeant Earl Asbell was present when you were there?

2 A. Yes.

3 Q. Okay. What, if anything, did you do
4 other than take some photographs at the scene?

5 A. After Sergeant Asbell collected the
6 evidence that he needed, I removed the body and took
7 her to the Medical University for a forensic autopsy.

8 Q. And calling your attention to the next
9 day, which would have been May 1st, is that when you
10 transported the body to the Medical University?

11 A. Yes, sir.

12 Q. And did you authorize an autopsy to be
13 conducted by Dr. Kim Collins?

14 A. Yes, sir.

15 Q. All right, sir. Please answer any
16 questions the defense has.

17 MR. BEAUFORD: No questions of this
18 witness.

19 THE COURT: Thank you, sir. You may be
20 excused.

21 MR. BAILEY: Call Don Gamache.

22 THE CLERK: Please stand there, raise
23 your right hand, place your left hand on the
24 Bible.

25 (Donald P. K. Gamache, called as a

1 witness by the State, having first been
2 duly sworn, was examined and testified as
3 follows:)

4 THE CLERK: Come around and have a seat.
5 Would you give us your full name and spell
6 your last name?

7 THE WITNESS: Donald Paul Kenneth
8 Gamache, G-a-m-a-c-h-e.

9 DIRECT EXAMINATION

10 BY MR. BAILEY:

11 Q. Mr. Gamache, just for the record, you're
12 a deputy with the Dorchester County Sheriff's Office?

13 A. Yes, sir.

14 Q. All right, sir. How long have you been a
15 deputy?

16 A. Since April of last year.

17 Q. Okay. And before that were you a law
18 enforcement officer in a different jurisdiction?

19 A. Yes, sir. Since '91.

20 Q. All right. Where were you working before
21 you came to Dorchester County?

22 A. Sir?

23 Q. Where were you working before you came to
24 Dorchester County?

25 A. Berkeley County Sheriff's Office.

1 Q. Okay. Were you at Dorchester County
2 Sheriff's Office on April 30th, 1998?

3 A. Yes, sir.

4 Q. And how long had you been with the
5 sheriff's department on that date, roughly?

6 A. Probably three weeks.

7 Q. Three weeks.

8 I want to call your attention to
9 April 30th of last year and ask whether or not you
10 were on duty that night, that evening?

11 A. Yes, sir. I was.

12 Q. Okay. And where were you located shortly
13 after 6:00 p.m. on April 30th of last year?

14 A. I was at the corner of Mallard and
15 Orangeburg Road.

16 Q. All right, sir. And at that time were
17 you real familiar with different roads and landmarks
18 in Dorchester County?

19 A. No, sir.

20 Q. All right, sir. Was there another deputy
21 that was with you in a different car in the same
22 general area?

23 A. Yes, sir.

24 Q. That was Deputy Prince?

25 A. Yes, sir. It was.

1 Q. Okay. Did you hear anything over your
2 police radio about a shooting?

3 A. Yes, sir. Dispatch put out a shooting
4 over the radio.

5 Q. And did they also give any description of
6 the vehicle they thought might have been involved in
7 the shooting?

8 A. Yes, sir. They did. They relayed that
9 the subject left in a dark blue older S-10 Chevy
10 truck.

11 Q. After receiving this information over
12 your radio, did you observe a truck that appeared to
13 meet that general description?

14 A. Yes, sir. I did.

15 Q. Where were you when you observed it, the
16 same location?

17 A. I was on Butternut heading towards
18 Sedgewick, Summerset area.

19 Q. All right, sir. So you were on Butternut
20 heading towards Sedgewick; is that correct?

21 A. Yes, sir.

22 Q. Let me show you State's 8, which is a map
23 that's been previously testified to. Okay. And is
24 this Sedgewick Road down here?

25 A. Yes, sir.

- 1 Q. Okay. And you were on Butternut up here?
- 2 A. Yes, sir.
- 3 Q. And you were heading toward the location
- 4 of the shooting; is that correct?
- 5 A. That's correct.
- 6 Q. As you headed toward Sedgewick, what, if
- 7 anything, did you observe?
- 8 A. I observed an older model Chevy truck
- 9 coming towards me at a high rate of speed.
- 10 Q. What's the speed limit?
- 11 A. It's posted 40 or 45.
- 12 Q. Approximately how fast was the truck
- 13 going away from Sedgewick?
- 14 A. I couldn't give an exact, but well over
- 15 60.
- 16 Q. I'm going to show you State's 2 through
- 17 5, and ask if you can identify those pictures.
- 18 A. Yes, sir.
- 19 Q. Is that the truck you stopped?
- 20 A. Yes, sir.
- 21 Q. Okay. How did you go about stopping the
- 22 truck, Mr. Gamache?
- 23 A. As soon as I seen the truck I turned on,
- 24 activated my blue lights and then initiated a
- 25 three-point turn to get behind it.

1 Q. And after you got behind the truck, did
2 you use blue lights, siren, or how did you stop him?

3 A. I used blue lights only. I didn't have
4 time to activate the siren itself. And when I got
5 directly behind him, he stopped the vehicle.

6 Q. Okay. And when you say he stopped the
7 vehicle, what occurred next?

8 A. He jumped out of the vehicle, at which
9 time he jumped out and put his hand up at which time
10 I ordered him to lay on the ground.

11 Q. Okay. Did he comply with that?

12 A. Yes, sir. He did.

13 Q. Okay. What did you do after he laid down
14 on the ground?

15 A. I had another officer, Prince, cover him
16 while I went in and detained him, put handcuffs on
17 him.

18 Q. Okay. And can you identify the person
19 here in court that you handcuffed that day?

20 A. Yes, sir.

21 Q. Point him out.

22 A. He's right there.

23 Q. Pointing towards the defendant who just
24 nodded at you?

25 A. Yes, sir.

1 Q. All right, sir. Now, would you state
2 whether or not you searched him after you handcuffed
3 him?

4 A. Yes, sir. I did.

5 Q. Okay. And what, if anything, did you
6 find in his left front pocket?

7 A. It was four shotgun shells.

8 Q. Four shotgun shells?

9 A. Yes, sir.

10 Q. Were these fired shells or live rounds?

11 A. Live rounds, sir.

12 Q. All right. And did you take those four
13 shotgun shells from him?

14 A. Yes, sir. I did.

15 Q. And what did you ultimately do with those
16 shotgun shells?

17 A. Turned them over to Detective Marshall.

18 Q. And is there a chain of custody form that
19 you use when you turn that over to him?

20 A. Yes, sir. There is.

21 Q. Let me hand you this piece of paper and
22 ask you to identify that.

23 A. Yes, sir. That's my signature, that's
24 the sheet that I gave Detective Marshall.

25 Q. Okay. That accompanied the four shotgun

1 shells you got from Mr. Weik?

2 A. Yes, sir.

3 Q. And you gave those to Detective Marshall?

4 A. Yes, sir.

5 MR. BAILEY: Your Honor, offer without
6 objection.

7 THE COURT: Yes, sir. Without objection.

8 (Entered into evidence was

9 State's Exhibit 9, evidence report sheet.)

10 BY MR. BAILEY:

11 Q. Did you obtain any identification off of
12 the person you stopped, did you subsequently identify
13 him as John Edward Weik?

14 A. Yes, sir. I did.

15 Q. All right. Did you get any other
16 paperwork off of him?

17 A. I searched him and I also got two ATM
18 receipts out of his front right pocket.

19 Q. All right, sir. Now, as you were
20 handcuffing Mr. Weik, would you state whether or not
21 he said anything to you?

22 A. Yes, sir. When I was handcuffing him.

23 Q. You're referring to your incident report
24 to refresh your memory; is that correct?

25 A. Yes, sir. I am.

1 Q. That's something you wrote out in your
2 own handwriting and signed?

3 A. Yes, sir. It is.

4 Q. All right, sir.

5 A. At first he stated that "I did it. I did
6 it. I'm guilty, I did it." Then he said, "I just
7 killed the only woman I ever loved."

8 Q. Were those statements made in response to
9 questions you asked him, or were they spontaneous
10 statements?

11 A. Spontaneous statements. He was asked no
12 questions at the time.

13 Q. All right, sir. Now, would you state
14 whether or not you read Miranda rights to Mr. Weik?

15 A. Yes, sir. I did.

16 Q. Okay. And how did you go about doing
17 that?

18 A. I read them off a form we have at the
19 sheriff's office.

20 Q. Okay. I'm going to hand you a document,
21 ask if this is a blank copy of a form that you used?

22 A. Yes, sir. It is. It's an identical
23 form, a copy of it.

24 MR. BAILEY: Your Honor, I would offer
25 the Miranda form.

1 THE COURT: All right.

2 MR. BEAUFORD: No objection.

3 (Entered into evidence was State's
4 Exhibit 10, Miranda form.)

5 THE COURT: By the way, if -- we, of
6 course, have had a hearing in this regard
7 already, and I just want the record to be very
8 clear that if there were any objections those
9 objections obviously don't need to be raised
10 again at this time. I don't even recall what
11 was, what was not. But whatever the
12 objections were at the time of that hearing,
13 obviously want them to be preserved in spite
14 of the fact that I made a ruling otherwise.
15 Whatever my ruling was, whatever the
16 objections were, I'm simply saying if the
17 objection's already been made there's no
18 reason for Mr. Beauford, or for you if it
19 works the other way around, to stand and
20 object to the specific thing again because
21 he's already done so.

22 MR. BAILEY: Yes, sir.

23 MR. BEAUFORD: Thank you.

24 BY MR. BAILEY:

25 Q. I'm going to hand you what's State's 10

1 as you've identified as a blank Miranda form. And
2 that's identical to the form that you had?

3 A. Yes, sir. It is.

4 Q. Okay. Now, did you read that form to
5 him, to Mr. Weik?

6 A. Did I read this form to him?

7 Q. Yes, sir.

8 A. Yes, sir. I did.

9 Q. Where was he when you read that to him?

10 A. He was placed in the rear passenger side
11 seat of my patrol car.

12 Q. Was he handcuffed?

13 A. Yes, sir. He was.

14 Q. You had handcuffed him; is that correct?

15 A. Yes, sir.

16 Q. Okay. If you would, Mr. Gamache, go
17 ahead and read for the jury those Miranda warnings
18 the same way you read them to Mr. Weik on April 30th,
19 1998.

20 A. Statements of Miranda rights: (1) You
21 have the right to remain silent. (2) Anything you
22 say can and will be used against you in a court of
23 law. (3) You have the right to talk to a lawyer and
24 have him present with you while you are being
25 questioned. (4) If you cannot afford to hire a

1 lawyer, one will be appointed to represent you before
2 any questioning if you wish. (5) You can decide at
3 any time to exercise these rights and not answer any
4 questions or make any statements.

5 Also on the bottom it has a waiver
6 of rights. I read the above rights, statement of my
7 rights and I understand each of those rights. And
8 having these rights in mind I waive them and
9 willingly make a statement.

10 Q. Okay. And after you read those rights to
11 Mr. Weik, did he make any response to you?

12 A. Yes, he did. I asked him if he
13 understood them and he verbally said that he did
14 understand and that he wanted to waive his rights.

15 Q. All right, sir. Now, did you attempt to
16 get him to sign that form? There's a place for a
17 signature; is there not?

18 A. No, sir. I did not.

19 Q. Okay. Why is that?

20 A. Because he was handcuffed in the car.

21 Q. All right. Did Mr. Weik then make a
22 verbal statement to you after he -- you read the
23 rights to him, he acknowledged he understood them and
24 wanted to waive them?

25 A. He made several statements. He was very

1 adamant about confessing that he killed a Ms. Susan
2 Krasae. And he also stated that the altercation
3 started when Ms. Krasae threatened to keep Mr. Weik
4 from seeing their son.

5 Q. Okay. Go ahead. Using that to refresh
6 your memory if you need to, go ahead and relate to
7 the jury what Mr. Weik told you after you read
8 Miranda rights to him.

9 A. He basically just stated that he wanted
10 to confess that he killed her, that he kept making
11 statements that the altercation occurred, started
12 when Ms. Krasae threatened to keep their son from
13 seeing Mr. Weik. Then stated that he tried
14 emphatically to get Ms. Krasae to talk, but she
15 emphatically yelled no and started to use profanity
16 and got very verbal with each other in the argument.

17 Q. Okay. And did he continue to relate to
18 you what occurred?

19 A. Yes. He then said that he had left, he
20 left -- she told him to leave and he went out of the
21 mobile home and went to his truck. And Ms. Krasae
22 was inside the mobile home. He stated that he went
23 to leave and he said he thought about it and he said
24 death penalty, 30 years, then said I pulled up the
25 seat and I grabbed my shotgun and went over to the

1 door and kicked it open. When I seen Susan she
2 started I'm going to call the cop. And he said I
3 sort her while she was yelling. I shot her in the
4 arm first and she fell to the ground. I then shot
5 her again in the chest. The gun jammed after the
6 second shot so I had to clear it. So I continued. I
7 then shot her a third time in the stomach and a
8 fourth time in the chest. I did it, I killed her,
9 take me to jail and make sure there are no loopholes.

10 Q. And did you offer any inducement to
11 Mr. Weik to give you this statement?

12 A. No, sir.

13 Q. And was it in response to any questions
14 you asked him, or was that spontaneous?

15 A. It was spontaneous, he was asked no
16 questions by myself.

17 Q. All right, sir. Did you observe the
18 truck that Mr. Weik was in when you arrested him?

19 A. Yes, sir. I did.

20 Q. Did you look inside the truck?

21 A. Yes, sir. I did.

22 Q. Let me hand you a photograph and see if
23 you can recognize this. Does that appear to be the
24 interior of Mr. Weik's truck?

25 A. Yes, sir.

1 Q. All right, sir.

2 MR. BAILEY: Your Honor, I would offer
3 this photograph without objection.

4 THE COURT: State's 11 without objection.

5 (Entered into evidence was

6 State's Exhibit 11, photograph.)

7 BY MR. BAILEY:

8 Q. If you could just step around so you
9 could see the TV monitor. Tell the jury, please,
10 what that picture shows.

11 A. That's the inside of Mr. Weik's pickup
12 truck, the shotgun, where it was placed when the
13 vehicle come to a stop.

14 Q. Okay. That's the way you observed it
15 after you pulled the truck over?

16 A. Yes, sir.

17 Q. All right, sir. Have a seat.

18 A. (The witness complied.)

19 Q. I'm going to hand you a package
20 containing four 12-gauge shotgun shells and ask if
21 these appear to be the shotgun shells that you
22 removed from Mr. Weik's pocket?

23 A. Yes, sir. They appear to be the same.

24 Q. They were turned over to Tom Marshall as
25 you testified previously?

1 A. Yes, sir.

2 Q. Do you recall what pocket these shells
3 came from?

4 A. They were in his left front pocket.

5 Q. Okay. Left front pocket of his pants?

6 A. Yes, sir.

7 Q. All right, sir.

8 MR. BAILEY: I would offer these State's
9 next exhibit --

10 THE COURT: All right.

11 MR. BAILEY: -- into evidence.

12 THE COURT: Number 12. No objection.

13 (Entered into evidence was

14 State's Exhibit 12, shotgun shells.)

15 BY MR. BAILEY:

16 Q. You said earlier that you removed some
17 ATM receipts from his pocket?

18 A. Yes, sir.

19 Q. Do these appear to be the ATM receipts?

20 A. As best I can remember, yes, sir.

21 Q. And you turned those over to Tom Marshall
22 also?

23 A. Yes, sir. I did.

24 MR. BAILEY: I would offer these, Your
25 Honor.

1 MR. BEAUFORD: No objections, Your Honor.

2 THE COURT: Number 13.

3 (Entered into evidence was

4 State's Exhibit 13, ATM receipts.)

5 BY MR. BAILEY:

6 Q. Mr. Gamache, after you had handcuffed
7 Mr. Weik in your car, read the Miranda rights to him
8 and he gave you the statements you've testified to,
9 would you state whether or not Deputy Burnette
10 arrived?

11 A. Yes, sir. He arrived at the scene, yes,
12 sir, he did.

13 Q. All right, sir.

14 MR. BAILEY: Your Honor, I have nothing
15 further of Mr. Gamache at this point. I would
16 reserve the right to recall him later.

17 THE COURT: Yes, sir. That would be
18 fine.

19 Any questions of him?

20 MR. BEAUFORD: Yes, sir, Your Honor.

21 CROSS-EXAMINATION

22 BY MR. BEAUFORD:

23 Q. Officer Gamache, is there any doubt in
24 your mind that he said "I killed the only woman I
25 loved?"

1 A. Is there any doubt?

2 Q. Yes, in your mind that he made that
3 statement.

4 A. No, sir. Not at all.

5 Q. Is there any doubt in your mind that he
6 told you it all started by her trying to keep his son
7 away from him?

8 A. Yes, sir. That's what he stated, yes,
9 sir.

10 Q. No further questions.

11 THE COURT: Thank you, sir. You may step
12 down.

13 MR. BAILEY: Call Joseph Burnette.

14 THE CLERK: Come right here, please,
15 raise your right hand, place your left hand on
16 the Bible.

17 (Joseph D. Burnette, II, called as a
18 witness by the State, having first been
19 duly sworn, was examined and testified as
20 follows:)

21 THE CLERK: Come around and have a seat.
22 Would you give us your full name and spell
23 your last name?

24 THE WITNESS: Joseph Dean Burnette, II,
25 B-u-r-n-e-t-t-e.

1 DIRECT EXAMINATION

2 BY MR. BAILEY:

3 Q. Officer Burnette, where do you work at
4 this time?

5 A. Charleston County Sheriff's Office.

6 Q. All right, sir. And where were you
7 employed in April of last year?

8 A. Dorchester County Sheriff's Office.

9 Q. Okay. Were you a uniformed officer with
10 the Dorchester County Sheriff's Office on April the
11 30th of last year?

12 A. Yes, sir.

13 Q. All right, sir. And were you on duty
14 that evening of April 30th of last year?

15 A. Yes, sir.

16 Q. All right, sir. Would you state whether
17 or not you were in the vicinity of West Butternut in
18 Dorchester County?

19 A. Yes, sir. I was.

20 Q. All right, sir. And did you have
21 occasion to go to West Butternut and Marie Street?

22 A. Yes, sir. I did.

23 Q. All right, sir. And why did you go to
24 that area?

25 A. I was headed that way to back up Deputy

1 Gamache on a traffic stop.

2 Q. All right, sir. And were you operating a
3 marked sheriff's police cruiser?

4 A. Yes, sir.

5 Q. And what type of equipment did you have
6 on that particular car?

7 A. It had a camcorder.

8 Q. Okay. Video camera?

9 A. Yes, sir.

10 Q. All right, sir. And when you pulled up
11 to the scene, what did you observe?

12 A. I observed Deputy Gamache. There's
13 another guy -- I can't remember exactly who it was --
14 standing there and they had a suspect in the back of
15 Gamache's car and had a pickup pulled over right
16 there in the road.

17 Q. Where did you park?

18 A. I pulled in right behind Deputy Gamache.

19 Q. That's the car that Mr. Weik was in?

20 A. Yes, sir.

21 Q. Handcuffed. Was he already handcuffed
22 when you got there?

23 A. Yes, sir.

24 Q. Was he in the back seat or the front seat
25 of Mr. Gamache's car?

1 A. He was in the back seat.

2 Q. When you arrived there who was the senior
3 officer present at that time you arrived?

4 A. I believe with the most time I believe I
5 was on the scene.

6 Q. Okay.

7 A. Still PFC, we didn't actually have any
8 rank.

9 Q. All right, sir. Was Mr. Weik already in
10 custody when you arrived, when you showed up?

11 A. Yes, sir.

12 Q. Already handcuffed?

13 A. Yes, sir.

14 Q. Did you have any conversation with
15 Mr. Weik?

16 A. Yes, I did.

17 Q. All right, sir. What, if anything, did
18 you say to him when you showed up?

19 A. When I got there I had talked to Deputy
20 Gamache, conversed with him. Shortly after I went
21 and activated the video camera and I spoke with
22 Mr. Weik.

23 Q. Okay. Let me ask you this: Did you
24 determine whether or not Mr. Weik had been given
25 Miranda rights?

1 A. Yes, sir. I asked Deputy Gamache if he
2 had read him his rights, Miranda rights. He said he
3 had. I also asked Mr. Weik if he had been read his
4 rights and he said he had.

5 Q. Okay. At this time your car was parked
6 behind Mr. Gamache's car; is that correct?

7 A. Directly behind it, yes, sir.

8 Q. Okay. And did you turn your camera on?

9 A. Yes, sir.

10 Q. Video camera?

11 A. Yes, sir.

12 Q. Was there any conversation other than
13 what you've already described where you asked
14 Mr. Weik if he had been read his Miranda rights, that
15 you had with him before you turned your camera on?

16 A. I'm sorry, repeat. I'm lost.

17 Q. Okay. Did you have any conversation with
18 Mr. Weik before you turned the camera on that you can
19 recall?

20 A. No, sir. I did not.

21 Q. Anything significant?

22 A. No, sir.

23 Q. All right, sir. And did Mr. Weik talk to
24 you voluntarily after you turned the video camera on?

25 A. Yes, sir.

1 Q. Okay. And did your recording -- your
2 camera record the conversation?

3 A. Yes, sir.

4 Q. Have you had a chance to review a
5 videotape of -- from your camera?

6 A. Yes, sir. I have.

7 Q. All right, sir. And as far as the sound
8 quality, how would you describe that?

9 A. It was pretty good at times. There was
10 some interference throughout some parts of the tape
11 where you couldn't really hear what was being said
12 exactly.

13 Q. All right, sir. I'm going to show you a
14 videotape here and ask if you can identify that.

15 A. Yes, sir. This is it, I've initialed
16 right at the bottom, it's one that I viewed.

17 Q. All right, sir. You viewed and listened
18 to that tape; is that correct?

19 A. Yes, sir.

20 Q. And then put your initials on it?

21 A. Yes, sir.

22 Q. That is the tape you listened to?

23 A. This is the tape.

24 Q. Okay. And does that tape accurately
25 represent the conversation between you and Mr. Weik

1 on the side of the road on April 30th, 1998?

2 A. Yes, sir. It does.

3 Q. All right, sir. I'm handing you another
4 document and ask if you've seen that document before?

5 A. Yes, sir.

6 Q. Okay. And is that a transcript of a
7 portion of this tape?

8 A. Yes, sir.

9 Q. And would you state whether or not you
10 followed along with the transcript and listened to
11 the tape at the same time to determine whether or not
12 that transcript's a reasonably accurate
13 representation of what's on the tape?

14 A. Yes, sir. I did.

15 Q. And is it?

16 A. Yes, sir.

17 Q. All right.

18 MR. BAILEY: Your Honor, I would offer
19 both the tape and the transcript.

20 THE COURT: Any objection?

21 MR. BEAUFORD: No objections, Your Honor.

22 THE COURT: All right, sir.

23 (Entered into evidence was

24 State's Exhibit 14, videotape.)

25 (Entered into evidence was

1 State's Exhibit 15, transcription.)

2 MR. BAILEY: Your Honor, I'd like to
3 utilize the same procedure I did before and
4 provide copies to the jurors.

5 THE COURT: Yes, sir.

6 MR. BAILEY: Your Honor, did you want a
7 copy also? I've got extra.

8 THE COURT: I don't need one. Do you all
9 have one?

10 MR. BEAUFORD: Yes, we do, Your Honor.

11 (Videotape, State's Exhibit 14, played
12 for the jury.)

13 THE COURT: All right. If you would take
14 those up, please.

15 Any other questions of this witness?

16 MR. BAILEY: Just a couple more questions
17 very briefly.

18 THE COURT: All right.

19 BY MR. BAILEY:

20 Q. Mr. Burnette, after Mr. Weik was
21 transported from the scene that we've seen here to
22 the law enforcement complex, what did you do?

23 A. I stayed behind with the vehicle, secured
24 that scene until Detective Bills arrived and the
25 county wrecker.

1 Q. Okay. And when the county wrecker
2 arrived, did it tow the truck to the law enforcement
3 complex?

4 A. Yes.

5 Q. Did you follow the truck in?

6 A. Yes, sir.

7 Q. And did anybody disturb the truck in any
8 way between the time you arrived and Mr. Weik was
9 being arrested from the time the truck arrived at the
10 law enforcement complex from the tow truck?

11 A. No, sir.

12 Q. All right, sir. And did you sign off on
13 the tow form here, is that your signature?

14 A. Yes, both places.

15 Q. All right, sir.

16 MR. BAILEY: We would offer it without
17 objection, Your Honor.

18 MR. BEAUFORD: No objection.

19 THE COURT: All right.

20 (Entered into evidence was

21 State's Exhibit 16, Vehicle Custody
22 Protection Form.)

23 BY MR. BAILEY:

24 Q. That's all I've got. Thank you very
25 much. The defense may have some questions for you.

CROSS-EXAMINATION

BY MR. BEAUFORD:

Q. Just a couple questions. Officer Burnette, is it fair to say that Eddie's behavior that day was somewhat strange?

MR. BAILEY: Your Honor, I object to that. The tape and the transcript speak for themselves. To characterize that it was strange wouldn't aid the jury in any way since they heard all the same thing.

THE COURT: All right. Go ahead. You can ask it.

BY MR. BEAUFORD:

Q. Is it fair to say that his behavior was strange that day?

A. It was I would say different. The way things are now nothing seems strange to me anymore.

Q. Is it fair to say that he was quite emotional?

A. He was somewhat emotional, yes, sir.

Q. No further questions.

REDIRECT EXAMINATION

BY MR. BAILEY:

Q. Did you think that if someone had just shot someone in cold blood four times that they would

1 tend to be emotional?

2 MR. BEAUFORD: Objection to that
3 characterization.

4 THE COURT: You opened the door. Go
5 ahead, sir.

6 THE WITNESS: Could you repeat the
7 question?

8 BY MR. BAILEY:

9 Q. In your experience would you think that
10 somebody who shot somebody four times with a shotgun
11 would be emotional right after that happened?

12 A. I would definitely think so.

13 Q. Thank you, sir.

14 THE COURT: Thank you, sir. You may step
15 down.

16 All right. Ladies and gentlemen,
17 we're going to stop the testimony at this
18 point in time. I would like the SLED agents,
19 if you all could, please -- it's 12:30. I
20 want the SLED agents to come in, they're going
21 to introduce themselves to you all. I'm going
22 to swear them, tell them what I told you this
23 morning and then let them carry you, get you
24 something to eat, do whatever else you need.

25 Ladies and gentlemen, would you

1 mind, please, coming around before the bench
2 here? I'd like -- I told the jury I would
3 like for you all, if you don't mind, to
4 introduce yourselves to them. I know you'll
5 get to know each other shortly, but would you
6 do that for me, please?

7 (SLED agents introduced to the jury.)

8 THE COURT: Ladies and gentlemen of the
9 jury, I explained to you all earlier this
10 morning that these folks are going to be
11 helping you all, they're going to provide for
12 you transportation and so forth, they're going
13 to be with you. As a matter of fact, I'm
14 going to stay out there the same place you're
15 going to be staying. And these ladies and
16 gentlemen are going to do the same.

17 At night there will be somebody up
18 all night to be sure that no one would come to
19 your room, or in any way try to contact you
20 all. And obviously, you know, works the other
21 way around, I don't want you deciding you want
22 to go home for a little while, so we have them
23 posted there for you.

24 They are going to provide the
25 transportation, they're going to provide -- of

1 course, the county will provide for lodging
2 and they will be with you for your meals and
3 so forth. And I've told them these things and
4 I've told you as well, that I would allow you
5 all to make phone calls. But there are going
6 to be, I believe, a couple of phones probably
7 in a designated area, designated room.

8 A couple of agents will be there,
9 one at least will be there when you make the
10 calls so there won't be any discussion of the
11 case and so forth. I understand you want to
12 call home and see how things are going, that's
13 not a problem.

14 And televisions will be provided you
15 all will watch, but they're going to have to
16 monitor that because obviously we don't want
17 any newscast and so forth. Other than that,
18 there will be a couple of televisions at
19 least, maybe some VCRs so some of you might
20 want to watch a movie and the other one a
21 television. We'll work all that out, it's not
22 going to be a problem, I don't believe.

23 They've done this many times, very
24 experienced, you will find that they will
25 accommodate you, I'm sure, in every way

1 possible.

2 I've told them and I've told you
3 this morning that I am not going to prohibit
4 someone from using alcohol or chewing tobacco
5 if that's what you want to do, or smoking
6 cigarettes. There will be a room for smokers
7 and nonsmokers, those who want to watch TV
8 without smoke. Otherwise I think they're
9 going to have two rooms maybe for that, we'll
10 work on that.

11 At any rate, I've told them that I
12 will not prohibit you all from consuming some
13 alcohol in the afternoon if you want to, when
14 you go out to eat for supper or whatnot if you
15 want to have two drinks. I don't care whether
16 they're mixed drinks, whether they're beer or
17 what, I don't care what they are, wine, two is
18 the limit, ladies and gentlemen. They pay for
19 it. The individual pays for it.

20 Same with the chewing tobacco. I
21 wish I could put that on the list. You all
22 would pay for that. I'd go and try to get you
23 to pay that for me, but no tobacco, no
24 alcohol, State's not going to pay for it. If
25 you want that certainly you're entitled to do

1 that with those limitations.

2 I don't believe that there's
3 anything else. If there is, from time to time
4 certainly we can discuss it. I will tell you
5 all this: You sit together, I would ask you
6 all now not to discuss the case at all. That
7 may seem a little strange to you. But there's
8 a reason for it. Because you know how it
9 goes, you pair up, somebody sits next to you
10 and you think, you say, well, what do you
11 think about this or that. And before long the
12 two of you have a conversation and nobody else
13 is involved in it. And this process is for 12
14 people to be involved at one time in one place
15 after all the evidence is heard and after the
16 law is given to you.

17 And so to -- you can certainly
18 rehash in your own minds everything that
19 you've heard, that's what you ought to do, I
20 don't have a problem certainly with that, but
21 it's not proper for you all to discuss the
22 case among yourselves. These agents will not
23 say a word, I'll assure you about this matter,
24 and I would ask you all not to say anything to
25 them. You can talk about anything in the

1 world you want to talk about other than this
2 case. And I'm satisfied that they will comply
3 and I'm sure you will, too.

4 Let me ask you all, if you will,
5 please, to raise your hands and let me give
6 you an oath as best I can.

7 (SLED agents sworn.)

8 THE COURT: Thank you very much. What
9 I'm going to do, ladies and gentlemen, is to
10 have you all filed out. By the way, I don't
11 want anyone leaving this courtroom, I want
12 everyone to stay in the courtroom until this
13 jury leaves. You all are going to go out and
14 they will carry you down to your various cars
15 and so forth. And they will make arrangements
16 with the business with the cars and so forth,
17 all that's going to be arranged for you.

18 Whatever you want will happen. If
19 it doesn't happen, you come back and you let
20 me know. It will happen. You won't have to
21 worry about reporting it to me because it will
22 happen. You need to put it in the police
23 lockup and whatnot, they'll do it for you to
24 keep it safe. Or if you want it to be carried
25 home or something we can work it out for you,

1 but just let them know what your desires are
2 and I'm satisfied they'll do whatever they can
3 to make your time convenient.

4 It's 12:30, 12:35 by that clock in
5 the back, mine says 12:40. Let's -- if we
6 can, let's start back at 2:00, that gives you
7 an hour and -- almost an hour and a half. But
8 by the time you check in the motel and get a
9 sandwich or whatnot it will probably take that
10 hour and a half. But we will shoot for 2:00
11 if we could. And then when you all come up
12 you all will just come to the jury room and
13 then I'll bring you out.

14 The other thing is this, I haven't
15 appointed a foreperson lady or gentleman. I
16 may not. I may let you all decide who you
17 would like to have serve as your foreperson,
18 doesn't make any decision (sic). You don't
19 need to decide today, it can wait. That
20 person usually sits where you are sitting
21 there, but it doesn't make any difference, no
22 assigned seats, just sit where you want to.

23 I know how it is, most people when
24 they get their seat it's their seat, I've seen
25 that for years. Anyway, you can do whatever

1 you want to do about that and we'll talk about
2 the foreperson somewhere later in the trial.

3 All right. You all have a good
4 lunch and I'll see you at 2:00.

5 (Jury excused.)

6 **THE COURT:** Ladies and gentlemen, those
7 of you now who remain in the courtroom, I
8 realize that this is -- this business, this
9 trial and so forth is a trying situation for
10 people from every corner of this courtroom.
11 It's trying for the State, the lawyers for the
12 State, all the witnesses, the same for the
13 defendant, for his lawyers, all the people who
14 are helping him.

15 It's trying for the police officers,
16 it's trying for the court reporter, it's
17 trying for clerks, it's trying for law clerks,
18 it's trying for judges, it's trying for
19 bailiffs, it's trying for everyone. I don't
20 know that I've left anybody out, it's trying
21 for everyone, certainly all the people who are
22 witnesses.

23 It's your courthouse, you're
24 entitled to be here, but I can tell you while
25 it may be trying I am not going to let

1 anything disrupt this trial. Nothing. I
2 don't want anyone to say anything, I don't
3 want anyone to show any emotion if it is at
4 all possible. Because if I see that there's a
5 problem with anyone, I'm simply going to shut
6 the doors to those people, they're just not
7 going to be able to stay in the courtroom.
8 And it's your courthouse and you're entitled
9 to be here.

10 I'm not threatening you. I'm just
11 telling you the trial's going to run and I'm
12 going to run it and we're going to end this
13 case with or without you. If you want to sit
14 here, fine. If you don't want to sit here,
15 causes me a little trouble, and I'm going to
16 send you out, that's all there is to it. I'm
17 not going to put up with any foolishness from
18 anyone, I don't care who you are or what the
19 reason is. I'm not going to do it.

20 And I've instructed these officers
21 that if I hear, if they hear or they see any
22 problems taking place I'm going to leave it to
23 them to go take the person out and then we'll
24 discuss it at the later time. I'm going to
25 let the officers carry the people out of the

1 courtroom at least until the witness is
2 finished testifying, then we can have a
3 hearing to determine whether or not I saw what
4 they saw. But I'm not going to waste time and
5 have officers -- I'm not going to direct
6 traffic from up here. That's what they're
7 here to do and I expect them to do what
8 they're here to do. All right. 2:00.

9 (Lunch recess taken.)

10 THE COURT: All right, ladies and
11 gentlemen, take your seats. Thank you. All
12 right. You can bring the jury, please.

13 (Jury present.)

14 THE COURT: All right, Solicitor.

15 MR. BAILEY: State calls Dr. Kim Collins.

16 THE CLERK: You need to put your left
17 hand on the Bible and raise your right hand.

18 (Kim A. Collins, MD, called as a witness
19 by the State, having first been duly
20 sworn, was examined and testified as
21 follows:)

22 THE CLERK: Have a seat over here,
23 please. State your full name for the record,
24 please.

25 THE WITNESS: Kim A. Collins,

1 C-o-l-l-i-n-s.

2 DIRECT EXAMINATION

3 BY MR. BAILEY:

4 Q. Ms. Collins, please tell the jury where
5 you're employed.

6 A. At the Medical University of South
7 Carolina in Charleston.

8 Q. Are you a licensed physician?

9 A. Yes, I am.

10 Q. Would you tell the jury what your
11 educational background is?

12 A. I attended college at the University of
13 Georgia where I received my BS in microbiology. I
14 then went to medical school at the Medical College of
15 Georgia where I received my MD. After completing
16 medical school I went into pathology training and I
17 did an anatomic and a clinical pathology residency
18 for five years at Bowman-Gray School of Medicine in
19 North Carolina. I then came to the Medical
20 University of South Carolina where I completed a
21 one-year forensic fellowship at the Medical
22 University.

23 Q. You're presently employed in what
24 capacity?

25 A. I am on the faculty of the medical and

1 dental school as an assistant professor and I am the
2 chief medical examiner.

3 Q. Would you tell the jury, please, how many
4 autopsies you have perform or participated in?

5 A. Probably an estimate around 2,000 or so.

6 Q. Have you testified as an expert in the
7 field of forensic pathology in the past?

8 A. Yes, I have.

9 Q. On approximately how many occasions have
10 you testified?

11 A. Probably around 100.

12 MR. BAILEY: Your Honor, I would tender
13 Dr. Collins as an expert in forensic
14 pathology.

15 THE COURT: Any questions of her?

16 MS. HARDEE-THOMAS: No.

17 MR. BEAUFORD: None from the defense,
18 Your Honor.

19 THE COURT: I find that she's qualified
20 as a forensic pathologist.

21 Ladies and gentlemen of the jury,
22 very briefly, Dr. Collins is qualified in the
23 field of forensic pathology. People who
24 testify generally as laywitnesses can tell you
25 what they see, what they hear, what they feel.

1 Obviously from their senses, five senses.

2 Basically a person, if he or she is
3 qualified as an expert, can give her opinion
4 in her particular field because she has
5 special training, skill, knowledge, experience
6 and so she can help you, help me. Those of us
7 who would not ordinarily understand about
8 certain of these matters, she is allowed to
9 give her opinion.

10 I will tell you, though, that just
11 because this witness or any other qualifies as
12 an expert, does not mean that you must take
13 her testimony as absolutely truth. Obviously
14 you have to consider her testimony like you
15 would any others, you give it the weight you
16 feel it deserves. But obviously you would
17 consider -- and while she gives her opinion
18 you would consider her ability to know about
19 what she speaks. And also the facts upon
20 which she bases her opinion, that may be of
21 some benefit for you to consider as well.

22 So you're the jury, you're the
23 judges of the facts of the case, and so you
24 listen to her testimony and give it the weight
25 it deserves. You do it like any other

1 witness.

2 BY MR. BAILEY:

3 Q. Would you please tell the jury, first of
4 all, what a forensic pathologist is?

5 A. A pathologist is one who studies in
6 diseases of the human body, and a forensic
7 pathologist investigates unnatural or unexplained
8 death or trauma. And so that is my capacity at the
9 Medical University, I'm a forensic pathologist.

10 Q. Doctor, calling your attention to May 1st
11 of last year, did you participate in doing an autopsy
12 on the body of a 27-year-old white female identified
13 to you as Susan Krasae?

14 A. Yes, I did. We began the examination at
15 10:00 in the morning.

16 Q. Would you state whether or not Detective
17 Tom Marshall of the Dorchester County Sheriff's
18 Office was present during that autopsy?

19 A. Yes, he was.

20 Q. What about Dr. Theresa Campbell, was she
21 present also?

22 A. Yes, she is my colleague.

23 Q. Did you conduct this autopsy pursuant to
24 authorization from the coroner, Chris Nesbit?

25 A. That's correct.

1 Q. Would you briefly describe to the jury
2 what you do during an autopsy?

3 A. All of our autopsies we first begin with
4 an external examination. And we examine the body in
5 the clothes, if it has clothes on, we take
6 photographs from both sides and we take a facial
7 identification shot. With certain cases, especially
8 gunshot wounds, we do x-rays of the body so we have
9 radiographs of any kind of bullets that are within
10 the body.

11 We then take the clothes off and
12 wash the body and we can determine any of the wounds
13 that are present. We then do a complete autopsy. No
14 matter where the wounds are we do complete autopsy on
15 all of our cases, examining the brain and internal
16 organs.

17 And at that time we also take
18 specimens for drug analysis, we take blood, we take
19 urine, and different tissues from the body. And then
20 we go and we dissect each of the organs of the body
21 and we take sections of those so that we can look at
22 the tissue under the microscope.

23 Q. In the case of the autopsy you did on the
24 body of Ms. Krasae, did you prepare an anatomical
25 sketch showing the exterior appearance of the body

1 before you opened it?

2 A. Yes. We have standard male, female, and
3 child diagrams that we use on each case.

4 Q. Let me hand you this, ask if this is an
5 enlargement of one of the blank diagrams that you
6 routinely use?

7 A. Yes, that is correct.

8 Q. Okay. And if you would, Doctor, you have
9 your notes with you?

10 A. Yes.

11 Q. And you have a chart similar to this
12 that's got a lot of markings on; is that correct?

13 A. Yes.

14 Q. Using that to refresh your memory, could
15 you use this chart here and indicate to the jury what
16 external markings you saw on Ms. Krasae's body? And
17 I've got a marker here.

18 A. Okay. What I have -- I'll be referring
19 to two things. One is my body diagram, which as you
20 can see is very marked up and so it will be a lot
21 easier to transfer a lot of these illegible notes
22 onto this clean diagram. And there are many wounds,
23 many injuries, so you will see me refer back and
24 forth to the report so that I can try to get them
25 correct as I draw them in.

1 We arbitrarily begin with the head.
2 It does not mean the head injury occurred first, has
3 nothing to do with that. We arbitrarily number or
4 letter them, such as the first one I'm going to do is
5 the head and we just called it A. We just
6 arbitrarily go from head down.

7 So she had a wound, a gunshot wound.
8 And I'll use the word gunshot to refer to gunshot,
9 shotgun, just a generic term. She had this to the
10 right face. And here is a long shape, because the
11 pellet goes in and it kind of tunnels around, grazes
12 the top of the skin, goes into the tissue, also
13 fractures the bone and then it comes out, one of the
14 pellets comes out right here. So we've got a
15 circular, single hole right here on her right side of
16 her face here.

17 She also had some stippling or
18 dotting which can be due to one of two things, either
19 gunpowder or it can be due to -- if you have seen
20 shotgun shells, the polyethylene filler, that white
21 powder inside a cartridge, it can be due to that. So
22 she had kind of polka-dot abrasions or scratches on
23 her face. So I'll just do little dots here.

24 And she also had what looked like a
25 black eye on the right. And that's secondary to this

1 injury, the blood seeps in and gives you a little
2 black eye underneath. The right cheekbone was
3 fractured. She also had an abrasion or a scratching
4 off of the skin on the left chin. Not a gunshot
5 wound, but an abrasion, it's still significant.

6 Now we'll move down to the thorax
7 and abdomen. The next one I arbitrarily named B. B
8 is kind of on the right, upper chest getting near the
9 shoulder. It is composed of six holes. Like I said,
10 it's composed of six holes, they're irregular.
11 There's a large one right here where like one of the
12 pellets did the same as it did on the cheek and
13 grazed along through here. And the direction is
14 pretty much backwards, just as the pellets are coming
15 out of the cartridge out of the shotgun they will
16 start to spread depending on how far away the barrel
17 is.

18 The next one is C, this was to her
19 right breast. It was kind of irregular, had
20 scalloped edges because the gun was coming away and
21 the pellets were starting to spread. And adjacent to
22 this large area there are three separate pellet
23 entrance wounds which I'll draw here. So most of the
24 pellets went into one big defect here, and we had
25 three little satellite pellets here on the side. A,

1 B, and C.

2 D is to the right chest just medial
3 to C. So this is D. E is to the -- kind of getting
4 toward the midline of the chest, near her breast, but
5 it's still toward the right. So this one's E. F is
6 now on the left chest, so this is F.

7 So what we've got here in this area
8 are multiple penetrating wounds from shotguns, and so
9 you've got all these pellets entering all the organs
10 in the chest area, so we've got damage to the
11 internal organs within the chest. This damage
12 includes not only the skin and the muscles of the
13 chest, also went through the ribs, through the
14 sternum, through the breastbone, went through the
15 heart, through the lungs, through the aorta which is
16 your major artery carrying blood in the body, through
17 your esophagus where your food goes, all the way into
18 the back. And some of the pellets got into the
19 backbones themselves.

20 And then on the back we had three of
21 the pellets actually came out and exited. Three
22 exited. And in this same area three more were
23 beneath the skin. We could see three similar little
24 bruises where we actually could pop the pellets out.
25 So six really came into this area, three came on out.

1 Okay. The next letter we'll go to
2 is going to be G. G is to the right elbow, right arm
3 region. The main defect is actually in the elbow
4 here. However, her right arm was mangled and
5 macerated, held together by some muscle and skin.
6 And I'll just block off about this area here which
7 was just pure ground pulpified tissue, muscle,
8 vessels, nerves, skin. So even though the target --
9 or the cartridge, the shells initially entered here,
10 remember all this area is destroyed. That is G.

11 H is to the right leg, right thigh
12 region. A large hole here where several pellets went
13 in, several of the lead pellets went in. Because you
14 could see deep in the muscle there are separate
15 individual holes going in as well as some satellite,
16 meaning just some stray flyers just like these out to
17 the side. And then there was an abrasion which we
18 think was caused by a pellet grazing, just like on
19 these two grazing the skin which actually ended up
20 entering her left leg. And then another re-entry
21 from one of the pellets going across this way, out
22 the thigh and into the left leg.

23 There were also entrance wounds in
24 her inguinal or in her -- the fold when you lift your
25 leg up, the fold here. She also had it on the

1 outside, her labia, outside of her -- kind of the
2 outside of your vagina. And on the pubic bone or the
3 mons pubis right here. These are all entrances here.

4 And on the back of her we had six
5 exits where the bullets went in and then popped back
6 out, there were six holes, two beneath the fold of
7 the left hip and four kind of on the medial aspect of
8 the back of the right leg, so kind of on the middle
9 here. There were four exit wounds. We called all of
10 these H that involved the pelvic region and the back
11 of the legs, the entrances and the exit wounds here.

12 MR. BAILEY: Let me go ahead and offer
13 this, Your Honor, into evidence.

14 THE COURT: All right. Any objection?

15 MR. BEAUFORD: No objections, Your Honor.

16 THE COURT: All right.

17 (Entered into evidence was

18 State's Exhibit 17 female drawing form.)

19 MR. BAILEY: State's 17.

20 BY MR. BAILEY:

21 Q. Dr. Collins, is it possible for you to
22 determine based on the wounds that you've described
23 on this chart, how many shotgun blasts were fired at
24 Ms. Krasae?

25 A. At least six, there could be more.

1 Because as I've indicated several times on the chart,
2 we had some stray pellets which could have been from
3 a separate shot where the majority maybe missed her
4 totally and one or two entered the body, but at least
5 six times.

6 Those would have been to the head,
7 as I showed the right side of the face, the arm,
8 right breast, the chest, right leg, and possibly
9 another one into the chest.

10 Q. Now, did you take -- did you remove any
11 foreign objects from Ms. Krasae's body?

12 A. Any pellets that we found we removed. We
13 also had a piece of the wadding which is part of the
14 shotgun cartridge. Anything removed we sent and we
15 turned over as evidence.

16 Q. Did you photograph the objects you
17 removed from Ms. Krasae's body?

18 A. Yes, we did.

19 Q. Let me hand you some photographs and ask
20 if you can identify these.

21 A. And I also have an itemized listing of
22 everything we removed and where it was removed from.

23 Q. All right.

24 A. This was a piece of gray metal which --

25 Q. First of all, let me just ask you to look

1 at all of them as a group and ask whether or not
2 those are photographs that you took from the autopsy?

3 A. Yeah. These are our photographs, we take
4 them on a blue autopsy towel. You'll see they've got
5 a label on the top indicating from where we got the
6 pellets.

7 THE COURT: Hold it one second. If you
8 don't mind, you just look at them yourself and
9 you decide whether or not they are -- I don't
10 know what they are, I hadn't seen them myself,
11 either. My understanding was is that there
12 were no photographs of -- I don't know what
13 they are.

14 MR. BAILEY: They're photographs of the
15 pellets wadding.

16 THE COURT: Objects themselves.

17 MR. BEAUFORD: May I have a look at them?

18 THE COURT: Yes, sir.

19 MR. BEAUFORD: No objection.

20 BY MR. BAILEY:

21 Q. Doctor, I'm going to hand these back to
22 you again, and just ask you to state whether or not
23 all of these are photographs of foreign bodies that
24 you removed from Ms. Krasae's body on May 1st of last
25 year?

1 A. Yes, they all have our labels.

2 MR. BAILEY: Your Honor, I would offer
3 these, I believe without objection from
4 defense.

5 THE COURT: All right, sir.

6 MR. BEAUFORD: No objections, Your Honor.

7 THE COURT: All right.

8 (Entered into evidence were State's
9 Exhibits 18 through 27, photographs.)

10 BY MR. BAILEY:

11 Q. What I'm going to do is have Mr. Bell put
12 them on the monitor one at a time and I'll read the
13 exhibit number and ask you to describe to the jurors
14 what these depict. And if you can correlate it to
15 the location of the chart we just discussed. This is
16 State's 18.

17 A. Okay. These are -- they're kind of
18 deformed because they end up going through bone and
19 such. So we've got some deformed gray pellets which
20 we removed from the back area. And remember, we
21 had -- I mentioned we had three in her -- beneath the
22 skin. We had three beneath the skin near these three
23 exit wounds on the back and then there were three
24 other ones that were within the back soft tissue that
25 had originated from these shots here.

1 You cannot tell which shot were
2 these pellets because once they hit tissue they
3 dispersed and they spread. All you can say is these
4 six came from these shots here.

5 Q. All right. State's 19.

6 A. This is one that was removed from the
7 heart. So it would have, again, have originated from
8 one of the shots here that went -- several pellets
9 went through the heart.

10 Q. State's 20.

11 A. This was a wadding, which is part of your
12 shotgun cartridge, which was found loose in the
13 clothing. It could have come, fallen out of one of
14 these holes here after the shooting. Or maybe it was
15 just loose within her clothing, maybe it never even
16 entered the body, just entered the clothing.

17 Q. And State's 21.

18 A. We've got the wadding here and some
19 pellets that were found in the left chest region when
20 we opened the body and so we recovered these. I'm
21 sorry, left chest would be over here near F.

22 Q. State's 22.

23 A. Again, this is one of the pellets that
24 was found within the left breast tissue.

25 Q. State's 23.

1 A. Okay. The buttocks or the hips, these
2 were some pellets that we recovered upon dissection
3 within the tissue of the hips originating from H, the
4 gunshot wound H.

5 Q. State's 24.

6 A. This is the wadding and some pellets from
7 the right breast tissue. And the wadding was found
8 around these two holes, D and E, we designated those.
9 Then the pellets were within the soft tissue from any
10 one of these shotgun wound entrances.

11 Q. State's 25.

12 A. Maxilla, that's your bone in your mouth
13 here. It would have been from the A, the face. So
14 there was a pellet that went into the bone here, the
15 maxilla.

16 Q. Twenty-six.

17 A. Okay. This was midline chest region,
18 again, originating from one of the shots B through F.

19 Q. And State's 27.

20 A. Okay. Right cheek, again, from gunshot
21 wound or shotgun wound A, we recovered from the right
22 cheek, one, I believe. Or these are the pieces of
23 deformed metal that were found which would have
24 originated from a whole pellet in the right cheek.

25 Q. You can have a seat, Doctor.

1 A. (The witness complied.)

2 Q. I'll next hand you a box and ask if
3 you'll examine the contents and see if you can
4 recognize those.

5 A. I believe these are the originals of what
6 the pictures are.

7 Q. Okay. These are the actual pieces of
8 pellet and wadding you removed from Ms. Krasae's
9 body?

10 A. Yes, they are.

11 Q. If you could, Doctor, take those one at a
12 time and give me a general description, hand that to
13 me.

14 A. We've got our autopsy stickers on here to
15 identify it. This one says a pellet with wadding
16 from the left chest. Pellets. There's several
17 pellets here from the left chest.

18 MR. BAILEY: And I would offer this.

19 Your Honor, what I would like to do is offer
20 the entire box, but have them numbered
21 separately. I think Mr. Beauford has no
22 objection to that. So rather than having her
23 go through this drill of identifying each one,
24 if I can just --

25 THE COURT: Let us put all one thing on

1 one box?

2 MR. BAILEY: I would like to have them
3 marked separately, but if she could just maybe
4 testify for the record that she's prepared the
5 labels and the labels depict the location she
6 got the material from.

7 THE COURT: All right.

8 BY MR. BAILEY:

9 Q. Doctor, as far as labels on each one of
10 those containers, on the plastic part of the
11 containers, were those prepared by you or somebody
12 under your supervision in the course of the autopsy?

13 A. Yes, Dr. Campbell and I. We've also
14 listed them, kind of itemized them within in the
15 autopsy reports so they're kind of duplicates,
16 exactly what's on the label is in the report.

17 MR. BAILEY: I would offer all of these
18 and would ask the court reporter if she could
19 mark those separately in sequence.

20 THE COURT: All right. Without objection
21 as I understand it?

22 MR. BEAUFORD: That's correct.

23 THE COURT: All right.

24 (Entered into evidence were
25 State's Exhibit 28 through 37, items

1 removed during autopsy.)

2 BY MR. BAILEY:

3 Q. Okay. Dr. Collins, I believe you
4 testified that you performed or participated in
5 roughly 1,000 autopsies; is that correct?

6 A. Around 2,000, yes.

7 Q. 2,000, I'm sorry.

8 And with respect to shotgun wounds
9 as opposed to, say, a rifle or a pistol wound, are
10 you familiar with the difference in the wounds a
11 shotgun would create?

12 A. Yes.

13 Q. All right. And someone who is shot with
14 a pistol or rifle, is there generally one entrance
15 wound?

16 A. Yes, unless -- yes.

17 Q. Okay. And what's the difference in a
18 shotgun wound?

19 A. With a shotgun actually you've got
20 instead of one bullet or projectile, now you've got
21 multiple because you have the pellets. And there's
22 also a great deal of force, especially if you're at
23 close range, that comes with all of those pellets
24 ejecting out of the gun simultaneously.

25 And once they get into that body

1 each individual pellet will carry that energy, and as
2 I mentioned they disperse. So you've got one shot,
3 one pull of the trigger causing a lot of pellets
4 dispersing to a lot of different organs, so you've
5 got massive, devastating trauma.

6 Q. All right. Would the number of entrance
7 wounds depend on the type of shotgun shell that we're
8 talking about?

9 A. That's correct.

10 Q. The type, the gauge as well as the type
11 of shot that's in the shell?

12 A. The gauge, the choke, the type of gun,
13 the type of ammunition, all of that.

14 Q. So are you able to determine with any
15 certainty how many times Ms. Krasae was shot, or is
16 the estimate you gave an estimate?

17 A. Well, we know it was multiple and it's
18 different locations of the body. The part that you
19 might be able to give or take one would be in the
20 chest area because you've got intersecting paths of
21 the pellets and you've got such maceration to the
22 soft tissue that you can have an overlap of the
23 shotgun wounds individually.

24 Q. So you can determine how many pellets
25 entered the body, but you cannot determine with

1 100 percent certainty how many times she was actually
2 shot; would that be a fair assessment?

3 A. I can't determine exactly, yes, how many
4 times the trigger was pulled.

5 Q. All right. Are you able to determine
6 from the trauma to the body the primary point of
7 impact, do you have a spread of pellets hitting the
8 body?

9 A. You can determine what we would say is
10 the entrance wound, where they initially contacted
11 the body and went in. Like on the elbow I showed
12 you, she's got the round entrance wound. Then on the
13 other side of her arm as the pellets spread the
14 tissue's just torn and pulpified. So you've got the
15 entrance wound where they enter.

16 Q. Is the right breast an entrance wound?

17 A. Yes, it is.

18 Q. Is the groin area an entrance wound?

19 A. Yes, on the right labeled H.

20 Q. Okay. Doctor, what is your opinion, to a
21 reasonable degree of medical certainty, as to the
22 cause of Ms. Krasae's death?

23 A. Heart and aortic lacerations or tearing
24 due to multiple shotgun blast.

25 Q.. Thank you, ma'am. That's all I have.

1 Please answer any questions that the defense may have
2 for you.

3 CROSS-EXAMINATION

4 BY MR. BEAUFORD:

5 Q. How are you doing today, Dr. Collins? I
6 have a few questions.

7 A. Fine, thank you.

8 Q. Is it safe to say that someone receiving
9 this many shots died immediately?

10 A. It would depend on -- trying to answer
11 straight with you, depend on what you're saying is
12 immediate and also which wounds came first.

13 Q. Can you determine which wounds came
14 first?

15 A. No, you cannot.

16 Q. And do you still feel safe with your
17 answer to say that there was at least six shots?

18 A. Five to six, yes.

19 Q. Five to six.

20 Can you determine whether someone
21 was in pain by an autopsy?

22 A. You know based on the injuries that you
23 see. Now, whether the person felt the injury at the
24 time you cannot tell at autopsy, but you know that
25 the -- for instance, the maceration of the arm would

1 have been extremely painful.

2 Q. Basically sometimes people get shot and
3 go into shock and don't feel pain?

4 A. They would feel it initially because
5 shock takes a few minutes.

6 Q. Then would it be safe to say they go
7 unconscious?

8 A. If they go into shock, that's correct.

9 Q. In a matter of seconds they go
10 unconscious?

11 A. Could be minutes. It depends on how much
12 blood is lost and where the injury is.

13 Q. No further questions.

14 REDIRECT EXAMINATION

15 BY MR. BAILEY:

16 Q. A couple questions to follow up on that,
17 Doctor.

18 A. Yes.

19 Q. If you would assume the first shot was to
20 the arm, would that be an immediately fatal shot?

21 A. Immediately fatal?

22 Q. Yes, ma'am.

23 A. No.

24 Q. If you would assume after the first shot
25 that the victim screamed, would you assume that she

1 was conscious and feeling pain at that point in time?

2 A. If she was reported to have screamed?

3 Q. Yes.

4 A. Yes.

5 Q. Thank you, Doctor. That's all I have.

6 THE COURT: Thank you, Doctor. You may
7 be excused.

8 MR. BAILEY: Call Dr. Campbell.

9 THE CLERK: Put your left hand on the
10 Bible, raise your right hand.

11 (Theresa A. Campbell, MD, called as a
12 witness by the State, having first been
13 duly sworn, was examined and testified as
14 follows:)

15 THE CLERK: Have a seat, please. Could
16 you state your full name for the record,
17 please?

18 THE WITNESS: Theresa Allen Campbell.

19 DIRECT EXAMINATION

20 BY MR. BAILEY:

21 Q. Dr. Campbell, where are you employed?

22 A. I'm at the Medical University of South
23 Carolina.

24 Q. What's your position there?

25 A. I'm a pathology resident.

1 Q. All right. And do you work with
2 Dr. Collins on occasion?

3 A. Yes.

4 Q. All right. I want to call your attention
5 to May 1st, 1998 and ask whether or not you assisted
6 Dr. Collins in the autopsy done on Susan Krasae?

7 A. Yes.

8 Q. Okay. Now, Doctor Collins had identified
9 several -- a box full of pellets and wadding that she
10 testified was removed from Ms. Krasae's body, and
11 those are exhibits numbered 28 through 37 for the
12 record, and I'll ask if you'll take a minute and look
13 at those.

14 A. (The witness complied.)

15 Q. Do those appear to be wadding and pellets
16 removed from Ms. Krasae's body by Dr. Collins and you
17 during the course of the autopsy?

18 A. Just the wadding, I mean, I could --
19 everything in here looks like what we took out.

20 Q. All right. And let me ask you if all of
21 that is listed on this evidence transfer sheet.

22 A. Okay. Do you have a pen or something I
23 can check it off when I look?

24 Q. Sure.

25 A. The only thing about this is the last one

1 here, the buttocks pellets, on the container it
2 doesn't have our label on it.

3 Q. Okay. All right.

4 A. I mean, they're there, but they're not
5 labeled like they should have been.

6 Q. All right. As far as you know those are
7 the same items?

8 A. Yeah.

9 Q. All right. The sheet you're holding in
10 your hand is the evidence transfer sheet?

11 A. Yes.

12 Q. Okay. Did you turn everything in this
13 box over to Detective Tom Marshall at the autopsy
14 room?

15 A. Yes.

16 Q. All right. And is the date indicated
17 there being May 1st, 1998?

18 A. Yes.

19 Q. Shortly after 2:00 p.m.?

20 A. At 2:45 p.m.

21 MR. BAILEY: Your Honor, I would offer
22 the evidence transfer sheet.

23 THE COURT: Any objection to that?

24 MS. HARDEE-THOMAS: No objection.

25 MR. BEAUFORD: No objection, no.

1 (Entered into evidence was State's
2 Exhibit 38, evidence transfer sheet.)

3 BY MR. BAILEY:

4 Q. Dr. Campbell, that's all I have. Thank
5 you very much.

6 THE COURT: Any questions?

7 MR. BEAUFORD: No questions.

8 THE COURT: Thank you, Doctor. You may
9 be excused. Thank you, ma'am.

10 MR. BAILEY: Call Brian Bills.

11 THE CLERK: Put your left hand on the
12 Bible, raise your right hand.

13 (Brian S. Bills, called as a witness by
14 the State, having first been duly sworn,
15 was examined and testified as follows:)

16 THE CLERK: Have a seat, please. Would
17 you state your full name for the record,
18 please?

19 THE WITNESS: Detective Corporal Brian
20 Scott Bills, B-i-l-l-s.

21 DIRECT EXAMINATION

22 BY MR. BAILEY:

23 Q. Mr. Bills, you are with the Dorchester
24 County Sheriff's Office?

25 A. Yes.

1 Q. Were you on duty the evening of April
2 30th, 1998?

3 A. I was.

4 Q. Were you sent to the intersection of
5 Butternut and Marie that evening?

6 A. Yes, I was.

7 Q. Would you state whether or not you
8 observed a blue '81 Chevrolet S-10 pickup at that
9 location?

10 A. I did.

11 Q. Was that truck registered to John Edward
12 Weik?

13 A. Yes, it was.

14 Q. And did you take some photographs of the
15 truck?

16 A. I did.

17 Q. All right, sir. I'll show you five
18 photographs that are already in evidence, State's 5,
19 6, 7, 8, and 11 and ask you if you can identify those
20 photographs.

21 A. Yes. Photographs I took off the truck.

22 Q. So you took all five of those that are in
23 evidence?

24 A. Yes, I did.

25 Q. Okay. I'll show you another photograph

1 of a license plate and rear bumper, ask if you took
2 that also.

3 A. Yes, I did.

4 Q. All right, sir. Is that the tag from the
5 truck registered to Mr. Weik?

6 A. Yes.

7 MR. BAILEY: I would offer this, Your
8 Honor.

9 MR. BEAUFORD: No objections, Your Honor.

10 THE COURT: All right.

11 (Entered into evidence was State's
12 Exhibit 39, photograph.)

13 BY MR. BAILEY:

14 Q. Mr. Bills, on that same day did you get a
15 search warrant for the truck?

16 A. Yes, I did, that same day.

17 Q. And were you present when a shotgun was
18 removed from the truck?

19 A. Yes, I was.

20 Q. And the shotgun's depicted in one of
21 those photographs; is it not?

22 A. Yes, it was.

23 Q. All right. And was Sergeant Earl Asbell
24 present when the shotgun was removed from the truck?

25 A. Yes, sir.

1 Q. And do you know whether or not he
2 unloaded the shotgun?

3 A. He did.

4 Q. Were you present when he did that?

5 A. Yes, I was.

6 Q. Were there any live shells in the shotgun
7 when he unloaded that?

8 A. Yes. There was one in the chamber and
9 one in the tube.

10 Q. All right, sir. Did this appear to be
11 the shotgun that was present in the truck when you
12 photographed it?

13 A. Yes, sir.

14 MR. BAILEY: Your Honor, I would offer
15 this into evidence at this time.

16 THE COURT: Any objections?

17 MS. HARDEE-THOMAS: No.

18 MR. BEAUFORD: No objections, Your Honor.

19 THE COURT: All right.

20 (Entered into evidence was State's
21 Exhibit 40, shotgun.)

22 BY MR. BAILEY:

23 Q. Mr. Bills, please answer any questions
24 Mr. Beauford may have for you.

25 MR. BEAUFORD: No questions, Your Honor.

1 THE COURT: Thank you, sir. Thank you
2 very much.

3 MR. BAILEY: Call Tom Marshall.

4 THE CLERK: Put your left hand on the
5 Bible, raise your right hand.

6 (Thomas M. Marshall, called as a witness
7 by the State, having first been duly
8 sworn, was examined and testified as
9 follows:)

10 THE CLERK: Have a seat. Would you state
11 your full name?

12 THE WITNESS: Thomas Miles Marshall,
13 M-a-r-s-h-a-l-l.

14 DIRECT EXAMINATION

15 BY MR. BAILEY:

16 Q. Mr. Marshall, where are you employed?

17 A. Dorchester County Sheriffs Department.

18 Q. How long have you worked there?

19 A. Going on seven years now.

20 Q. What's your rank and your job at the
21 sheriff's office?

22 A. I'm currently a detective corporal with
23 the Dorchester County Sheriff's Department.

24 Q. Okay. And are you the case officer in
25 this case?

1 A. Yes, I am.

2 Q. What does it mean to be the case officer?

3 A. It's the chief investigating officer and
4 the one that was called out to handle the case that
5 particular night.

6 Q. As far as the file that was generated
7 during the course of that investigation, is that
8 something you're responsible for as case officer?

9 A. That's correct.

10 Q. All right, sir. I want to call your
11 attention to April 30th, 1998, and ask whether or not
12 you recall receiving four shotgun shells from Deputy
13 Gamache?

14 A. Yes, I did.

15 Q. Hand you State's Number 9, ask if that
16 appears to be the chain of custody form where
17 Mr. Gamache turned over four live shotgun shells to
18 you?

19 A. Yes, it is. That's my signature as
20 receiving it and then I released it also to --

21 Q. You need to speak up where they can --

22 A. I also received it from Deputy Gamache,
23 that's my signature over there as receiving, and then
24 I have a signature releasing it to Sergeant Earl
25 Asbell.

1 Q. All right. State's 12, four Winchester
2 brand 12-gauge shotgun shells unfired. Does that
3 appear to be the four shotgun shells described in the
4 chain of custody form?

5 A. Yes, sir. It does.

6 Q. All right, sir. And you turned these
7 over to Mr. Asbell; is that correct?

8 A. That's correct.

9 Q. Is he the evidence custodian for the
10 Dorchester County Sheriff's Office?

11 A. Yes, sir. He is.

12 Q. The next day, May the 1st, did you attend
13 the autopsy of Ms. Krasae at the Medical University?

14 A. Yes, I did.

15 Q. Were you present when Dr. Collins
16 performed the autopsy, did you observe it?

17 A. Yes, sir. I did.

18 Q. And did you observe her removing certain
19 pellets and --

20 MR. BEAUFORD: Your Honor, I'm going to
21 object. He's leading this witness.

22 MR. BAILEY: I'll do it the long way,
23 Judge.

24 THE COURT: Yes, sir.

25

1 BY MR. BAILEY:

2 Q. Okay. What, if anything, did you do at
3 the autopsy?

4 A. As I was there at the autopsy I observed
5 the very first part of it which is taking the picture
6 of the clothing, seeing the actual examination of the
7 body with the clothes on and then having the body --
8 removing the clothes and then taking pictures of the
9 clothing and then the washing down of the body.

10 From there I witnessed the full
11 autopsy, at which point they removed certain pellets
12 and waddings from certain different locations on the
13 body.

14 Q. Okay. Let me hand you State's 38 already
15 in evidence and ask if you can identify this.

16 A. Yes. This is the evidence transference
17 sheet that the Medical University uses and then --
18 which is listed of all the items that were turned
19 over to me. My signature's down at the bottom where
20 I print and then I sign it and then stated that I'm a
21 Dorchester County Sheriff's Department deputy
22 accepting the evidence.

23 Q. All right, sir. I'm going to hand you a
24 box containing numerous pellets in separately marked
25 containers. And were you, as case officer -- excuse

1 me. As case officer, were you present in court when
2 Dr. Collins testified?

3 A. Yes, I was.

4 Q. Dr. Campbell testified?

5 A. Yes, I was.

6 Q. Did you receive the items in that box
7 from Dr. Campbell the same time she transferred them
8 to you via that chain of custody form?

9 A. Yes, sir. I did.

10 Q. All right, sir. And were they in a
11 separately sealed container when you received them?

12 A. They were in these sealed containers here
13 just like this.

14 Q. Were they labeled as they're labeled now?

15 A. Yes, sir. The way they were labeled with
16 the Medical University numbers on there, that's how
17 they were labeled the day that I received them.

18 Q. Okay. What did you do with them?

19 A. After that, after getting the -- this box
20 here and the clothing and everything, that was then
21 taken back to the Dorchester County law enforcement
22 complex and that was turned over to Sergeant Asbell.

23 Q. When you turned them over to Sergeant
24 Asbell, were they still sealed up in the containers
25 as you received them from Dr. Campbell?

1 A. That is correct.

2 Q. And on May the 4th of 1998, would you
3 state whether or not you turned over the four live
4 shotgun shells you got from Officer Gamache, which
5 was State's 12 to Earl Asbell?

6 A. Yes. I turned those over on the 4th,
7 that is correct.

8 Q. To Mr. Asbell?

9 A. That is correct, sir.

10 MR. BAILEY: Your Honor, that's all I
11 have of Mr. Marshall. I reserve the right to
12 recall him later.

13 THE COURT: All right, sir.

14 Any questions of him?

15 MR. BEAUFORD: No questions at this time,
16 Your Honor.

17 THE COURT: All right. Thank you, sir.

18 MR. BAILEY: State would next call Earl
19 Asbell.

20 THE CLERK: Put your left hand on the
21 Bible, raise your right.

22 (Earl V. Asbell, Jr., called as a witness
23 by the State, having first been duly
24 sworn, was examined and testified as
25 follows:)

1 THE CLERK: Have a seat. State your full
2 name for the record, please.

3 THE WITNESS: Earl Vincent Asbell, Jr.

4 A-s-b-e-l-l.

5 DIRECT EXAMINATION

6 BY MR. BAILEY:

7 Q. Mr. Asbell, tell the jury, please, where
8 you work.

9 A. Dorchester County Sheriff's Office.

10 Q. All right, sir. How long have you worked
11 there?

12 A. Eleven years.

13 Q. What's your position with the sheriff's
14 office?

15 A. I'm the sergeant in charge of crime
16 scene, latent print examiner, and also the evidence
17 custodian.

18 Q. What type of training have you had as far
19 as taking care of a crime scene?

20 A. I attended the basic academy in 1989,
21 after that I went to Florida to IPTM for crime scene
22 technician workshop, I've also had homicide
23 investigations, ID technicians, several latent
24 fingerprint courses, basic blood spatter and advanced
25 blood spatter also.

1 Q. All right. Calling your attention to
2 April 30th of last year about 6:35 p.m., would you
3 state whether or not you went to 533 Sedgewick in
4 Dorchester County?

5 A. Yes, sir. I did.

6 Q. Was that in the course of your duties as
7 a deputy with the Dorchester County Sheriff's Office?

8 A. Yes, sir. It was.

9 Q. All right, sir. Is that address in
10 Dorchester County?

11 A. Yes, sir. It was.

12 Q. About -- you arrived there at about what
13 time?

14 A. About 6:45.

15 Q. All right, sir. And were other law
16 enforcement officers already present when you
17 arrived?

18 A. Yes, sir. Officer McGauvran was there
19 and Corporal Bills was there.

20 Q. Would you state whether or not the crime
21 scene was secured by the time you got there?

22 A. Yes, sir. There was security tape around
23 the yard, McGauvran was on the outside taking the
24 name of anybody that entered the crime scene.

25 Q. All right. I'm going to show you five

1 photographs and ask you to take a look at them and
2 whether or not you can identify those.

3 A. Yes, sir. I can.

4 Q. Do those accurately depict the location
5 of the homicide of Ms. Susan Krasae that occurred on
6 April 30th, 1998?

7 A. Yes, sir. They do.

8 MR. BAILEY: I would offer these, Your
9 Honor, I believe without objection from
10 Mr. Beauford; is that correct?

11 MR. BEAUFORD: That's correct, Your
12 Honor.

13 THE COURT: All right, sir.

14 (Entered into evidence were State's
15 Exhibits 41 through 45, photographs.)

16 BY MR. BAILEY:

17 Q. Mr. Asbell, I'm going to put these on the
18 monitor, and if you would, please, step around there
19 where you don't block the jurors' view, I'll ask you
20 to tell the jurors what each one of these is, sir.
21 First of all, State's 41.

22 A. State's 41 is just an identification
23 photograph to show the residence which I was locating
24 the crime scene, 533 Summerset Lane.

25 Q. Forty-two.

1 A. State's 42 is the front yard and the
2 front door leading into the living room of the
3 residence that was taken from the road next to the
4 mailbox.

5 Q. Forty-three.

6 A. State's Exhibit 43 is a photograph of the
7 front porch and the front door.

8 Q. All right. Now, there are two doors
9 there, or one?

10 A. There's a storm door and then a door
11 leading -- a regular front door leading into the
12 trailer.

13 Q. And 44.

14 A. That's upside down, but that's a
15 photograph of the front door leading into the living
16 room of the trailer.

17 Q. And State's 45.

18 A. As you come up on the front porch and
19 open the front door that is the first sight you see
20 as you walk in, is a reclining chair -- or rocking
21 chair, excuse me, some type of chair sitting there.
22 This was also where the shell casings were located.

23 Q. All right, sir. You can go ahead and
24 have a seat for right now.

25 A. (The witness complied.)

1 Q. Mr. Asbell, in the course of your duties
2 did you go inside the trailer?

3 A. Yes, sir. I did.

4 Q. All right, sir. Would you state whether
5 or not you prepared a computerized sketch of the
6 interior layout of the mobile home?

7 A. Yes, sir. I did.

8 Q. Is that the sketch that you prepared?

9 A. Yes, sir. It is.

10 Q. Was that drawn from a rough sketch you
11 prepared earlier?

12 A. That's correct. I made a rough sketch at
13 the crime scene, then later I did this.

14 Q. All right.

15 MR. BAILEY: Your Honor, I would offer
16 this, I believe, without objection.

17 THE COURT: All right.

18 (Entered into evidence was State's
19 Exhibit 46, computerized sketch.)

20 BY MR. BAILEY:

21 Q. Mr. Asbell, if you would please come
22 around, sir. Again, just point out to the jury, just
23 first of all, where the front door to the mobile home
24 is.

25 A. The front door of the mobile home is

1 right here next to the legend where it states the
2 case number, it's this opening right here. This is
3 the chair that you view in the photograph and the
4 front door was open a while ago, this is a drawing of
5 the chair here. As you walk in you enter the living
6 room, over here is the kitchen, you have the dining
7 room table here, this is where the victim's body was
8 laying.

9 When you come in the front door if
10 you go to your right there's a hallway here, there's
11 a bedroom, a bathroom, and another bedroom. And then
12 if you go through the kitchen you have what is called
13 a master bedroom, master bathroom, and that's the
14 back of that trailer.

15 This is the legend that states the
16 case number, the victim, the address. That was drawn
17 by myself and this photograph, or this drawing, is
18 not to scale.

19 This is the -- the legend on the
20 left explains these numbers that are in the
21 photograph. Do you want me to continue on into that?

22 Q. Before you get into that, you've located
23 the approximate location of Ms. Krasae's body as you
24 observed; is that correct?

25 A. That's correct. It was on the back wall

1 between the dining room table and the couch.

2 Q. Could you describe the general scene
3 around the body when you saw it?

4 A. There was a volume of blood underneath
5 the body with blood spatter.

6 Q. Tell the jury what blood spatter is.

7 A. When you have a pool of blood and
8 something strikes it, the surface tension of the
9 blood is erupted, it creates a spatter. Kind of like
10 if you go along and you step in a mud puddle, the
11 spattering the water out. When an object strikes a
12 pool of blood it creates the same type of spatter.

13 You have spatter from something
14 striking the blood, you have spatter from something
15 being cast off. When your hand's wet, you're
16 shaking, you know, water goes everywhere, that's
17 spatter. That's what we call blood spatter.

18 She had a volume of blood directly
19 under the body, you have spatter coming up between
20 the legs towards the floor going under the table and
21 then directed up on the walls behind the body.

22 Q. All right, sir. And in the course of
23 your duties did you search the interior of the mobile
24 home for anything that you thought might be of
25 evidentiary value?

1 A. Yes, sir. We did.

2 Q. All right, sir. What were you looking
3 for in particular?

4 A. The shell casings for one thing, and any
5 projectiles that might have exited out the body.

6 Q. All right, sir. I'm going to get you to
7 have a seat again briefly.

8 A. (The witness complied.)

9 Q. Mr. Asbell, I'm going to hand you several
10 photographs and ask if you took those photographs.

11 A. Yes, sir. I did.

12 Q. Were those taken in the living room of
13 the mobile home as shown in this diagram?

14 A. Yes, sir. It was.

15 Q. What were you trying to take pictures of
16 there?

17 A. This is a photograph of the spent shotgun
18 shells. And what I meant by that is the fired
19 shotgun shell casings that were found in the floor.
20 There are photographs without placards by them and
21 then there's also photographs with numbered placards
22 by them. I signed each piece of evidence in
23 numbering and photographs.

24 MR. BAILEY: Your Honor, I would move to
25 introduce all of these also without objection.

1 MR. BEAUFORD: That's correct, Your
2 Honor.

3 THE COURT: All right.

4 (Entered into evidence were State's
5 Exhibits 47 through 52, photographs.)

6 BY MR. BAILEY:

7 Q. What I'll do is get you to step up here
8 again and I'll hand these to Mr. Bell and read the
9 exhibit number into the record, if you'll tell the
10 jury what these different pictures show and if you
11 can correlate that to the diagram you've got there.
12 First of all, State's 47.

13 A. State's Exhibit 47 I was standing in the
14 doorway. That is this chair located right here, and
15 you see the numbers 1 and 2 that corresponds to 1 and
16 2 here in the chair. This was a fired shotgun shell
17 casing by number 1. And also in the chair, which is
18 labeled number 2, is another fired shotgun shell
19 casing.

20 Q. State's 48.

21 A. State's 48 is a duplicate of that other
22 photograph, you can just see the shell casing here,
23 number 1, more clearly. It was taken from just a
24 slightly different angle.

25 Q. Forty-nine.

1 A. Forty-nine was taken from approximately
2 the center of the living room and you can see photo
3 placard 2 which is the shell casing which is laying
4 in the chair. Number 3 is another shotgun shell
5 casing laying next to number 3, which is located to
6 the left of the chair. Here's the shell casing here
7 to the right of number 3. That was to the left of
8 that chair.

9 Number 4, which is the shell casing
10 found behind the chair, is also labeled here. It was
11 kind of under the edge of the table by the chair.

12 Q. I know this drawing's not to scale, but
13 what's the approximate distance from that chair from
14 where the shotgun shells are found to the location of
15 Ms. Krasae's body?

16 A. Probably about ten feet, ten to 12 feet,
17 somewhere in that area.

18 Q. Okay. State's 50.

19 A. State's 50 is a photograph of what I've
20 got labeled down here as number 1, this is the spent
21 shotgun shell casing lying to the right of the chair
22 next to the wall without the photo placard on that.
23 That is also labeled number 1 on the drawing.

24 Q. Fifty-one.

25 A. State's Exhibit 51 is the spent shell

1 casing that was in the chair and that's showing the
2 location of legend number 2.

3 Q. Fifty-two.

4 A. Fifty-two shows number 3, the shotgun
5 casing which is labeled here to the left of the
6 chair, and number 4 in the background which is behind
7 the chair.

8 Q. Indulge me for a second, please.

9 (Pause in proceedings.)

10 Q. Let me show you one more photograph.
11 First of all, you can have a seat for a minute, Mr.
12 Asbell.

13 A. (The witness complied.)

14 Q. Did you attempt to locate any wadding or
15 pellets that might have been fired from the shotgun?

16 A. Yes, sir. We searched the dining room
17 and kitchen area and found a couple pellets in that
18 area.

19 Q. All right. I'm going to hand you a
20 photograph and ask if this shows the location of some
21 of the pellets you found?

22 A. Yes, sir. It does. That shows the two
23 pellets we found.

24 Q. Okay.

25 MR. BAILEY: I would offer this, I

1 believe, without objection from Mr. Beauford.

2 MR. BEAUFORD: That's correct, Your
3 Honor.

4 THE COURT: All right. 52, 53?

5 MR. BAILEY: It's just one more.

6 (Entered into evidence was State's
7 Exhibit 53, photograph.)

8 BY MR. BAILEY:

9 Q. Mr. Asbell, State's 53, if you would tell
10 the jury what that is and where it is.

11 A. This photograph here was taken when I was
12 standing by the corner of the couch in the living
13 room looking into the kitchen and into the back
14 bedroom. This was the end of a counter here which is
15 this counter in the kitchen. This is the doorway to
16 the master bedroom and that's this doorway right
17 here.

18 This photograph was taken here down
19 this little hall going into it. There's a spent
20 pellet right here on the floor that was recovered
21 right here next to number 6. Move the photograph the
22 other way, please. There we are. Right here is a
23 spent pellet for number 6. And then there was one
24 lying in the doorway which is number 7. I can't push
25 it in here, but there's a pellet laying there on the

1 floor where number 7 is located. Number 5 in this
2 photograph I designated as the body of the victim.

3 Q. All right, sir. You can have a seat.

4 A. (The witness complied.)

5 Q. Let me hand you four envelopes, ask you
6 if you can identify these.

7 A. Yes, sir. I can.

8 Q. Okay. For the record, what are those?

9 A. These are the four spent shotgun shells
10 that I found on the floor in the living room, they're
11 three inch double aught magnum, I believe they were
12 Winchester Super X double aught magnums.

13 Q. What gauge are those, first of all?

14 A. Twelve gauge.

15 Q. When you say "double aught magnum," what
16 do you mean by that?

17 A. That's the size they designated to a
18 buckshot, the actual size of the pellet.

19 Q. And magnum, what does that mean?

20 A. Three inch, just a high powered shotgun.

21 Q. All right, sir. Those are the four
22 shotgun shells that are shown in the pictures that
23 are already in evidence?

24 A. Yes, sir. It is.

25 MR. BAILEY: Your Honor, I would offer

1 these.

2 THE WITNESS: They're listed items 1
3 through 4.

4 THE COURT: Any objection to those?

5 MR. BEAUFORD: No objections, Your Honor.

6 THE COURT: Fifty-four through 57.

7 (Entered into evidence were State's
8 Exhibits 54 through 57, spent shell
9 casings.)

10 BY MR. BAILEY:

11 Q. I hand you four more envelopes, ask you
12 to take a look at that, see if you can identify
13 those.

14 A. Yes, sir. That's listed as photo placard
15 number 6, this was the lead pellet that was found at
16 the end of the kitchen counter. And this one is
17 photo placard number 7, this was the lead pellet that
18 was found to the entrance to the bedroom. Bear with
19 me one moment.

20 Fifty-eight is a blood sample I took
21 on the floor underneath the dining room table, and 59
22 is a blood sample I took off the wall.

23 Q. All right.

24 MR. BAILEY: I would offer the pellets,
25 these identified, into evidence.

1 MR. BEAUFORD: No objection, Your Honor.

2 THE COURT: All right.

3 (Entered into evidence was State's

4 Exhibit 58, lead pellet.)

5 (Entered into evidence was State's

6 Exhibit 59, lead pellet.)

7 BY MR. BAILEY:

8 Q. Okay. Mr. Asbell, later on that day did
9 you process an older model blue S-10 Chevrolet pickup
10 truck?

11 A. Yes, sir. I did.

12 Q. Registered to John Weik?

13 A. Yes, I did, sir.

14 Q. For the record, let me show you some
15 photographs to see if you can identify that as being
16 the truck that you processed. And this is State's 2,
17 3, 4, 5, and 11 which has been testified previously
18 as being Mr. Weik's pickup truck that was stopped by
19 the deputies.

20 A. Yes, sir. This is it.

21 Q. Show you State's 40, ask if you can
22 identify that.

23 A. Yes, sir. This is a Remington 1100, 12
24 gauge three-inch magnum, serial number L964906M.
25 This is the shotgun that I removed from the front

1 seat of that truck.

2 Q. Show you State's Exhibit 11 on the
3 monitor here, and ask if that's the location that the
4 shotgun was in in Mr. Weik's truck when you recovered
5 it.

6 A. Yes, sir. It is.

7 Q. All right, sir. And would you state
8 whether or not the shotgun was loaded or unloaded
9 when you retrieved it?

10 A. There was one shell in the chamber and
11 one in the tube.

12 Q. When you say "shell," you're talking
13 about live rounds?

14 A. Two live rounds in the gun.

15 Q. Have a seat.

16 A. (The witness complied.)

17 Q. I'll ask if you can identify that
18 envelope.

19 A. Yes, sir. This is the envelope that I
20 put two shotgun shells in, and they also bear my
21 initials on the head of it.

22 Q. Those are the two live rounds you took
23 out of that Remington 1100?

24 A. Yes, sir. These are also Winchester
25 Super X three-inch double aught magnums.

1 Q. Again, where do they come from within the
2 gun?

3 A. One was loaded, it was a live round,
4 hadn't been fired, and one in this tube here where
5 the shells are stored.

6 Q. Okay.

7 MR. BAILEY: I would offer these, Your
8 Honor.

9 MR. BEAUFORD: No objections.

10 THE COURT: All right.

11 (Entered into evidence was State's

12 Exhibit 60, two live shotgun shells.)

13 BY MR. BAILEY:

14 Q. Mr. Asbell, calling your attention to the
15 next day, I'm going to ask you whether or not you had
16 occasion to see Detective Tom Marshall.

17 A. Yes, sir. I did.

18 Q. I'm going to ask you to take a look at
19 this box and state whether or not Mr. Marshall turned
20 those items over to you the following day.

21 A. Yes, sir. He did. Yes, sir. They were
22 turned over to me May 1st.

23 Q. All right. Bear with me just a second,
24 please.

25 (Pause in proceedings.)

1 Q. Let me hand you this and ask if that
2 appears to be another copy of the chain of custody
3 form for items in the autopsy which is State's 38, in
4 which indicates that was turned over to you.

5 A. Yes, sir. This is a photocopy of the
6 copy that I have.

7 Q. Okay. And that's got your name, your
8 signature, and the date that you received that from
9 Tom Marshall; is that correct?

10 A. Yes, sir. It is.

11 Q. That would include all items from the
12 autopsy; is that correct?

13 A. Yes, sir.

14 Q. All right.

15 MR. BEAUFORD: Your Honor, I'm just going
16 to object, having to produce the original.

17 THE COURT: All right.

18 BY MR. BAILEY:

19 Q. Do you have the original?

20 A. The original is kept at the coroner's
21 office. We get a carbon copy. This is what was
22 turned over to me with the evidence and this is a
23 carbon copy that I signed.

24 Q. I'll substitute this one.

25 MR. BEAUFORD: Withdraw the objection,

1 Your Honor.

2 THE COURT: All right. No objection, 61,
3 chain of custody form.

4 (Entered into evidence was State's
5 Exhibit 61, evidence transfer sheet.)

6 BY MR. BAILEY:

7 Q. When Tom Marshall turned over that,
8 those -- the pellets and wadding from the autopsy,
9 were they in sealed containers?

10 A. Yes, sir. They were.

11 Q. All right. And did you ever open those
12 sealed containers when you received them before you
13 took them to SLED?

14 A. I don't believe I did. I placed another
15 security tape over the top of them.

16 Q. Okay. Calling your attention to May the
17 4th, I want to ask whether or not you received four
18 shotgun live rounds from Tom Marshall as testified as
19 being taken from Mr. Weik's pocket by Deputy Gamache?

20 A. Yes, sir. I did. These are the four
21 rounds, they also bear my initials on the head stamp.

22 Q. All right, sir. Mr. Asbell, I want to
23 call your attention to the next day, May 5th, I want
24 to ask you if you went to the SLED forensic lab in
25 Columbia for the purpose of turning over certain

1 items of evidence to SLED?

2 A. Yes, sir. I did.

3 Q. First of all, tell the jury what kind of
4 paperwork you fill out when you carry things to SLED
5 for them to examine.

6 A. SLED has a forensic form. The first form
7 we turn in is the forensic service request form that
8 lists the investigating officers, the case numbers,
9 the date of the incident, the victims, the suspects,
10 and any information we have about them. Also the
11 type of case, the type of death, was there any
12 serology work or DNA to be done, all this is asked on
13 this first form.

14 On the second page it's the
15 inventory sheet where we assign each piece of
16 evidence a number and we list each piece of evidence.
17 And they go through and they type it as I give it to
18 them, they enter it in their computer and then they
19 sign for the evidence there at SLED. They retain the
20 original copy and I retrieve a carbon copy of it.

21 Q. All right, sir. I'm going to hand you a
22 four-page document, see if you can identify that.

23 A. The first page is the request form
24 asking -- tells you about the case, who was involved.
25 And the next three pages are the list of the evidence

1 that was transported to SLED.

2 Q. Does that represent all the evidence you
3 carried to SLED on May 5th of last year?

4 A. Yes, sir. It does.

5 Q. Your signature appears on that?

6 A. Yes, sir. My signature is printed and
7 signed on all four copies.

8 Q. And does the evidence check-in lady at
9 SLED, Ms. Merritt, is her signature on that also
10 accepting those items?

11 A. She's on the last three pages.

12 Q. All right, sir.

13 A. And any alternate that receives evidence
14 from me is also on there.

15 Q. All right, sir.

16 MR. BEAUFORD: No objections, Your Honor.

17 THE COURT: All right.

18 (Entered into evidence was State's
19 Exhibit 62, SLED lab request.)

20 BY MR. BAILEY:

21 Q. Mr. Asbell, I'm going to hand you State's
22 62 which is the chain of custody form, stuff that you
23 took up to SLED on May 5th. And referring to that
24 form I'm going to ask you to state for the record
25 whether or not that form includes the four spent

1 shell casings that you found at Ms. Krasae's trailer,
2 the two live rounds that you removed from the
3 shotgun --

4 A. Yes, sir. It does.

5 Q. -- as well as the shotgun itself. And
6 then I'll ask whether or not you gave those to John
7 Black at SLED?

8 A. Yes, sir. I did. They are listed as
9 items 1 through 7, and John Black signed for those
10 items.

11 Q. All right, sir. Why did you give those
12 to Mr. Black?

13 A. I sent the spent casings and the two live
14 rounds that were in the shotgun and the shotgun
15 itself to John for a latent examination, he's a
16 latent print examiner for SLED.

17 Q. All right. The rest of the items that
18 you took up to SLED, would you state whether or not
19 they include the four 12 gauge live rounds removed
20 from John Weik's --

21 MR. BEAUFORD: Objection. He can tell
22 what they contain; the solicitor's testifying.

23 THE COURT: I think he said state whether
24 or not, maybe I misunderstood.

25 MR. BAILEY: Yes, sir. I did. Your

1 Honor, just the reason I'm doing it this way
2 I've got 30, 40 items there and I just want to
3 call his attention to the three of them. I
4 mean, it's all in the documentation.

5 THE COURT: I'll allow it.

6 BY MR. BAILEY:

7 Q. All right. Would you state whether or
8 not the stuff that you carried to SLED also included
9 the four live shotgun shells that Deputy Gamache
10 testified he removed from Mr. Weik's front pants'
11 pocket that he in turn turned over to Tom Marshall,
12 Tom Marshall turned over to you?

13 A. Yes, sir. I do. I listed them as item 22
14 on the SLED inventory form.

15 Q. State whether or not those were turned
16 over to Denise Merritt at SLED.

17 A. Yes, sir. They were.

18 Q. All right, sir. What about the pellet
19 containers, the wadding containers from the autopsy
20 that you received from Tom Marshall, did you turn
21 those over to Ms. Merritt also?

22 A. Yes, sir. I did.

23 Q. All right, sir. And finally the pellets
24 that you located on the floor of the trailer that you
25 testified about, did you turn those over to

1 Ms. Merritt also?

2 A. Yes, sir.

3 Q. Okay. Now, was everything that you took
4 to SLED, was it taken up there in sealed containers?

5 A. Yes, sir. It was.

6 Q. All right, sir. Mr. Asbell, please
7 answer any questions that the defense may have for
8 you.

9 CROSS-EXAMINATION

10 BY MR. BEAUFORD:

11 Q. Mr. Asbell, what type of gun is that?

12 A. Remington 1100, three-inch magnum 12
13 gauge.

14 Q. Is it an automatic?

15 A. Semiautomatic.

16 Q. What's the difference between
17 semiautomatic and automatic?

18 A. All you have to do -- well, automatic is
19 like a machine gun, if you hold the trigger down it
20 will keep firing. Semiautomatic each time you pull
21 the trigger it fires, all you have to do is pull the
22 trigger.

23 Q. How many shells would that gun store at
24 one time?

25 A. I do not know, sir.

1 Q. You're familiar with semiautomatic
2 weapons of that type?

3 A. Yes, sir. That has a tube load, it would
4 probably hold anywhere from six to eight rounds, but
5 I'm not sure how many.

6 Q. And how long would it take to fire six to
7 eight rounds?

8 A. That would depend on the individual, I
9 couldn't tell you. I mean, you could fire them rapid
10 succession probably less than four to five seconds.

11 Q. You said forty-five seconds?

12 A. Four to five seconds.

13 Q. Okay.

14 A. Just depending on how fast you can pull
15 the trigger. As fast as you can pull it, it will
16 shoot.

17 Q. So basically you can probably fire it
18 probably less than several seconds, empty it?

19 A. More than likely, yes, sir.

20 Q. No further questions.

21 THE COURT: The number of shells you can
22 put in that gun depends on the length of
23 shells, first of all, doesn't it?

24 THE WITNESS: Yes, sir. That would have
25 something to do with it.

1 THE COURT: Three-inch magnum would take
2 less than two and a half inch shell.

3 THE WITNESS: Yes, sir. It would.

4 THE COURT: And so forth.

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. Thank you, sir.

7 MR. BAILEY: Nothing further of
8 Mr. Asbell.

9 THE COURT: Let's take a break. Let's
10 take a minute or two, we'll bring you right
11 back. No discussion now.

12 (Jury excused.)

13 (Recess taken.)

14 THE COURT: Thank you. Be seated,
15 please. We can bring the jury.

16 (Jury present.)

17 THE COURT: All right, Solicitor.

18 MR. BAILEY: State calls Denise Merritt.

19 THE CLERK: Put your left hand on the
20 Bible, raise your right.

21 (Denise H. Merritt, called as a witness
22 by the State, having first been duly
23 sworn, was examined and testified as
24 follows:)
25

DIRECT EXAMINATION

BY MR. BAILEY:

Q. State your full name, please.

A. Denise H. Merritt.

Q. Ms. Merritt, you work at SLED?

A. Yes, sir.

Q. What do you do at SLED?

A. Evidence technician.

Q. Okay. That's in the forensic lab?

A. Yes, sir.

Q. Would you tell the jury, please, just generally how evidence is handled at SLED? The law enforcement officer brings evidence to the lab for analysis by the different experts at SLED, what happens to it?

A. We review the paperwork, find out exactly which departments it's going to, and if it's not already packaged we package it accordingly.

Q. Okay.

A. We deal with sealed containers.

Q. Would you state whether or not SLED has a unique lab number for each particular case?

A. Yes, sir. Each case is assigned a number of its own.

Q. Okay. And would you state whether or not

1 each item that goes to SLED, like a bullet or shotgun
2 pellet or shell, do they each have a separate unique
3 number?

4 A. Yes, sir.

5 Q. Okay. And that's to track that
6 evidence --

7 A. Yes, sir.

8 Q. -- in SLED?

9 All right. And were you working in
10 the evidence check-in area at SLED on May the 5th,
11 1998?

12 A. Yes, sir.

13 Q. And would you state whether or not you
14 logged in several items of evidence from Earl Asbell?

15 A. Yes, sir.

16 Q. I'm going to show you what's been marked
17 as State's 62 which has been testified as being the
18 forensic service request and inventory sheet that
19 Mr. Asbell brought into SLED that day. And I'll ask
20 whether or not you logged in all the items that are
21 listed there?

22 A. Yes, sir. I did.

23 Q. Okay. Now, based on that document that
24 you've got in front of you, does that indicate that
25 John Black received the four spent shell casings, the

1 shotgun and the two live rounds taken out of the
2 shotgun?

3 A. Yes, sir.

4 Q. Okay. And did you personally receive the
5 rest of those items that are listed there?

6 A. Yes, sir. With the exception of the
7 blood, which was put into the DNA box.

8 Q. Okay. All right. But in regard to the
9 four shotgun shells that were removed from Mr. Weik's
10 pocket and the pellets from the autopsy, the pellets'
11 records from the residence that are listed on there,
12 did you receive those items?

13 A. The pellets, yes, sir.

14 Q. Okay.

15 A. Yes. Yes, I did.

16 Q. All right. Would you tell the jury what
17 fire lock is?

18 A. Fire lock is an evidence room that is
19 just for firearms and it's a locked area.

20 Q. Okay. And in regard to the four live
21 shotgun, 12-gauge shotgun shells and the pellets from
22 the autopsy and the pellets removed from the trailer,
23 were those put in fire lock by you?

24 A. Yes, sir.

25 Q. And were all of these items that you got

1 from Mr. Asbell in sealed containers?

2 A. Yes, sir.

3 Q. Okay. And did you do anything to unseal
4 the containers? In other words, you put them in fire
5 lock in the same sealed condition you got them from
6 Mr. Asbell?

7 A. Put them in the same -- put them in fire
8 lock sealed.

9 Q. Thank you, Ms. Merritt. That's all I
10 have. Please answer any questions of the defense at
11 this point.

12 MR. BEAUFORD: No questions, Your Honor.

13 THE COURT: Thank you, ma'am. You may be
14 excused.

15 MR. BAILEY: Call John Black.

16 THE CLERK: Would you put your left hand
17 on the Bible, raise your right hand?

18 (John P. Black, called as a witness by
19 the State, having first been duly sworn,
20 was examined and testified as follows:)

21 THE CLERK: Have a seat, please. Would
22 you state your full name for the record,
23 please?

24 THE WITNESS: John Phillip Black.
25

DIRECT EXAMINATION

BY MR. BAILEY:

Q. Mr. Black, you're employed at SLED?

A. Yes, sir. I am.

Q. What do you do at SLED?

A. I'm a senior agent assigned to the latent fingerprint and crime scene department.

Q. How long have you worked at SLED in that capacity?

A. Approximately four and a half years.

Q. All right, sir. Have you been qualified as an expert in fingerprints previously?

A. Yes, sir. I have.

Q. About how many times?

A. Thirteen times.

Q. All right, sir. Now, briefly what training have you had in fingerprint identification?

A. In addition to some training I received during my formal education at Ohio University, once I joined SLED's latent print unit I went through the standard two-year in-house training program which covers everything from the history of fingerprinting, the fingerprint processing identification through crime scene investigation.

I've also attended a number of

1 schools outside of SLED, to include basic fingerprint
2 course offered at the Criminal Justice Academy in
3 Columbia, also an FBI advanced fingerprint course in
4 Columbia. I've attended advanced palm print
5 identification school in North Carolina as well as
6 several courses relating to the processing of
7 evidence for fingerprints.

8 MR. BAILEY: I would tender Mr. Black as
9 an expert in fingerprint identification.

10 MR. BEAUFORD: No objection.

11 THE COURT: All right.

12 BY MR. BAILEY:

13 Q. Mr. Black, what's a latent print?

14 A. A latent print technically is a print
15 that is hidden or unseen and requires some type of
16 physical or chemical processing to make it visible.

17 Q. What's a known print?

18 A. A known print, or an inked print, is a
19 print that is taken under controlled conditions by
20 applying a thin film of a black printer's ink on the
21 fingers or the palms and then rolling them or
22 pressing them onto a fingerprint or a palm print
23 card.

24 Q. Okay. You basically would compare known
25 prints with a latent print to see if you can match

1 them up is what you did at SLED?

2 A. That's correct.

3 Q. And are you always able to -- if I was to
4 touch this podium here, does that necessarily mean
5 that you could lift my fingerprints off of it and
6 match them up with my inked prints?

7 A. There's no guarantee that you would even
8 leave a print there, sir.

9 Q. All right. Some items you would leave
10 prints on and some you would not?

11 A. That's correct.

12 Q. What different factors would go into
13 that, whether or not I would leave a print in a
14 particular situation?

15 A. Okay. First of all, the condition that
16 the hands are in at the time a surface is touched is
17 one of the main factors that will determine whether
18 or not a print is left behind. If you are perspiring
19 or if your hands are contaminated with oils or
20 greases that are picked up from other parts of your
21 body, such as your nose or your forehead, then you
22 would have a much higher probability of leaving a
23 print than if your hands were dry. Also if you have
24 gloves on, that certainly would decrease drastically
25 the chance of leaving a print behind.

1 The nature of the surface itself is
2 very important. In other words, generally speaking a
3 smooth surface, such as glass, is much more recipient
4 to fingerprints than would, say, this microphone,
5 which is very rough and porous and corrugated.

6 Also the environmental factors that
7 are taking place prior to a print being deposited,
8 more specifically after a print has been left. In
9 other words, if a print is on something like an
10 automobile in the South Carolina sunshine, that sun
11 is going to bake those prints off a lot of times
12 because a latent print is about 99 percent moisture.
13 If an object is touched and then is submerged in
14 water, that can have an effect. If an object is
15 touched and then is not protected properly and comes
16 into contact with other objects, that's another
17 factor that can determine whether or not the prints
18 will be left.

19 Q... All right. I want to call your attention
20 to State's 62 which has been testified to by
21 Mr. Asbell and Ms. Merritt, and ask whether or not
22 you're familiar with that particular form, whether or
23 not your signature appears on that?

24 A. Yes, sir. State's Exhibit Number 62 is a
25 copy of the paperwork which accompanied the evidence

1 that was logged in in this case. And on the second
2 and fourth pages of this exhibit I do see a copy of
3 my signature.

4 Q. All right, sir. And does that indicate
5 that you received State's 54, 55, 56, 57, and 60,
6 which are not the same as your SLED numbers? I'll
7 hand them to you so you can look at both numbers.

8 A. Yes, sir. State's 54, 55, 56, 57, and 60
9 correspond to my item numbers 1 through 6, and these
10 are 60 items I did receive in this case.

11 Q. State's 40, Remington 1100 shotgun.

12 A. Yes, sir. State's 40 corresponds to my
13 item number 7 in this case. I can see my laboratory
14 number, my initials which I inscribed in this portion
15 of the gun.

16 Q. Did you get all of those items, four
17 spent shell casings and two live rounds and the
18 shotgun direct from Earl Asbell on May 5th, 1998?

19 A. One moment, please. Yes, sir. I did,
20 directly from Sergeant Asbell.

21 Q. All right, sir. Would you state whether
22 or not you examined those for any readable prints?

23 A. Yes, sir. It was requested that I
24 process these items for fingerprints, and I did so.

25 Q. Were you able to find any readable prints

1 on any of those items?

2 A. On my item 1, which is State's 54, I did
3 not develop any ridge detail whatsoever. On State's
4 55 I did develop partial ridge detail, but it was
5 insufficient to either identify or eliminate anybody
6 as having caused that print. On State's 56 and 57 I
7 did not develop any ridge detail at all. And on
8 State's 60 and State's 40 I again developed partial
9 ridge detail, but, again, it was insufficient to
10 either identify or eliminate anybody as a source.

11 Q. Partial ridge detail means somebody
12 handled that item, but you just couldn't tell who it
13 was by the prints?

14 A. That's correct.

15 Q. All right, sir. After you completed your
16 examination, calling your attention to May 8th, 1998,
17 would you state whether or not you placed all those
18 items in fire lock?

19 A. Yes, sir. I did, in fact, on May the 8th
20 transfer all these items before me to a secure area
21 known as fire lock in the firearms department.

22 Q. Please answer any questions Mr. Beauford
23 might have for you.

24 MR. BEAUFORD: No questions, Your Honor.

25 THE COURT: Thank you, sir.

1 MR. BAILEY: May he be excused?

2 THE COURT: You may be excused.

3 MR. BAILEY: Call Kenneth Whitler.

4 Mr. Whitler.

5 (Kenneth H. Whitler, called as a witness
6 by the State, having first been duly
7 sworn, was examined and testified as
8 follows:)

9 THE CLERK: Could you state your full
10 name for the record, please?

11 THE WITNESS: Kenneth H. Whitler,
12 W-h-i-t-l-e-r.

13 DIRECT EXAMINATION

14 BY MR. BAILEY:

15 Q. Would you please tell the jury where
16 you're employed?

17 A. Currently employed at the South Carolina
18 Law Enforcement Division Forensics Laboratory in the
19 firearms department.

20 Q. What's your educational background?

21 A. Undergraduate and graduate degrees from
22 the University of South Carolina.

23 Q. How long have you worked for SLED?

24 A. Since November of 1997.

25 Q. All right, sir. And what do you do at