

VOLUME ONE OF EIGHT

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Paul M. Burch, Circuit Court Judge

RECEIVED

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S.C. Supreme Court

MARION ALEXANDER LINDSEY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

- APPLICANT'S EXHIBIT #26 (AUDIOTAPE)**
- APPLICANT'S EXHIBIT #27 (PHOTOGRAPH)**
- APPLICANT'S EXHIBIT #28 (PHOTOGRAPH)**

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG) Case No(s) .: 02-GS-42-0453
State of South Carolina)
Plaintiff,)
-VS-) TRANSCRIPT OF RECORD
Marion Lindsey) VOLUME 1 OF 4
Defendant.)

May 17, 2004
Spartanburg, South Carolina

B E F O R E:

HONORABLE JOHN C. FEW, Judge.

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

TREY GOWDY, Esquire
Solicitor

BARRY BARNETT, Esquire
Assistant Solicitor

DONNIE WILLINGHAM, Esquire
Assistant Solicitor

MIKE BARTOSH, Esquire
Attorney for the Defendant

DOUG BRENNAN, Esquire
Attorney for the Defendant

KAREN QUIMBY, Esquire
Attorney for the Defendant

TERESA B. JOHNSON
OFFICIAL REPORTER

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5	S-3	9 mm casing	1486	1592, 1742
6	S-4	9 mm casing	1486	1592, 1742
7	S-5	Beretta 9 mm	1486	1570, 1742
8	S-6	Black clip	1486	1570, 1742
9	S-7	9 mm round	1486	1570, 1742
10	S-8	.38 special casing	1486	1598, 1742
11	S-9	.38 special casing	1486	1598, 1742
12	S-10	.38 special casing	1486	1598, 1742
13	S-11	Winchester .38 special	1486	1598, 1742
14	S-12	Federal .38 special casing	1486	1598, 1742
15	S-13	Taurus .38 special	1486	1597, 1742
16	S-14	Projectile	1486	
17	S-15	Projectile	1486	
18	S-16	Projectile	1486	1584, 1742
19	S-17	Projectile	1486	1584, 1742
20	S-18	Projectile	1486	1584, 1742
21	S-19	Projectile	1486	1602, 1742
22	S-20	R.P. live round	1486	
23	S-21	911 tape	1486	
24	S-21(a)	Enhanced CD	1486	1513, 1742
25	S-22	Photo	1486	1530, 1742

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5	S-26	Photo	1486	1530, 1742
6	S-27	Photo	1486	1588, 1742
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8	S-29	Photo	1486	1588, 1742
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10	S-31	Photo	1486	1588, 1742
11	S-32	Photo	1486	1591, 1742
12	S-33	Photo	1486	1591, 1742
13	S-34	Photo	1486	1591, 1742
14	S-35	Photo	1486	1591, 1742
15	S-36	Photo	1486	
16	S-37	Photo	1486	1594, 1742
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22	S-43	Photo	1486	
23	S-44	Photo	1486	
24	S-45	Photo	1486	
25	S-46	Photo	1486	1800

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
1			
2	S-47	Photo	1486
3	S-48	Photo	1486 1599, 1742
4	S-49	Photo	1486
5	S-50	Photo	1486 1600, 1742
6	S-51	Photo	1486
7	S-52	Photo	1486
8	S-53	Photo	1486
9	S-54	Photo	1486 1603, 1742
10	S-55	Photo	1486 1603, 1742
11	S-56	Photo	1486 1603, 1742
12	S-57	Photo	1486
13	S-58	Photo	1486 1603, 1742
14	S-59	Photo	1486
15	S-60	Photo	1486
16	S-61	Photo	1486 1601, 1742
17	S-62	Photo	1486 1601, 1742
18	S-63	Photo	1486 1601, 1742
19	S-64	Photo	1486 1659, 1742
20	S-65	Photo	1488 1945
21	S-66	Photo	1488 1945
22	S-67	Photo	1488 1945
23	S-68	Photo	1488 1804
24	S-69	Photo	1488 1804
25	S-70	Photo	1488 1804

1	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
2	S-71	X-ray	1488	1804
3	S-72	X-ray	1488	1804
4	S-73	Photo	1488	1800
5	S-74	Photo	1488	1770
6	S-75	Photo	1488	1770
7	S-76	Photo	1488	1774
8	S-77	Car seat	1488	1760
9	S-78	Booking card	1488	1937
10	S-79	Bond sheet	1488	1937
11	S-80	Indictment	1488	1952
12	S-81	Lab sheet	1488	1952
13				
14		DEFENDANT' S EXHIBITS		
15		No exhibits offered.		
16				
17		COURT' S EXHIBITS		
18	C-1	Photo	1734	
19	C-2	Photo	1734	
20	C-3	Photo	1734	
21	C-4	Photo	1734	
22	C-5	Photo	2162	
23	C-6	Jury Question	2165	
24	C-7	Jury Question	2165	
25				

1 P R O C E E D I N G S

2 **THE COURT:** All right. Ladies and gentlemen,
3 again, my name is John Few. I'm from Greenville. I'm
4 going to be able to work with you all for this term of
5 court which is probably going to last us into next
6 week. We don't know exactly how long yet, but it
7 probably will go through the weekend and into next
8 week.

9 Let me take this opportunity to thank you all for
10 being here. We really appreciate the way in which you
11 all have worked with us since March when we sent out
12 the original summons for you all to be here in April.
13 Then we had to, of course, move the trial to today.
14 And you all have been cooperative. And we certainly
15 do appreciate that. It gives us a lot of hope to look
16 forward to working with you all this week, these next
17 two weeks. I think it's going to be a good term of
18 court for us.

19 Now, those of us who are a part of this system
20 permanently who work here, of course, we have to be
21 here all the time. We realize this is an imposition
22 on you to bring you out of your homes and bring you
23 out of your jobs to come up here and to serve as
24 members of the jury panel for this term of court.
25 We're going to do our best to streamline this process

1 as much as we can to make it run as efficiently as we
2 can for you all, to minimize the amount of time that
3 you have to spend up here.

4 But this is a several day process that we're
5 going to go through in qualifying the jury. There
6 will be times that each of you is asked to come back.
7 I think that we will all be here this morning until at
8 least lunchtime. And then hopefully, we will be able
9 to break you down into groups after that and ask you
10 to come back. We again ask you to continue the level
11 of cooperation that you have shown us so far and to be
12 prompt when we ask you to come back. That will help
13 us out considerably.

14 The process of qualifying the jury is basically a
15 three-step process. In just a second, the Clerk of
16 Court or the Deputy Clerk of Court is going to call
17 the roll. After that, the second step is I will ask
18 you some questions as a group and get your answers as
19 a group or individuals. And we will be able to do
20 that before lunch. And the third step is going to
21 take several days. That's when we're going to break
22 you down into panels and give you a set time to come
23 back.

24 When we have gotten far enough along that we have
25 enough jurors that have been qualified, then we will

1 be ready to begin the trial that I'm going to talk to
2 you about in just a few more minutes. So now, before
3 we have the Clerk call the roll, I'm going to have the
4 Clerk administer to you an oath. And I want you to
5 keep in mind that this oath will apply to the
6 information that you give us when we call the roll
7 which is really just your name.

8 But it also applies to the questions that I'm
9 going to ask you this morning as a group. And it will
10 also apply to the questions that I will ask you and
11 that the lawyers will ask you when we break you down
12 into panels and bring you back in groups. So for the
13 next several days, everything you tell me and
14 everything you tell this court will be subject to the
15 oath that you are about to take now.

16 Would you go ahead and administer the oath?

17 **THE CLERK:** Ladies and gentlemen of the jury,
18 please stand and raise your right hand.

19 (WHEREUPON, all jurors comply.)

20 **THE CLERK:** Do each of you solemnly swear or
21 affirm that the answers you are about to give the
22 Court are the whole truth and nothing but the truth so
23 help you God?

24 (WHEREUPON, all jurors respond affirmatively.)

25 **THE COURT:** All right. Now, ladies and gentlemen,

1 because there are so many of you, it is obviously
2 impossible for us to be able to tell whether each one
3 of you accepted that oath. So I'm going to ask you
4 this question now, is there any member of the jury
5 panel who did not accept the oath that we just
6 administered to you? If you did not accept the oath,
7 please stand.

8 (WHEREUPON, there was no response.)

9 **THE COURT:** And ma'am, I see you're standing, but
10 you did accept the oath, didn't you?

11 **POTENTIAL JUROR:** Yes.

12 **THE COURT:** All right. Call the roll.

13 When your name is called, please stand. There's
14 a lot of you. This is a big room. I'm used to making
15 my voice project into all corners of the room. Some
16 of you may not be used to having to speak quite that
17 loud. When your name is called, please repeat your --
18 stand and repeat your name for us. Tell us your
19 mileage one way here to the courthouse from your home.

20 Background noise makes it difficult for us to
21 hear. We have a court reporter up here who is taking
22 down everything that is said. So please try to
23 minimize the moving around and shuffling and coughing
24 and other things that are going to create background
25 noise that make it difficult for us to hear.

1 Go ahead.

2 **THE CLERK:** Number 3, Shannon G. Arrington.

3 **POTENTIAL JUROR:** You want my name?

4 **THE CLERK:** Name, your occupation --

5 **THE COURT:** Well, we're just going to get the name
6 and the mileage in order to move it along more
7 quickly.

8 **THE CLERK:** All right.

9 **POTENTIAL JUROR:** My name is Shannon Arrington.
10 A-r-r-i-n-g-t-o-n. And I live approximately 30 miles
11 from here.

12 **THE CLERK:** Thank you.

13 Number 4, William D. Atkins.

14 **POTENTIAL JUROR:** William Atkins. It's
15 approximately four miles.

16 **THE CLERK:** Number 6, Michael W. Ausberry,
17 Junior.

18 **POTENTIAL JUROR:** Michael Ausberry, Junior.
19 Approximately 30 miles.

20 **THE CLERK:** Number 8, Steve D. Babb.

21 **POTENTIAL JUROR:** Steve Babb. 25 miles.

22 **THE CLERK:** Number 9, Pamela C. Bagwell.

23 **POTENTIAL JUROR:** Pam Bagwell. Ten miles.

24 **THE CLERK:** Number 10, Dena G. Bailey.

25 **POTENTIAL JUROR:** Dena Bailey. Approximately

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eight miles.

THE CLERK: Number 13, Donald L. Banks.

POTENTIAL JUROR: Donald Banks. 20 miles.

THE CLERK: Number 14, Jackie D. Barham.

POTENTIAL JUROR: Jackie Barham. Six miles.

THE CLERK: Number 15, Samuel K. Bagwell.

Barnwell, I'm sorry. Barnwell.

POTENTIAL JUROR: Samuel K. Barnwell. 25 miles.

THE CLERK: Number 18, Thaddeus A. Beck.

POTENTIAL JUROR: Thaddeus Beck. 13 miles.

THE CLERK: Number 19, Lori S. Bedillion.

POTENTIAL JUROR: Lori Bedillion. Five miles.

THE CLERK: Number 20, Joseph N. Bennett.

POTENTIAL JUROR: Joseph N. Bennett. 15 miles.

THE CLERK: Number 21, Joshua R. Bennett.

POTENTIAL JUROR: Joshua Bennett. 15 miles.

THE CLERK: Number 22, Kimberly A. Berry.

POTENTIAL JUROR: Kimberly A. Berry. I was told to come in this morning. I can't serve this jury.

THE COURT: I will talk to you about that as soon as I can, Mrs. Berry. But for now, if you would just give us your mileage, then we will get to you. It will be a little bit longer. But I've got to go ahead and go through the roll call. And then I will talk to you. What's your mileage?

1 **POTENTIAL JUROR:** About eight miles.
2 **THE CLERK:** Number 27, Don J. Boyce.
3 **POTENTIAL JUROR:** Don J. Boyce. Approximately
4 seven miles.
5 **THE CLERK:** Number 28, Sandra L. Brady.
6 **POTENTIAL JUROR:** Sandra Brady. Eight miles.
7 **THE CLERK:** Number 29, Timothy R. Brewton.
8 **POTENTIAL JUROR:** Timothy Brewton. 18 miles.
9 **THE CLERK:** Number 32, Joseph -- Joshua L. Brock.
10 **POTENTIAL JUROR:** Joshua Brock. Approximately 20
11 miles.
12 **THE CLERK:** Number 35, Tommy D. Brown.
13 **POTENTIAL JUROR:** Tommy D. Brown. 15 miles.
14 **THE CLERK:** Number 37, Carol S. Burdette.
15 **POTENTIAL JUROR:** Carol Burdette. Seven miles.
16 **THE CLERK:** Number 39, Lori J. Burnett.
17 **POTENTIAL JUROR:** Lori Burnett. 18 miles.
18 **THE CLERK:** Number 40, Samantha Butler.
19 **POTENTIAL JUROR:** Samantha Butler. Ten miles.
20 **THE CLERK:** Number 44, Barrie L. Calderone.
21 **POTENTIAL JUROR:** Barrie Calderone. Seven miles.
22 **THE CLERK:** Number 45, Otis D. Campbell.
23 **POTENTIAL JUROR:** Otis D. Campbell. Twelve
24 - miles.
25 **THE CLERK:** Number 48, Kimberly M. Carpenter.

1 **POTENTIAL JUROR:** Kim Carpenter. Approximately 15
2 miles.

3 **THE CLERK:** Number 49, Kevin O. Cartledge.

4 **POTENTIAL JUROR:** Kevin Cartledge. Ten miles.

5 **THE CLERK:** Number 50, Candace D. Cathcart.

6 **POTENTIAL JUROR:** Candace Cathcart. Ten miles.

7 **THE CLERK:** Number 51, Alicia M. Center.

8 **POTENTIAL JUROR:** Alicia Center. Ten miles.

9 **THE CLERK:** Number 52, Betty L. Cochran.

10 **POTENTIAL JUROR:** Betty L. Cochran. 20 miles.

11 **THE CLERK:** Number 53, Leonard F. Cogdill.

12 **POTENTIAL JUROR:** Leonard Cogdill. Four miles.

13 **THE CLERK:** Number 57, Clara V. Cope.

14 **POTENTIAL JUROR:** Clara V. Cope. 15 miles.

15 **THE CLERK:** Number 59, James R. Cottrell.

16 **POTENTIAL JUROR:** James R. Cottrell. Ten miles.

17 **THE CLERK:** Number 60, James E. Creel.

18 **POTENTIAL JUROR:** James Creel, 15.

19 **THE CLERK:** Number 61, Travis K. Cromer.

20 **POTENTIAL JUROR:** Travis Cromer. Five miles.

21 **THE CLERK:** Number 63, Sheril H. Cudd.

22 **POTENTIAL JUROR:** Sheril Cudd. Eight miles.

23 **THE CLERK:** Number 65, Luther M. Culpepper.

24 **POTENTIAL JUROR:** Luther Culpepper. 17 miles.

25 **THE CLERK:** Number 66, Harold L. Daniels.

1 **POTENTIAL JUROR:** Harold L. Daniels. Five miles.
2 **THE CLERK:** Number 68, Michael T. Dawson.
3 **POTENTIAL JUROR:** Michael Dawson. 15 miles.
4 **THE CLERK:** Number 71, James S. Dodd.
5 **POTENTIAL JUROR:** James S. Dodd, 25.
6 **THE CLERK:** Number 72, Elizabeth M. Donald.
7 **POTENTIAL JUROR:** Elizabeth Donald. Twelve miles.
8 **THE CLERK:** Number 74, Cheryl L. Dotson.
9 **POTENTIAL JUROR:** Cheryl Dotson. 18 miles.
10 **THE CLERK:** Number 77, Ashley D. Driscoll.
11 **POTENTIAL JUROR:** Ashley Driscoll. Approximately
12 three miles.
13 **THE CLERK:** Number 81, Emma G. Ellis.
14 **POTENTIAL JUROR:** Emma Ellis. 25 miles.
15 **THE CLERK:** Number 82, Frank L. Elmore.
16 **POTENTIAL JUROR:** Frank L. Elmore. 25 miles.
17 **THE CLERK:** Number 84, Dewey L. Ferrell, Jr.
18 (WHEREUPON, there was no response.)
19 **THE CLERK:** That juror is on the list to be
20 checked.
21 Number 85, Stanley F. Fields.
22 **POTENTIAL JUROR:** Stanley Fields. 15 miles.
23 **THE CLERK:** Number 86, Kenneth J. Fields, Jr. is
24 on the list to be checked.
25 87, Wendy K. Fincher.

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(WHEREUPON, there was no response.)

THE CLERK: On the list to be checked.

89, Joseph H. Floyd.

POTENTIAL JUROR: Joseph H. Floyd. I would say approximately ten miles.

THE CLERK: Number 90, Judy D. Folk.

POTENTIAL JUROR: Judy Folk. 15 miles.

THE CLERK: Number 92, Candy C. Fowler.

POTENTIAL JUROR: Candy C. Fowler. Approximately 15.

THE CLERK: Number 93, Gail L. Fowler.

POTENTIAL JUROR: Gail Fowler. Six miles.

THE CLERK: Number 95, Linda J. Fuller.

POTENTIAL JUROR: Linda Fuller. 18 miles.

THE CLERK: Number 96, Robin D. Gallman.

POTENTIAL JUROR: Robin Gallman. Nine miles.

THE CLERK: Number 97, Pam L. Gardner.

POTENTIAL JUROR: Pam Gardner. Ten miles.

THE CLERK: Number 100, James B. Gedroic.

POTENTIAL JUROR: James Gedroic. 30 miles.

THE CLERK: Number 101, James T. Gentry.

POTENTIAL JUROR: James T. Gentry. A mile and a half.

THE CLERK: 102, Sarah H. Gibson.

POTENTIAL JUROR: My name has been changed. It's

1 Sarah Gibson Simms. And approximately seven miles.
2 **THE CLERK:** Number 103, Teresa R. Gilbert.
3 **POTENTIAL JUROR:** Teresa Gilbert. Approximately
4 10.
5 **THE CLERK:** Number 106, Danny S. Gomes.
6 **POTENTIAL JUROR:** Danny Gomes. Five miles.
7 **THE CLERK:** Number 109, Melva Graham Martin.
8 **POTENTIAL JUROR:** Melva Martin. About 15 miles.
9 **THE CLERK:** Number 112, Brandon J. Greenway.
10 **POTENTIAL JUROR:** Brandon Greenway. 15 miles.
11 **THE CLERK:** Number 113, Catherine A. Grubbs.
12 **POTENTIAL JUROR:** Catherine A. Grubbs. 20 miles.
13 **THE CLERK:** Number 115, Angela M. Haley.
14 **POTENTIAL JUROR:** Angela Haley. Five miles.
15 **THE CLERK:** Number 117, Amanda J. Hamby.
16 **POTENTIAL JUROR:** I recently moved to address.
17 Would you like my mileage on the new one?
18 **THE CLERK:** (Nods head affirmatively.)
19 **POTENTIAL JUROR:** I'm Amanda Hamby. About 35
20 miles per hour.
21 **THE CLERK:** Number 118, Rosa L. Hammitt.
22 **POTENTIAL JUROR:** Rosa Hammitt. Approximately ten
23 miles.
24 **THE CLERK:** Number 122, Robert D. Hensley.
25 **POTENTIAL JUROR:** Robert Hensley. About ten

1 miles.

2 **THE CLERK:** Number 123, Leon G. Hicks.

3 **POTENTIAL JUROR:** Leon Hicks. 21 miles.

4 **THE CLERK:** Number 125, Carole E. Hill.

5 **POTENTIAL JUROR:** Carole Hill. 28 miles.

6 **THE CLERK:** Number 126, Elizabeth A. Hill

7 **POTENTIAL JUROR:** I am Elizabeth Hill.

8 Approximately 25 miles.

9 **THE CLERK:** Number 127, Todd C. Hillstock.

10 **POTENTIAL JUROR:** Todd Hillstock. One mile.

11 **THE CLERK:** How many miles, sir?

12 **POTENTIAL JUROR:** One.

13 **THE CLERK:** Number 130, Tracy L. Hollingsworth.

14 **POTENTIAL JUROR:** Tracy Hollingsworth. About

15 seven or eight miles.

16 **THE CLERK:** Number 133, John P. Hoversrud.

17 **POTENTIAL JUROR:** John Hoversrud. Ten miles.

18 **THE CLERK:** Number 134, Karla S. Howell.

19 (WHEREUPON, there was no response.)

20 **THE CLERK:** She's on the list to be checked.

21 Number 135, Donna J. Hughes.

22 **POTENTIAL JUROR:** Donna Hughes. Eight miles.

23 **THE CLERK:** Number 137, Kylie L. Hyder.

24 **POTENTIAL JUROR:** Kylie Hyder. 30 miles.

25 **THE CLERK:** Number 138, Dean T. Israel.

1 **POTENTIAL JUROR:** Dean T. Israel. Seven miles.
2 **THE CLERK:** Number 146, Ricky L. Johnson.
3 **POTENTIAL JUROR:** Ricky Johnson. 15 miles.
4 **THE COURT:** What was the number? 146?
5 **THE CLERK:** 146.
6 Number 147, Sophia M. Johnson.
7 **POTENTIAL JUROR:** Sophia Johnson. Ten miles.
8 **THE CLERK:** Number 148, Linda K. Jones.
9 **POTENTIAL JUROR:** Linda Jones. Eleven miles.
10 **THE CLERK:** Number 151, Matt Kern.
11 **POTENTIAL JUROR:** Matt Kern. Seven miles.
12 **THE CLERK:** Number 153, Jon C. Krisher.
13 **POTENTIAL JUROR:** Jon Krisher. 16 miles.
14 **THE CLERK:** Number 155, Dorthy Landrum.
15 **POTENTIAL JUROR:** Dorthy Landrum. One mile.
16 **THE CLERK:** Number 157, Wilma S. Langford.
17 **POTENTIAL JUROR:** Wilma Langford. About 20 miles.
18 **THE CLERK:** Number 160, Mackenzie A. Leake.
19 **POTENTIAL JUROR:** Mackenzie Leake. 25 miles.
20 **THE CLERK:** Number 161, Elaine J. Lee.
21 **POTENTIAL JUROR:** Elaine Lee. Six miles.
22 **THE CLERK:** Number 162, Rick J. Lee.
23 **POTENTIAL JUROR:** Rick Lee. Twelve miles.
24 **THE CLERK:** Number 171, Donald L. Malone.
25 **POTENTIAL JUROR:** Donald Malone. Ten miles.

1 **THE CLERK:** Number 173, Harold T. Marcum, Jr.
2 **POTENTIAL JUROR:** Harold Marcum. Eight miles.
3 **THE CLERK:** Number 175, Joyce P. Martin.
4 **POTENTIAL JUROR:** Joyce P. Martin. 17 miles.
5 **THE CLERK:** Number 176, Miguel A. Martinez.
6 **POTENTIAL JUROR:** Miguel A. Martinez. About
7 eight miles.
8 **THE CLERK:** Number 178, Michael E. Mathis.
9 **POTENTIAL JUROR:** Michael Mathis. Five miles
10 **THE CLERK:** Number 179, Larry A. Mauldin.
11 **POTENTIAL JUROR:** Larry A. Mauldin. 15 miles.
12 **THE CLERK:** Number 185, Shirley McDowell.
13 **POTENTIAL JUROR:** Shirley McDowell. Five miles.
14 **THE CLERK:** Number 187, Gary S. McHam.
15 **POTENTIAL JUROR:** Gary McHam. Three miles.
16 **THE CLERK:** Number 189, Brent W. McKinney.
17 **POTENTIAL JUROR:** Brent W. McKinney. 15 miles.
18 **THE CLERK:** Number 191, John D. Medford.
19 **POTENTIAL JUROR:** John D. Medford. Seven miles.
20 **THE CLERK:** Number 192, Dana A. Melton.
21 **POTENTIAL JUROR:** Dana Melton. Five miles.
22 **THE CLERK:** Number 194, Jerlyn M. Miller.
23 **POTENTIAL JUROR:** Jerlyn Miller. One mile.
24 **THE CLERK:** Number 195, Kathleen C. Miller.
25 **POTENTIAL JUROR:** Kathleen Miller. 30 miles.

1 **THE CLERK:** Number 196, Lewis J. Miller.
2 **POTENTIAL JUROR:** Lewis J. Miller. About eight
3 miles.
4 **THE CLERK:** Number 197, Aletha M. Misenheimer.
5 **POTENTIAL JUROR:** Aletha Misenheimer. Ten miles.
6 **THE CLERK:** Number 199, Laurence D. Morda.
7 **POTENTIAL JUROR:** Laurence Morda. About 25 miles.
8 **THE CLERK:** Number 200, Lynne L. Morgan.
9 **POTENTIAL JUROR:** Lynne L. Morgan. Five miles.
10 **THE CLERK:** Number 202, Amanda E. Morton.
11 **POTENTIAL JUROR:** Amanda Morton. 15 miles.
12 **THE CLERK:** Number 203, Brock T. Muenzer.
13 **POTENTIAL JUROR:** Brock Muenzer. About 29 miles.
14 **THE CLERK:** Number 204, Theresa M. Nason.
15 **POTENTIAL JUROR:** Therea Nason. 21 miles.
16 **THE CLERK:** Number 205, Joann T. Netherton.
17 **POTENTIAL JUROR:** Joann Netherton. 15 miles.
18 **THE CLERK:** Number 206, Deborah W. Newman.
19 **POTENTIAL JUROR:** Deborah Newman. 12 miles.
20 **THE CLERK:** Number 208, Thomas N. Oliver.
21 **POTENTIAL JUROR:** Thomas Oliver. Five miles.
22 **THE CLERK:** Number 211, Brenda B. Pair.
23 **POTENTIAL JUROR:** Brenda Pair. 10 miles.
24 **THE CLERK:** Number 212, William D. Parnell.
25 **POTENTIAL JUROR:** William Parnell. 18 miles.

1 **THE CLERK:** Number 213, Rodney Petty.
2 **POTENTIAL JUROR:** Rodney Petty. Eight miles.
3 **THE CLERK:** Number 214, Timothy K. Pitts.
4 **POTENTIAL JUROR:** Timothy Pitts. Eight miles.
5 **THE CLERK:** Number 215, John S. Poole.
6 **POTENTIAL JUROR:** John Poole. Four and a half
7 miles.
8 **THE CLERK:** Number 216, Angela A. Porter.
9 **POTENTIAL JUROR:** Angela Porter. One mile.
10 **THE CLERK:** Number 218, Janet Prasanlack.
11 **POTENTIAL JUROR:** Janet Prasanlack. 15 miles.
12 **THE CLERK:** Number 221, Jamie A. Puckett.
13 **POTENTIAL JUROR:** Jamie Puckett. Ten miles.
14 **THE CLERK:** Number 222, Tammy Queen.
15 **POTENTIAL JUROR:** Tammy Queen. Four miles.
16 **THE CLERK:** Number 223, Donald E. Ray.
17 **POTENTIAL JUROR:** Donald Ray. Two miles.
18 **THE CLERK:** Number 224, Kenneth J. Reese.
19 **POTENTIAL JUROR:** Kenneth Reese. 14 miles.
20 **THE CLERK:** Number 225, Jeffrey A. Rhineberger.
21 **POTENTIAL JUROR:** Jeffrey Rhineberger. 18.
22 **THE CLERK:** Number 226, Melody M. Riddle.
23 **POTENTIAL JUROR:** Melody Riddle. About eight.
24 **THE CLERK:** Number 227, Ronnie H. Ridings.
25 **POTENTIAL JUROR:** Ronnie Ridings. Eight miles.

1 **THE CLERK:** Number 228, Timothy J. Roberts.
2 **POTENTIAL JUROR:** Timothy Roberts. 14 miles.
3 **THE CLERK:** Number 229, Regina E. Robertson.
4 **POTENTIAL JUROR:** Regina Robertson. 12 miles.
5 **THE CLERK:** Number 230, Alonzo M. Robinson.
6 **POTENTIAL JUROR:** Alonzo Robinson. Ten miles.
7 **THE CLERK:** Number 231, Donnie Rogers.
8 (WHEREUPON, there was no response.)
9 **THE CLERK:** Donnie Rogers, that's a juror to be
10 checked on.
11 232, Kim Rogers.
12 **POTENTIAL JUROR:** Kim Rogers. 12 miles.
13 **THE CLERK:** Number 233, Danny R. Rollins.
14 **POTENTIAL JUROR:** Danny Rollins. Twelve miles.
15 **THE CLERK:** Number 235, Iva A. Ross.
16 **POTENTIAL JUROR:** Iva Ross. Approximately 20
17 miles.
18 **THE CLERK:** Number 236, Craig C. Ruff.
19 **POTENTIAL JUROR:** Craig Ruff. 23 miles.
20 **THE CLERK:** Number 240, Martha J. Sallis.
21 **POTENTIAL JUROR:** Martha Sallis. Ten miles.
22 **THE CLERK:** Number 241, Shannon D. Sanders.
23 **POTENTIAL JUROR:** Shannon Sanders. About 25
24 miles.
25 **THE CLERK:** Number 243, Lady N. Sartor.

1 **POTENTIAL JUROR:** Lady Sartor. Ten miles.
2 **THE CLERK:** Number 247, Jeffrey D. Seay.
3 **POTENTIAL JUROR:** Jeffrey Seay. 14 miles.
4 **THE CLERK:** Number 250, Mark P. Simmons.
5 **POTENTIAL JUROR:** Mark Simmons. About twelve
6 miles.
7 **THE CLERK:** Number 253, Brenda M. Smith.
8 **POTENTIAL JUROR:** Brenda Smith. Eight miles.
9 **THE CLERK:** Number 254, Latrice V. Smith.
10 **POTENTIAL JUROR:** Latrice Smith. Three miles.
11 **THE CLERK:** Number 255, Marvin Smith.
12 **POTENTIAL JUROR:** Marvin Smith. 15 miles.
13 **THE CLERK:** Number 256, Matthew S. Smith.
14 **POTENTIAL JUROR:** Matthew Smith. Five miles.
15 **THE CLERK:** Number 257, Richard K. Smith.
16 **POTENTIAL JUROR:** Richard Smith. Four miles.
17 **THE CLERK:** Number 258, Toni D. Smith.
18 **POTENTIAL JUROR:** Toni Smith. Six miles.
19 **THE CLERK:** Number 260, Ryan Snapp.
20 **POTENTIAL JUROR:** Ryan Snapp. About 18 miles.
21 **THE CLERK:** Number 261, Heather L. Snite.
22 **POTENTIAL JUROR:** Heather Snite. Five miles.
23 **THE CLERK:** Number 267, Tameka D. Stephen
24 **POTENTIAL JUROR:** Tameka Stephen. Two miles.
25 **THE CLERK:** Number 268, Jami L. Sturgeon.

1 **POTENTIAL JUROR:** Jami Sturgeon. Two miles.
2 **THE CLERK:** Number 269, Tracey A. Surrett.
3 **POTENTIAL JUROR:** Tracey Surrett. 28 miles.
4 **THE CLERK:** Number 270, Lori L. Tallent.
5 **POTENTIAL JUROR:** Lori Tallent. 12 miles.
6 **THE CLERK:** Number 271, Michael D. Taylor.
7 **POTENTIAL JUROR:** Michael Taylor. Uh, 25 miles.
8 **THE CLERK:** Number 272, Ramniklal P. Thakrar.
9 **POTENTIAL JUROR:** Ramniklal Thakrar. Eight miles.
10 **THE CLERK:** Number 273, Patricia A. Thomas.
11 **POTENTIAL JUROR:** Patricia Ann Thomas. I'm not
12 really sure. I think about five miles.
13 **THE CLERK:** Number 274, Darcy J. Thompson.
14 **POTENTIAL JUROR:** Darcy Thompson. Two miles.
15 **THE CLERK:** Number 277, Dorothy Tiner.
16 **POTENTIAL JUROR:** Tiner. It's 15 miles.
17 **THE CLERK:** Number 279, Gary G. Tucker.
18 **POTENTIAL JUROR:** Gary Tucker. 25 miles.
19 **THE CLERK:** Number 281, Jane V. Vellines.
20 **POTENTIAL JUROR:** Jane Vellines. Approximately
21 five miles.
22 **THE CLERK:** Number 282, Sheila M. Vlieg.
23 **POTENTIAL JUROR:** Sheila Vlieg. Roughly nine
24 miles.
25 **THE CLERK:** Number 285, Michael D. Weeks.

1 **POTENTIAL JUROR:** Michael Weeks. About 7 miles.
2 **THE CLERK:** Number 287, Tracy Whitaker.
3 **POTENTIAL JUROR:** Tracy Whitaker. Five miles.
4 **THE CLERK:** Number 288, Junie White.
5 **POTENTIAL JUROR:** Junie White. Two miles.
6 **THE CLERK:** Number 291, Sherba J. Wilkins.
7 **POTENTIAL JUROR:** Sherba Wilkins. Four miles.
8 **THE CLERK:** Number 293, Hollie R. Williams.
9 **POTENTIAL JUROR:** Hollie Williams. One mile.
10 **THE CLERK:** Number 294, Isabell Williams.
11 **POTENTIAL JUROR:** Isabell Williams. Two miles.
12 **THE CLERK:** Number 295, Jeffrey W. Williams.
13 **POTENTIAL JUROR:** Jeffrey Williams. Ten miles.
14 **THE CLERK:** Number 297, Thomas A. Williams.
15 **POTENTIAL JUROR:** Thomas Williams. Seven miles.
16 **THE CLERK:** Is any juror present in the courtroom
17 whose name I did not call?
18 Juror number 134, Karla S. Howell.
19 **POTENTIAL JUROR:** Yes, sir.
20 **THE CLERK:** Is that your name? Go ahead and
21 repeat your name.
22 **POTENTIAL JUROR:** Karla S. Howell.
23 **THE CLERK:** How many miles did you have?
24 **POTENTIAL JUROR:** I'm sorry.
25 **THE CLERK:** How many miles to the courthouse this

1 morning?

2 **POTENTIAL JUROR:** Approximately about 15 miles.

3 **THE CLERK:** Thank you.

4 **THE CLERK:** Now, ladies and gentlemen, as I said a
5 minute ago, I have a list of questions that I have to
6 ask you now. This list of questions is set forth in
7 the South Carolina Statutes. And I'm required to ask
8 you each one of these questions. Some of these
9 questions might call for personal information from
10 you. We don't want any one of you to suffer any
11 embarrassment at all.

12 If I ask you a question and you're going to have
13 to answer that question and you don't want to answer
14 the question out loud in front of the rest of the
15 jurors, then you can just tell me that. And I will
16 give you a chance at the end to come down front and
17 answer the question privately with me and with the
18 Clerk of Court. We don't want anybody to suffer any
19 embarrassment.

20 Please listen very carefully to the questions
21 that I ask you. It is very important that if you have
22 any information that is responsive to a question that
23 I ask that you give me that information this morning.
24 If I ask a question and you have some information that
25 you need to provide, please stand. I will recognize

1 you. Give me your name and then tell me your
2 information.

3 Now, if you don't want to do it out loud, you can
4 tell me that then or you can just remain quiet. You
5 can remain seated. And at the end, you can come down
6 front and give me the information that you did not
7 want to give out loud in front of the rest of the jury
8 panel.

9 There are two types of questions that I'm going
10 to ask you. The first type of question or the first
11 group of questions relates directly to your
12 qualification to serve as jurors in South Carolina.
13 The second group of questions relate to what we call
14 exemptions. Even though you may be qualified to
15 serve, you may be exempt for one reason or the other.
16 The first group of questions that I'm going to ask you
17 relate directly to your qualification. Is there any
18 member of the jury panel who is not a citizen of the
19 United States? If not, please stand.

20 (WHEREUPON, there was no response.)

21 **THE COURT:** Is there any member of the jury panel
22 who is not a citizen and resident of Spartanburg
23 County, South Carolina? If not, please stand.

24 Tell me your name, ma'am.

25 **POTENTIAL JUROR:** Alicia Center.

1 **THE COURT:** Ms. Center?
2 **POTENTIAL JUROR:** Uh-huh (affirmative).
3 **THE COURT:** What county do you live in?
4 **POTENTIAL JUROR:** Greenville County.
5 **THE COURT:** What's your address?
6 **POTENTIAL JUROR:** Greenville, South
7 Carolina.
8 **THE COURT:**
9 **POTENTIAL JUROR:** Yes.
10 **THE COURT:** Have you moved recently?
11 **POTENTIAL JUROR:** Yes, sir. December of '03.
12 **THE COURT:** All right. Thank you, Ms. Center.
13 Your name, ma'am?
14 **POTENTIAL JUROR:** Amanda Hamby, 117.
15 **THE COURT:** Where do you live, ma'am?
16 **POTENTIAL JUROR:** I live at
17 in Campobello.
18 **THE COURT:** And is that in Greenville?
19 **POTENTIAL JUROR:** No.
20 **THE COURT:** What county is that in?
21 **POTENTIAL JUROR:** It's in Inman.
22 **THE COURT:** Is it in Spartanburg County?
23 **POTENTIAL JUROR:** I'm not sure. I just moved
24 there.
25 **THE COURT:** Okay. I think that's in Spartanburg

1 County.

2 **POTENTIAL JUROR:** Okay. I'm sorry.

3 **THE COURT:** That's all right.

4 Yes, ma'am. Tell me your name.

5 **POTENTIAL JUROR:** Kylie Hyder.

6 **THE COURT:** All right. Ma'am, where do you live?

7 **POTENTIAL JUROR:** I live in Greenville County.

8

9 **THE COURT:**

10 **POTENTIAL JUROR:** Uh-huh (affirmative).

11 **THE COURT:** That might be North
12 Carolina. You sure that's in South Carolina? Have
13 you moved recently, Ms. Hyder?

14 **POTENTIAL JUROR:** Uh-huh (affirmative).

15 **THE COURT:** And that's in Greenville County?

16 **POTENTIAL JUROR:** Uh-huh (affirmative). It's
17 right outside.

18 **THE COURT:** Thank you, Ms. Hyder. All right.

19 Nobody else is standing. Is there any member of
20 the jury panel who is unable to read, write, speak or
21 understand the English language? If you are unable to
22 do either one of those things, please stand.

23 Tell me your name, sir.

24 **POTENTIAL JUROR:** Lewis James Miller.

25 **THE COURT:** Mr. Miller. All right. Mr. Miller,

1 you want to talk to me about that now or you want to
2 speak to me privately in a few minutes?

3 **POTENTIAL JUROR:** Well, I went to the 10th grade.
4 I ain't all that smart or anything like that there. I
5 do the best I can, you know.

6 **THE COURT:** Do you work, Mr. Miller?

7 **POTENTIAL JUROR:** Yeah.

8 **THE COURT:** How long have you held your job?

9 **POTENTIAL JUROR:** I been on this job now about
10 seven months.

11 **THE COURT:** And you answered the question because
12 you don't read all that well?

13 **POTENTIAL JUROR:** I can't read too good. Can't
14 read too good.

15 **THE COURT:** You can read some but not to well?

16 **POTENTIAL JUROR:** Not to good.

17 **THE COURT:** Mr. Miller, I'll tell you what, at
18 the end, when I get all the jurors to come up and
19 speak to me individually, why don't you come up and
20 talk to me a little bit more in detail then. Okay?
21 Thank you, sir.

22 Your name, sir?

23 **POTENTIAL JUROR:** Michael Mathis.

24 **THE COURT:** Mr. Mathis?

25 **POTENTIAL JUROR:** Yes, sir.

1 **THE COURT:** All right. You want to speak to me
2 now or you want to speak to me privately in a few
3 minutes?

4 **POTENTIAL JUROR:** Speak to you now.

5 **THE COURT:** All right. Go ahead.

6 **POTENTIAL JUROR:** I went to the fourth grade in
7 school. I can't read and write.

8 **THE COURT:** Can you read at all?

9 **POTENTIAL JUROR:** Barely.

10 **THE COURT:** What kind of job do you have?

11 **POTENTIAL JUROR:** I move furniture now. But I'm
12 on disability.

13 **THE COURT:** All right. Do you, uh, when you
14 manage your money, do you have a checkbook that you
15 use?

16 **POTENTIAL JUROR:** No.

17 **THE COURT:** Who handles your money?

18 **POTENTIAL JUROR:** My daughter does.

19 **THE COURT:** Is that because you are unable to
20 handle a checkbook?

21 **POTENTIAL JUROR:** Yes.

22 **THE COURT:** All right. Thank you, Mr. Mathis.
23 We'll get back to you in a few minutes.

24 Yes, ma'am.

25 **POTENTIAL JUROR:** My name is Dorthy Landrum. And

1 I can't read.

2 **THE COURT:** Mrs. Landrum?

3 **POTENTIAL JUROR:** Yes.

4 **THE COURT:** All right. Ma'am, do you work?

5 **POTENTIAL JUROR:** No, disability.

6 **THE COURT:** Ma'am?

7 **POTENTIAL JUROR:** Disability.

8 **THE COURT:** How long have you been on disability?

9 **POTENTIAL JUROR:** Twenty something years.

10 **THE COURT:** Can you read at all or just not to
11 well?

12 **POTENTIAL JUROR:** I can't read at all.

13 **THE COURT:** All right. We'll get back to you in a
14 few minutes, Ms. Landrum.

15 Nobody else is standing. Does any member of the
16 jury panel have less than a six grade education? If
17 so, please stand.

18 Mr. Mathis, you don't need to stand again.

19 **POTENTIAL JUROR:** Sir?

20 **THE COURT:** You don't need to stand again, sir.

21 (WHEREUPON, there was no response.)

22 **THE COURT:** Nobody is standing. Is there any
23 member of the jury panel who is unable to serve on the
24 jury duty this week because of a medical condition,
25 either a mental or a physical condition? Anyone who

1 is unable to serve on jury duty this week because of a
2 medical condition, please stand.

3 All right. Tell me your name, ma'am.

4 **POTENTIAL JUROR:** Kim Berry.

5 **THE COURT:** Ms. Berry.

6 Now, let me say this to each one of you who are
7 standing now in response to the question about a
8 medical condition. I'm going to have to have some
9 sort of documentation from a physician in order to
10 excuse you from jury service. So if you have that,
11 you can present it to me now.

12 If you don't have that, then we will have a
13 little bit of time this afternoon and tomorrow for you
14 to try to get that. So if you don't have it, still I
15 want you to tell me your name. But understand that
16 I'm not going to be able to excuse you until I have
17 seen some documentation from a physician.

18 All right. Ms. Berry.

19 **POTENTIAL JUROR:** I would have brought it. I'm
20 seeing a doctor for a nerve in my back. I can't sit.
21 That's why I've been standing. I didn't get notice
22 until Friday in my mailbox that I was suppose to be
23 here Monday morning. When I called, she said I have
24 to show up to see the judge. There was no way to do
25 that at 5 o'clock Friday. I can get you several

1 doctors.

2 **THE COURT:** Is this a problem that you've had for
3 a long time or something that has come up recently?

4 **POTENTIAL JUROR:** In the last month.

5 **THE COURT:** Do you work?

6 **POTENTIAL JUROR:** No.

7 **THE COURT:** How long has it been since you've
8 worked?

9 **POTENTIAL JUROR:** Seven years, eight years.

10 **THE COURT:** All right. Let me see the lawyers up
11 here for a second please.

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 **THE COURT:** All right. What I'm going to do, it
15 looks like there's about ten to twelve of you all
16 standing that want to talk to me about medical
17 problems. Instead of doing that one at a time now,
18 I'm going to ask you all when I meet with the jurors
19 individually in about 20 or 30 minutes, I want you to
20 come down and speak to me then.

21 But you have to understand that I do not have the
22 power to excuse you from jury service for a medical
23 condition unless you have documentation from a
24 physician. It may be that you need to go and try to
25 get that this afternoon when we have a little time off

1 and then bring it to me as soon as you can. But if
2 you want to come on up and tell me about it, it may be
3 that we can, depending on your situation, we might can
4 resolve it without an excuse, but I kind of doubt it.
5 So when I ask the jurors to come speak to me
6 individually in a few minutes, just come and get in
7 that line and I will speak to you then. So you all
8 can have a seat.

9 Is there any member of the jury panel who has
10 ever been convicted of a crime whose maximum
11 punishment could have been more than one year in
12 prison? Now, there are several ways that you can be
13 convicted. Perhaps you pled guilty before a judge or
14 you might have been found guilty before a judge or
15 before a jury and you were convicted in that way.

16 And it does not matter what sentence you actually
17 got. What is important is what sentence you could
18 have gotten. And if you have been convicted of a
19 crime where the sentence that you could have gotten is
20 more than one year in jail, please stand now and tell
21 me about it. Or if you choose, you can come speak to
22 me about it privately in a few minutes.

23 Tell me your name, sir.

24 - **POTENTIAL JUROR:** Robert Hensley. Can I speak
25 with you privately please.

1 **THE COURT:** All right.

2 Ma'am?

3 **POTENTIAL JUROR:** I'll come --

4 **THE COURT:** If you want to speak to me privately,
5 you don't have to tell me that right now.

6 Your name, sir?

7 **POTENTIAL JUROR:** Travis Cromer. I was convicted
8 of strong arm robbery.

9 **THE COURT:** Is that here in Spartanburg?

10 **POTENTIAL JUROR:** Yes, sir. It is.

11 **THE COURT:** All right. Mr. Cromer, we'll be back
12 with you in a few minutes.

13 Yes, sir.

14 **POTENTIAL JUROR:** John Medford. I would like to
15 speak to you in private, please.

16 **THE COURT:** All right, Mr. Medford.

17 Your name, sir?

18 **POTENTIAL JUROR:** Ryan Snapp.

19 **THE COURT:** What was your last name?

20 **POTENTIAL JUROR:** Snapp.

21 **THE COURT:** All right. You want to tell me about
22 it now?

23 **POTENTIAL JUROR:** No, sir.

24 **THE COURT:** All right.

25 **POTENTIAL JUROR:** Michael Mathis.

1 **THE COURT:** Mr. Mathis.

2 **POTENTIAL JUROR:** I was convicted of three counts
3 of grand larceny. I was sentenced to eight years.
4 And I could have got 30.

5 **THE COURT:** Three counts of grand larceny. Thank
6 you, Mr. Mathis.

7 Your name, sir?

8 **POTENTIAL JUROR:** Frank Elmore.

9 **THE COURT:** Yes, sir.

10 **POTENTIAL JUROR:** Speak to you privately.

11 **THE COURT:** All right.

12 **POTENTIAL JUROR:** Joseph Floyd. I'd like to speak
13 to you later.

14 **THE COURT:** All right.

15 Ma'am?

16 **POTENTIAL JUROR:** Tracey Surrett. Voluntary
17 manslaughter.

18 **THE COURT:** We'll get back to you shortly, Ms.
19 Surrett.

20 Nobody else is standing. Is there any member of
21 the jury panel who is a Clerk or Deputy Clerk of
22 Court, a constable, sheriff or other commissioned law
23 enforcement officer, a probate judge, county
24 commissioner, magistrate or other county officer or
25 any person employed within the walls of any

1 courthouse? If so, please stand.

2 Tell me your name, ma'am.

3 **POTENTIAL JUROR:** Elizabeth Donald. Elizabeth
4 Donald.

5 **THE COURT:** All right. Tell me about your
6 situation.

7 **POTENTIAL JUROR:** I work with the county auditor.

8 **THE COURT:** And where is your office?

9 **POTENTIAL JUROR:** It's up the street in the
10 administrative building.

11 **THE COURT:** In the administrative building. What
12 is your position?

13 **POTENTIAL JUROR:** Tax clerk.

14 **THE COURT:** Tax clerk?

15 **POTENTIAL JUROR:** Uh-huh (affirmative).

16 **THE COURT:** All right. I don't think that
17 disqualifies you but I will have to check.

18 Your name, sir?

19 **POTENTIAL JUROR:** I work for the county of Lyman.

20 **THE COURT:** What do you do for Lyman?

21 **POTENTIAL JUROR:** I'm a lab technician for the
22 water plant.

23 **THE COURT:** And your office is at the water plant?

24 **POTENTIAL JUROR:** It's in the Town Hall.

25 **THE COURT:** In the Town Hall. Tell me your name

1 again.

2 **POTENTIAL JUROR:** William Atkins, Juror number 4.

3 **THE COURT:** All right, sir. I don't think that
4 disqualifies you but I'll have to check, Mr. Atkins.

5 Is there any member of the jury panel who has
6 already served as a juror or on jury duty in circuit
7 court during this year, 2004? If so, please stand.

8 Yes, sir.

9 **POTENTIAL JUROR:** I served before but not on this
10 side.

11 **THE COURT:** In this building?

12 **POTENTIAL JUROR:** Yes, sir.

13 **THE COURT:** But over in the basement on the other
14 side?

15 **POTENTIAL JUROR:** Yes, sir.

16 **THE COURT:** And tell me your name.

17 **POTENTIAL JUROR:** Shannon Arrington.

18 **THE COURT:** Ms. Arrington?

19 **POTENTIAL JUROR:** Uh-huh (affirmative).

20 **THE COURT:** That was in magistrate's court. That
21 would not disqualify you.

22 Is there any member of the jury panel who has
23 served as a member of the Spartanburg County Grand
24 Jury in the last several years? If so, please stand.

25 (WHEREUPON, there was no response.)

1 **THE COURT:** Is there any member of the jury panel
2 who is employed as a guard with the South Carolina
3 Department of Corrections? If so, please stand.

4 (WHEREUPON, there was no response.)

5 **THE COURT:** All right. Now, I'm going to move on
6 to the second group of questions that relate to
7 exemptions. The first exemption is for jurors who are
8 65 or older. If you are age 65 or older and you do
9 not want to serve as a juror during this term of
10 court, then I will excuse you.

11 Now let me make it clear that you certainly are
12 free to serve. These exemptions, any exemption that
13 might apply to you, you are free to serve if you
14 choose to. And we will certainly love to have you
15 stick around and serve. But if you are 65 or older
16 and you don't want to serve, please stand and tell me
17 your name, now.

18 **POTENTIAL JUROR:** Junie White.

19 **THE COURT:** Mr. White, you don't want to serve,
20 sir?

21 **POTENTIAL JUROR:** No, sir.

22 **THE COURT:** Mr. White, we'll be back in touch
23 with you very shortly.

24 **POTENTIAL JUROR:** Iva Ross.

25 **THE COURT:** Ma'am?

1 **POTENTIAL JUROR:** Iva Ross.

2 **THE COURT:** You don't want to serve, ma'am?

3 **POTENTIAL JUROR:** Huh-uh (negative.)

4 **THE COURT:** All right. Mrs. Ross, I'll be in
5 touch with you shortly.

6 Nobody else. The next exemption applies to
7 anybody who might have served on jury duty in circuit
8 court during the years 2002 or 2003. If you served as
9 a juror in circuit during either of those years and
10 you don't want to serve now, please stand.

11 (WHEREUPON, there was no response.)

12 **THE COURT:** Nobody is standing. The next
13 exemption deals with those of you who have small
14 children. There are several parts to this exemption.
15 All of these parts must apply to you before you can be
16 exempted.

17 If you have a child that is under the age of 7,
18 and you have custody of that child and you are the
19 person who is responsible for the care of that child
20 during the day or during the time that court will be
21 running and if you have attempted to make other
22 arrangements for the care of that child but you have
23 been unable to do so, then I can transfer you to a
24 different term of court or excuse you. If you want to
25 take advantage of this exemption, please stand.

1 All right. There are four of you who are
2 standing. I'm going to ask you in a few minutes when
3 I talk to the jurors -- five of you -- individually to
4 come down front and speak to the Clerk of Court. The
5 Clerk of Court will have an affidavit that you will
6 have to fill out. And if you fill that affidavit out,
7 it will be given to me. And I will see whether or not
8 I can excuse you. All right.

9 Is there any member of the jury panel who is a
10 full-time student, school teacher, school crossing
11 guard, bus driver or who serves in any other school
12 related function who is unable to serve on jury duty
13 this week because of that school related activity? If
14 you will stand now, then I can transfer you to a
15 different term of court. I can not excuse you, but I
16 can transfer you.

17 Ma'am?

18 **POTENTIAL JUROR:** I'm a summer student at
19 Spartanburg Tech.

20 **THE COURT:** Are you working also?

21 **POTENTIAL JUROR:** Yes, I am.

22 **THE COURT:** When does summer school start?

23 **POTENTIAL JUROR:** From 8:00 to 10:45 in the
24 morning.

25 **THE COURT:** But what --

1 **POTENTIAL JUROR:** It starts today.

2 **THE COURT:** All right. You are Ms. Hill?

3 **POTENTIAL JUROR:** Yes.

4 **THE COURT:** Ms. Hill, I will need to see
5 something. It's not that I don't believe you. It's
6 just that the legislature put in the statute that I've
7 got to see something that shows that you are enrolled
8 as a student.

9 **POTENTIAL JUROR:** I have an itinerary with me.

10 **THE COURT:** All right. If you will bring that
11 down when I ask to speak to the jurors individually,
12 then I will look at it then. Thank you, Ms. Hill.

13 Yes, ma'am.

14 **POTENTIAL JUROR:** I have a disabled child at home.

15 **THE COURT:** How old is the child?

16 **POTENTIAL JUROR:** She's eleven. She has --

17 **THE COURT:** Okay. I can talk to you about that
18 later. But that would not fit under this particular
19 exemption. If the child is over seven --

20 **POTENTIAL JUROR:** I was wondering --

21 **THE COURT:** Right.

22 Your name, ma'am?

23 **POTENTIAL JUROR:** Janie Sturgeon. I am a teacher
24 at Spartanburg School District 6.

25 **THE COURT:** Okay.

1 **POTENTIAL JUROR:** They have made arrangements for
2 me to be out if necessary but it is the last two weeks
3 of school.

4 **THE COURT:** Well, you may want to be out the last
5 two weeks of school.

6 **POTENTIAL JUROR:** I'm fine with staying if that's
7 okay with you.

8 **THE COURT:** In order for that exemption to kick
9 in, you have to ask me to excuse you. I haven't heard
10 you do that yet.

11 All right. Nobody else is standing.

12 Now, ladies and gentlemen, in just a second, I'm
13 going to speak to those of you who want to talk to me
14 privately. I expect that there probably will be a
15 fairly large number of you who want to speak to me
16 privately. Normally, I probably have about 15 to 20
17 percent of the jurors who want to speak privately.
18 This is a very large group of jurors. We will
19 probably end up with about 45 to 50 people who want to
20 speak to me. So it's going to take a little while.
21 I'm going to let you all take a break while I do this.

22 There are several other things that I'm going to
23 have go on. First of all, let me explain to you that
24 we realize as I said earlier that jury service is
25 inconvenient for you. But there's not a whole lot

1 that I can do about that. Jury service is mandatory.
2 And for most of you, unless you fit into one of the
3 categories that I just went over with those questions,
4 then you are required to stay. But if you have
5 something that is going on with you these two weeks
6 that just makes this a really bad time for you to
7 serve and if that situation is not going to exist
8 during some other term of court, then I can talk to
9 you about that. I might can transfer you to a
10 different term of court.

11 So if you want to talk to me about being
12 transferred to a different term of court because
13 service this term is an extreme hardship on you, then
14 I will do that. But you have to keep in mind that I
15 can't let you go just because your child has a
16 baseball game today like my son does that I'm going to
17 be missing and other things like that. If this is
18 just a particularly bad week, and I think the standard
19 is that if service on the jury this week would
20 constitute an extreme hardship for you, then I can
21 transfer you.

22 Or if you want to talk to me about any other
23 question that I've already asked and you haven't
24 answered it yet, some of you have already told me that
25 you have answers that you want to speak to me

1 privately about and some of you haven't mentioned it
2 yet. So if there's anything that I asked you about
3 that you have not already told me about, then I'm
4 going to ask you to form a line in just a second.
5 I'll tell you where that is. And you can speak to me
6 privately.

7 Now, there are two things I want you all to do
8 while I'm talking to these jurors individually. First
9 of all, you can take a break. After you have spoken
10 to him, you can go out in the hall. You can go to the
11 restroom, get something to drink or whatever.

12 During that break again, you may not discuss this
13 case. Don't discuss any cases that might be up for
14 trial. Don't discuss what I've talked to you about
15 this morning. Talk about the weather. Talk about
16 baseball, fishing, whatever it is you want to talk
17 about, but don't talk about court. And if you need to
18 speak to me privately, then come down front and speak
19 to me before you take your break.

20 And the other thing that I want you to do is each
21 one of you filled out a questionnaire. It's now been
22 a couple of months since you did that. Maybe you've
23 had a chance to think back over what you put in that
24 questionnaire. And if there's anything that you feel
25 like you need to add to your questionnaire or if

1 there's anything you think you need to change about
2 the answers that you put in your questionnaire, then I
3 want you to come down front. While I'm talking to
4 individual jurors, I want you to speak to one of these
5 four ladies who are sitting right here at this bench
6 in front of me and tell them that you want to change
7 your answer or amend your answer. And they will give
8 you a chance to do that.

9 There's some chance that we can get this done in
10 25 minutes. So I want everybody to get back in their
11 seats by noon. If you need to speak to me privately,
12 come and speak to me now before you take your break.
13 Hold on just one second. Let's form a line starting
14 between these two tables right over here. Then bend
15 it around this way and head it back out towards the
16 door where Mr. Nesbitt is standing.

17 (WHEREUPON, the Court held conferences with individual
18 jurors at approximately 11:35 a.m.)

19 (WHEREUPON, the Court resumes at approximately 1:00
20 p.m.)

21 **THE COURT:** All right. We're going to take a
22 lunch break. I need for you all to come back at 2
23 o'clock and I will resume talking to you. We just
24 have a few of you left. But we have a couple of
25 things that just has to be done now. There's nothing

1 we can do about it. All of you come back at 2 o'clock
2 and we'll speak with you individually then.

3 (WHEREUPON, a lunch recess was taken at approximately
4 1:01 p.m.)

5 (WHEREUPON, the Court resumed at approximately 2:11
6 p.m.)

7 (WHEREUPON, the Court held individual conferences with
8 jurors.)

9 (WHEREUPON, the resumed at approximately 3:00 p.m.)

10 **THE COURT:** You know how as you go through life,
11 you have to kind of start to come to grips with all of
12 your character flaws. And if you are able to do that,
13 it helps you to get through life. And one of my
14 character flaws is the inability to predict how long
15 it's going to take to do something.

16 I hope that that doesn't become a bigger problem
17 for us as we go through this week. But I really
18 thought we could get through that more quickly than we
19 did. But we are finish with it. We're ready to move
20 on to the next step. If you all will kindly permit
21 it, those of us who have been at it since 2 o'clock
22 are going to take a short break. Then we'll be back
23 to have a discussion with you that is going to get us
24 a little bit farther along.

25 Before we break, let me repeat and I have had

1 this conversation with many of you individually and
2 I've also mentioned it to all of you. There are some
3 of you out there who have heard about the primary case
4 that we are here to try and have maybe read something
5 about it. Maybe you've seen something on TV or heard
6 people talking about it.

7 I'm going to talk to you in more detail about
8 that in a few minutes. But I am again instructing
9 each of you to not discuss anything that relates to
10 any case that you might have heard or understood that
11 we're going to be dealing with this week. So, is
12 there anybody who doesn't understand that? You can
13 talk about anything you want to except for a case, any
14 case that's pending before this court.

15 We'll take a short break. I'm anticipating about
16 ten minutes. That's probably barely enough time for
17 each of you to get up, go to the bathroom and come
18 back. So if you don't need to do that, try to hold
19 on. Once we get started -- there I was about to do it
20 again. I was about to predict how long it's going to
21 take in the next step. But I'm not even going to take
22 a shot at it. If you need to take a break, go ahead
23 and take it. We'll try to get started again at ten
24 minutes after 3:00.

25 (WHEREUPON, a short recess was taken at approximately

1 3:02 p.m.)

2 (WHEREUPON, the Court resumed at approximately 3:25
3 p.m.)

4 **THE COURT:** Have you all had a chance to go over
5 each other's questions?

6 **MR. BARTOSH:** Yes, Your Honor.

7 **MR. GOWDY:** Yes.

8 **THE COURT:** Is there any objection?

9 **MR. BARTOSH:** No, sir.

10 **MR. GOWDY:** Your Honor, we have no objection.
11 We think 3 and 6 are duplicitous, but we don't have an
12 objection to it.

13 **THE COURT:** All right. One of the last things
14 that I mentioned to you all before I started talking
15 to jurors individually was to ask you if you had
16 anything to add or change to the juror questionnaire
17 that you returned to us back in March to come up front
18 and to see the Clerk of Court about doing that. Is
19 there anybody who is on the jury panel who needs to
20 add or change anything on their juror questionnaire
21 who has not already done so today? If so, please
22 stand.

23 (WHEREUPON, there was no response.)

24 **THE COURT:** All right. Ladies and gentlemen, we
25 are here for this term of court primarily for the

1 trial of the case of the State versus Marion Alexander
2 Lindsey. Mr. Lindsey has been indicted in Indictment
3 number 2002-GS-42-4753 for murder. In that
4 indictment, it is alleged that the defendant, Marion
5 Alexander Lindsey, did in Spartanburg County on or
6 about September the 18th, 2002, feloniously, willfully
7 and with malice aforethought kill one Ruby Lindsey by
8 shooting the victim with a gun. And the victim died
9 as a proximate result thereof. All in violation of
10 Section 16-3-10 and 20 of the South Carolina Code of
11 Laws.

12 Now, I tell you that to begin to give you some
13 background as to what we're doing here and what the
14 allegations are in this case. But I want to make sure
15 you understand that what I just read to you out of the
16 indictment is simply allegation. It's not fact. It's
17 not evidence. It's just allegation. The indictment
18 is simply the document that processes this case and
19 brings it into this court for trial.

20 Mr. Lindsey has pled not guilty to the
21 indictment that I just read to you. That plea casts
22 the burden on the State to prove the defendant guilty
23 beyond a reasonable doubt. A defendant in a criminal
24 trial no matter what the seriousness of the crime
25 against him, charged against him may be is always

1 presumed to be innocent of the crime with which he has
2 been charged unless and until his guilt has been
3 proven by evidence satisfying the jury of that guilt
4 beyond a reasonable doubt.

5 This presumption of innocence is a very important
6 part of the law of this country. The presumption of
7 innocence stays with him from the time he is charged
8 throughout the trial and even into the jury room when
9 the jury begins deliberations. And it will remain
10 with him unless and until the jury finds him guilty
11 beyond a reasonable doubt.

12 Now, in this particular case, the State is
13 seeking the death penalty against Mr. Lindsey as the
14 penalty that he faces for this crime. And because of
15 that, the trial is going to be broken down or divided
16 into two phases. You may have heard or you may hear
17 that this is referred to as a bifurcated trial.
18 That's simply a big word that means divided in two.
19 The first phase of the trial is the guilt phase. The
20 second phase of the trial is the sentencing phase.

21 I'm telling you all this just to give you some
22 background as to what the procedure is over the next
23 few days that we will go through. I want to talk to
24 you a little bit more about that now. I do want to
25 make it very clear that I, as the circuit judge, and

1 you, as potential members of the jury, and those of
2 you who will ultimately end up on the jury have very
3 different roles to play. I am not permitted under
4 South Carolina Law to have any opinion as to whether
5 Mr. Lindsey is guilty or as to what the sentence
6 should be. That is exclusively the responsibility of
7 the jury in a case like this.

8 The members of the jury will determine whether or
9 not the State has proven Mr. Lindsey guilty of murder
10 beyond a reasonable doubt. That is the guilt phase.
11 At the end of the guilt phase, if the jury finds Mr.
12 Lindsey guilty of murder, then we move into the
13 sentencing phase. If the jury finds Mr. Lindsey not
14 guilty of murder, than the case is over. But if the
15 jury finds Mr. Lindsey guilty of murder, then we move
16 into the sentencing phase.

17 In the sentencing phase, the State would seek to
18 prove the existence of an aggravating circumstance.
19 And if the State proves beyond a reasonable doubt the
20 existence of an aggravating circumstance, then it
21 becomes the responsibility of the jury to determine
22 whether or not Mr. Lindsey would receive the penalty
23 of life in prison or the death penalty.

24 I do want to stress to you again that the fact
25 that I am mentioning to you what the penalty could

1 possibly be is in no way an indication of anything
2 other than to simply explain to you what this process
3 involves. Over the next several days, we're going to
4 be talking to you individually about that issue.

5 Now, let me tell you one more thing about the
6 procedure that we will be following during or over the
7 next several days. We're going to have some time in
8 the next little while here. The Clerk of Court will
9 be drawing your names randomly and putting you into
10 groups of six people. We will then bring those groups
11 of six people back to the courthouse. Everybody else
12 can go free for a little while. And we will bring
13 groups of six people back to the courthouse about
14 every two hours. We will speak to you individually.

15 Once we get enough jurors who qualify to serve on
16 the jury, then we will move into the last phase of
17 jury selection. And that is to actually strike the
18 jury. We will have 40 people, maybe 40 prospective
19 jurors. And we will get them back into what will
20 eventually be half of this courtroom. You probably
21 have noticed it's like a convention center. Back in
22 that little closet is a wall that pulls out. I'm
23 sitting right in the middle of the wall.

24 By the time you get here tomorrow, the wall will
25 probably be back in place. And we will be over here

1 in this side of the courtroom. We will bring those 40
2 jurors in here. We will pick a jury and begin the
3 actual trial. I don't know whether or not this is
4 going to happen yet but we might do what is called
5 sequester the jury. I haven't made that decision yet.

6 What sequester the jury means is that you will
7 report to the courthouse for jury selection. And if
8 you are put on that jury then you stay with us until
9 the trial is concluded. That means that you spend the
10 night at our expense in your new fine Marriott Hotel
11 right across the street. You will be fed at county
12 expense as a group. And your activities and who you
13 can talk to and what you can do is somewhat
14 controlled.

15 Ladies and gentlemen, don't be alarmed by that.
16 This is a process that we have been following in South
17 Carolina for many years. We have experienced people
18 who will be handling the sequestration process if we
19 got that route. And they are very capable of making
20 the process as smooth and efficient as possible and so
21 that it's not too big of a burden on you all.

22 All right. I'm going to ask you all some
23 questions now. I'm not really going to be looking for
24 any detailed answers to these questions. We kind of
25 want to know who has answers to some of these

1 questions. Then as we get into the process of talking
2 to you individually, we will explore your answers to
3 these questions.

4 So what I'm going to do first is to have
5 everybody who's going to be involved in this case to
6 introduce themselves to you. And then you listen very
7 carefully as to who those people are. Then I'm going
8 to ask you whether or not you know or are related to
9 any of the people who will be introducing themselves
10 to you.

11 Now, give me short answers when you answer that
12 question. For example, at some point, I'm going to be
13 asking you if you know anything about this case. And
14 some of you have already talked to me about that. If
15 you know anything or have heard anything or have read
16 anything about what is alleged to have happened here,
17 all I want you to do is tell me Yes, I do.

18 Then, when we're all in private and it's just
19 you, you can say anything you want to, anything you
20 heard and you won't be -- there won't be other jurors
21 in there for you to -- to hear you. Then you can tell
22 us all about it. But for now, just give us a short
23 answer. And we will come back to the detailed answers
24 in a little bit.

25 Mr. Gowdy, would you please introduce yourself

1 and those who will be involved in assisting you in the
2 trial of this case to the jury panel.

3 **MR. GOWDY:** Thank you, Your Honor.

4 My name is Trey Gowdy. I'm the Solicitor for the
5 Seventh Judicial Circuit which includes Spartanburg
6 and Cherokee counties. Barry Barnett is my principal
7 Deputy Solicitor. To his left is Donnie Willingham
8 who is also a Deputy Solicitor.

9 **THE COURT:** All right. Ladies and gentlemen, I
10 just want to have yes or no answers. Is there any
11 member of the jury panel who is related by blood or
12 marriage to Mr. Gowdy or to Mr. Barnett or to Mr.
13 Willingham? Or do you know either of the three of
14 them in any way? If so, please stand.

15 All right. Ma'am, over here to my left, tell me
16 your name please.

17 **POTENTIAL JUROR:** Amanda Hamby. I know --

18 **THE COURT:** That's all right. We'll get into the
19 details in a little bit, Ms. Hamby. Thank you.

20 Ma'am.

21 **POTENTIAL JUROR:** Tammy Queen.

22 **THE COURT:** Ms. Queen?

23 **POTENTIAL JUROR:** Yes.

24 **THE COURT:** All right. Ms. Queen.

25 Mr. McHam?

1 **POTENTIAL JUROR:** Yes.

2 **THE COURT:** All right.

3 **POTENTIAL JUROR:** John Poole.

4 **THE COURT:** Mr. Poole?

5 **POTENTIAL JUROR:** Yes.

6 **THE COURT:** All right. Thank you.

7 Mr. Bartosh, would you please introduce yourself
8 and your co-counsel and your client to the jury.

9 **MR. BARTOSH:** Thank you, Your Honor.

10 My name is Mike Bartosh. I'm a lawyer here in
11 Spartanburg. Helping me is Doug Brennan. Doug is
12 also an attorney here in Spartanburg. It's our
13 pleasure to represent Marion Lindsey. He's the
14 gentleman sitting next to Mr. Brennan. And on the
15 end is Karen Quimby.

16 **THE COURT:** Is there any member of the jury panel
17 who is related by blood or marriage to Mr. Bartosh,
18 to Mr. Brennan, to Ms. Quimby or to Mr. Lindsey?
19 Or do you know either of them in any way? If so,
20 please stand.

21 All right. Over here to my left, ma'am, tell me
22 your name.

23 **POTENTIAL JUROR:** Emma Ellis.

24 **THE COURT:** Ms. Ellis, Thank you.

25 And you are Ms. Hamby. All right. You may be

1 seated.

2 Your name, sir?

3 **POTENTIAL JUROR:** Donnie Malone.

4 **THE COURT:** Mr. Malone.

5 Your name, ma'am?

6 **POTENTIAL JUROR:** Brenda Smith.

7 **THE COURT:** Ms. Brenda Smith.

8 Your name, sir?

9 **POTENTIAL JUROR:** Craig Ruff.

10 **THE COURT:** Ruff?

11 **POTENTIAL JUROR:** Uh-huh (affirmative).

12 **THE COURT:** Thank you. You can be seated.

13 Ms. Queen.

14 Your name, ma'am?

15 **POTENTIAL JUROR:** Teresa Gilbert.

16 **THE COURT:** Ms. Gilbert.

17 **POTENTIAL JUROR:** Otis Campbell.

18 **THE COURT:** Mr. Campbell.

19 **POTENTIAL JUROR:** Gary Tucker.

20 **THE COURT:** Mr. Tucker.

21 **POTENTIAL JUROR:** Jeff Rhineberger.

22 **THE COURT:** Mr. Rhineberger.

23 **POTENTIAL JUROR:** James Gedroic.

24 **THE COURT:** What was your last name, sir?

25 **POTENTIAL JUROR:** Gedroic.

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THE COURT: Gedroic?

POTENTIAL JUROR: Yes.

THE COURT: With a G?

POTENTIAL JUROR: Yes.

THE COURT: Thank you.

POTENTIAL JUROR: Betty Cochran.

THE COURT: Ms. Cochran.

POTENTIAL JUROR: Linda Jones.

THE COURT: And Ms. Jones.

All right. Let me see Mr. Bartosh and Mr. Gowdy for one second, please.

(WHEREUPON, there was a bench conference off the record.)

THE COURT: All right. A couple of follow up questions to that. Mr. Gowdy has as Solicitor a staff of lawyers and non-lawyers herein Spartanburg County and also in Cherokee County who assist him in prosecuting cases. Is there any member of the jury panel who is related by blood or marriage to anybody who works in the Seventh Circuit Solicitor's Office? Or do you know anybody who works in the Seventh Circuit Solicitor's Office? If so, please stand.

Ms. Donald. That's correct?

POTENTIAL JUROR: Right.

THE COURT: All right. Thank you, ma'am.

1 Ms. Hamby?
2 **POTENTIAL JUROR:** Yes.
3 **THE COURT:** And your name, ma'am?
4 **POTENTIAL JUROR:** Dena Bailey.
5 **THE COURT:** Ms. Bailey.
6 **POTENTIAL JUROR:** Matt Kern.
7 **THE COURT:** Kern?
8 **POTENTIAL JUROR:** Yes, sir.
9 **THE COURT:** K-e-r-n?
10 **POTENTIAL JUROR:** Yes, sir.
11 **THE COURT:** All right. Thank you, Mr. Kern.
12 **POTENTIAL JUROR:** Otis Campbell.
13 **THE COURT:** Mr. Otis Campbell.
14 Mr. McHam?
15 **POTENTIAL JUROR:** Yes.
16 **THE COURT:** Thank you.
17 Likewise, Mr. Bartosh has a group of people who
18 assist him. And these other lawyers have staff who
19 assist them in doing their work as lawyers here in
20 Spartanburg County. Is there any member of the jury
21 panel who is related by blood or marriage to anybody
22 who works for any of the lawyers on the defense side,
23 Mr. Bartosh, Mr. Brennan or Ms. Quimby? Or do you
24 know any of them in any way? If so, please stand.
25 (WHEREUPON, there was no response.)

1 **THE COURT:** You heard me read in the indictment
2 that the alleged victim of this crime is Ruby Lindsey.
3 Is there any member of the jury panel who was related
4 by blood or marriage to Ruby Lindsey or did you know
5 her in any way? If so, please stand.

6 Ms. Queen?

7 **POTENTIAL JUROR:** Yes.

8 **THE COURT:** All right.

9 **MR. GOWDY:** Your Honor, could I approach for
10 one moment?

11 **THE COURT:** Yes, sir.

12 (WHEREUPON, a bench conference was held off the
13 record.)

14 **THE COURT:** All right. Let me make myself more
15 clear. It has been pointed out to me that Mrs.
16 Lindsey actually went by the name of Nell. Her name
17 was Ruby Nell Lindsey. She went by the name of Nell
18 Lindsey. Is there any member of the jury panel who
19 was related by blood or marriage to Ruby Nell Lindsey?
20 Or did you know her in any way? If so, please stand.

21 (WHEREUPON, there was no response.)

22 **THE COURT:** Some of you, I may be mistaken about
23 this. But I believe that some of you told me during
24 the individual questioning that we had that you knew
25 of or knew Ms. Lindsey. I need you to tell me that

1 again now, if you don't mind please.

2 **POTENTIAL JUROR:** If I understand you correctly, I
3 knew of.

4 **THE COURT:** You knew of Mrs. Lindsey?

5 **POTENTIAL JUROR:** Yes, sir.

6 **THE COURT:** And you are Ms. Bagwell?

7 **POTENTIAL JUROR:** Yes, sir.

8 **THE COURT:** All right. Thank you, ma'am.

9 Now, ladies and gentlemen, let me follow up again
10 a little bit on the, whether or not you know or are
11 related to the defendant Marion Alexander Lindsey or
12 the alleged victim Ruby Nell Lindsey. Do you know
13 anyone in their family? Or do you, like Ms. Bagwell
14 said, she knew of Ruby Nell Lindsey.

15 Is there anybody who knows somebody in their
16 families or who knows of them in any way? Now, let me
17 do this. If you heard something about this case,
18 let's just wait a minute before we talk about that.
19 Let's talk about whether or not you knew their
20 families or know their families or know of them
21 independent of this case.

22 Ms. -- all right. She's going to wait a minute.
23 Your name please.

24 **POTENTIAL JUROR:** Candace Cathcart.

25 **THE COURT:** Ms. Cathcart. All right. Thank you,

1 Ms. Cathcart.
2 Your name, Mr. --
3 **POTENTIAL JUROR:** Joe Floyd. Floyd.
4 **THE COURT:** Floyd. All right. Thank you.
5 **POTENTIAL JUROR:** I'm not really sure.
6 **THE COURT:** Tell us your name, ma'am. And I
7 appreciate that. I understand how there probably are
8 a number of you who might be sitting out there
9 thinking Well, you know, that sounds kind of familiar
10 but I'm not sure. If you're not sure, tell us that
11 now. So that way, you will have a day or so to think
12 about it. And when we get around to questioning you
13 individually, we can explore exactly what you do know.
14 So tell me your name, ma'am.
15 **POTENTIAL JUROR:** Sarah Simms.
16 **THE COURT:** Mrs. Simms?
17 **POTENTIAL JUROR:** Uh-huh (affirmative).
18 **POTENTIAL JUROR:** Clara Cope.
19 **THE COURT:** Mrs. Cope?
20 **POTENTIAL JUROR:** Uh-huh (affirmative).
21 **THE COURT:** Thank you. Both of you, thank you.
22 Your name, sir?
23 **POTENTIAL JUROR:** Timothy Pitts.
24 **THE COURT:** Mr. Pitts.
25 All right. I'm going to again follow up, this

1 time relating to the lawyers. Now, some of these
2 lawyers might not always have been in the jobs that
3 they are in right now. You might have had some
4 relationship with them. Maybe they represented you.
5 Is there any member of the jury panel who has ever
6 been represented by any of the lawyers who have been
7 introduced to you? If so, please stand.

8 Ms. Hamby. All right. Thank you, Ms. Hamby.

9 All right. Mr. Bartosh and Ms. Quimby are
10 employees of the Spartanburg Public Defender's Office.
11 Mr. Bartosh is the Spartanburg County Public
12 Defender. So I'm going to ask you a few questions
13 about the Public Defender's Office here in Spartanburg
14 County. Is there any member of the jury panel who
15 knows or who is related to anybody who works in the
16 Spartanburg County Public Defender's Office or might
17 have worked in the Spartanburg County Public
18 Defender's Office recently? If so, please stand.

19 (WHEREUPON, there was no response.)

20 **THE COURT:** Is there any member of the jury panel
21 who is represented by any lawyer in the Spartanburg
22 County Public Defender's Office or do you know anybody
23 who is represented by a lawyer in the Spartanburg
24 County Public Defender's Office? If so, please stand.

25 Tell me your name, ma'am.

1 **POTENTIAL JUROR:** Emma Ellis.

2 **THE COURT:** Ms. Ellis.

3 All right. Ladies and gentlemen, let me, uh, is
4 there any member of the jury panel or a member of the
5 jury who has an immediate family member who fits this
6 description? Is there any member of the jury panel or
7 any member of your immediate family who has ever been
8 arrested for or charged with or convicted of any crime
9 involving criminal domestic violence, pointing a
10 firearm, assault with a firearm or assault and
11 battery? If so, please stand.

12 And y'all are doing a good job. I do want
13 everybody to stand. And then I will identify you one
14 at a time to get your name.

15 Is this Ms. Lee?

16 **POTENTIAL JUROR:** Yes.

17 **THE COURT:** All right. Ms. Lee, you can be
18 seated.

19 Tell me your name again, ma'am.

20 **POTENTIAL JUROR:** Lori Burnett.

21 **THE COURT:** Mr. Burnett. Thank you very much.

22 Ms. Hamby?

23 **POTENTIAL JUROR:** Yes.

24 **THE COURT:** Ms. Cathcart?

25 **POTENTIAL JUROR:** Yes.

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THE COURT: Ms. --

POTENTIAL JUROR: Cope.

THE COURT: Ms. Cope. Ms. Cope. All right.

Thank you, ma'am.

Let me back up over here. Your name, ma'am?

POTENTIAL JUROR: Carol Burdette.

THE COURT: Carol Burnette. Burdette?

POTENTIAL JUROR: Burdette.

THE COURT: Burdette.

Your name, sir?

POTENTIAL JUROR: James Gentry.

THE COURT: James Gentry.

Okay. I'm going to take a break and make sure everybody's got a chance to catch up writing down names.

Your name, sir?

POTENTIAL JUROR: Tom Brown.

THE COURT: Brown?

POTENTIAL JUROR: Yeah.

THE COURT: All right. Mr. Brown.

POTENTIAL JUROR: James Cottrell.

THE COURT: Cottrell?

POTENTIAL JUROR: Cottrell.

THE COURT: James Cottrell.

Mr. Floyd.

1 And your name, ma'am?

2 **POTENTIAL JUROR:** Karla Howell.

3 **THE COURT:** H-o-w-e-l-l?

4 **POTENTIAL JUROR:** That's correct.

5 **THE COURT:** All right. Your name, ma'am?

6 **POTENTIAL JUROR:** Lori Tallent.

7 **THE COURT:** Lori Tallent.

8 **POTENTIAL JUROR:** What if it was dropped?

9 **THE COURT:** You still need to tell me about it.

10 Tell me your name.

11 **POTENTIAL JUROR:** Tracy Hollingsworth. I was --

12 **THE COURT:** I don't want any details, ma'am. When
13 we get around to talking to you individually, I will
14 ask you, we'll ask you about the details then.

15 **POTENTIAL JUROR:** Okay.

16 **THE COURT:** All right. Thank you.

17 And your name was Lori?

18 **POTENTIAL JUROR:** Betty Cochran.

19 **THE COURT:** Ms. Cothran?

20 **POTENTIAL JUROR:** Cochran.

21 **THE COURT:** Cochran.

22 Let me back up one. Your name, the lady who just
23 stood, what's your name again?

24 **POTENTIAL JUROR:** Tracy Hollingsworth.

25 **THE COURT:** And your name, ma'am?

1 **POTENTIAL JUROR:** Tracy Brock.

2 **THE COURT:** Ms. Brock.

3 **POTENTIAL JUROR:** Would you repeat that?

4 **THE COURT:** I will be glad to repeat it. The
5 question is is there any member of the jury panel or
6 any member of your immediate family who has ever been
7 arrested for, charged with or convicted of any crime
8 involving criminal domestic violence, pointing a
9 firearm, assault with a firearm or assault and
10 battery? If so, please stand. And your name is?

11 **POTENTIAL JUROR:** Ellis. Emma Ellis.

12 **THE COURT:** Ms. Ellis. I'm going to get you from
13 now on. I'm not going to have to ask you that any
14 more.

15 Anybody else?

16 What was your name, ma'am?

17 **POTENTIAL JUROR:** Tracy Whitaker.

18 **THE COURT:** Ms. Whitaker. All right. Thank you.

19 All right. Let me just explain that last
20 question just a little bit to include close personal
21 friends. I will just repeat it again. Is there any
22 member of the jury panel or any member of your
23 immediate family or anyone who has a close personal
24 friend who has ever been arrested for, charged with or
25 convicted of any crime involving domestic violence,

1 pointing a firearm, assault with a firearm or assault
2 and battery? If you have not already told me about
3 it, please stand.

4 Your name, sir?

5 **POTENTIAL JUROR:** Marvin Smith.

6 **THE COURT:** Marcus Smith?

7 **POTENTIAL JUROR:** Marvin Smith.

8 **THE COURT:** Marvin Smith.

9 Your name, sir?

10 **POTENTIAL JUROR:** Harold Marcum.

11 **THE COURT:** Harold?

12 **POTENTIAL JUROR:** Marcum.

13 **THE COURT:** Mr. Marcum. Okay.

14 Your name, sir?

15 **POTENTIAL JUROR:** Hollie Williams.

16 **THE COURT:** Reeves?

17 **POTENTIAL JUROR:** Hollie Williams.

18 **THE COURT:** I'm sorry.

19 **POTENTIAL JUROR:** Williams.

20 **THE COURT:** Williams?

21 **POTENTIAL JUROR:** Yes.

22 **THE COURT:** And what was your first name?

23 **POTENTIAL JUROR:** Hollie.

24 **THE COURT:** Hollie Williams. Okay. Hold on just
25 one second. All right. Thank you, Mr. Williams.

1 Your name, sir?

2 **POTENTIAL JUROR:** Harold Daniels.

3 **THE COURT:** Mr. Daniels?

4 **POTENTIAL JUROR:** Yes.

5 **THE COURT:** Ma'am?

6 **POTENTIAL JUROR:** Isabell Williams.

7 **THE COURT:** And Pitt?

8 **POTENTIAL JUROR:** Timothy Pitts.

9 **THE COURT:** Mr. Pitts. All right.

10 Your name, sir?

11 **POTENTIAL JUROR:** Alonzo Robinson.

12 **THE COURT:** Mr. Robinson.

13 **POTENTIAL JUROR:** Tracy Whitaker.

14 **THE COURT:** Ms. Whitaker.

15 **POTENTIAL JUROR:** Martha Sallis.

16 **THE COURT:** Ms. Sallis.

17 Your name, sir?

18 **POTENTIAL JUROR:** Richard Smith.

19 **THE COURT:** Richard Smith.

20 All right. Let me, let me pause. We are not in
21 any big hurry. We all want to get done. But this is
22 very, very, very important. Sometimes what happens is
23 we go through this process. And this is all new to a
24 lot of y'all. You're not used to having to dash back
25 through your life's history and recall everything that

1 ever happened to you. And it's quite natural that you
2 might not immediately remember something that I'm
3 asking you about.

4 You may go home tonight and you may say I forgot
5 that my best friend was charged with criminal domestic
6 violence. And I forgot to tell that judge about it.
7 And what I don't want to happen is that I don't want
8 you to then say, Well, oh, my God, if I tell him about
9 it now, he's going to put me in jail. I want you, if
10 you go home and you remember something, please come
11 back and tell us about it.

12 It's very important that you all dig deep into
13 your memory and come up with any information that I am
14 asking you for. And just like I said, if you remember
15 it later, tell us about it. It's when you don't tell
16 me about it that like I said earlier, it puts me in
17 difficult position. So please think deep. Take your
18 time. If you remember something later, come back and
19 tell me.

20 **POTENTIAL JUROR:** Sir.

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

22 **POTENTIAL JUROR:** John Boyce.

23 **THE COURT:** Mr. Boyce?

24 **POTENTIAL JUROR:** Yes.

25 **THE COURT:** All right. Mr. Boyce, I guess

1 because we're doing this thing without giving any
2 details, I need you to tell me which question you are
3 telling me about.

4 **POTENTIAL JUROR:** Your last one.

5 **THE COURT:** The last one?

6 **POTENTIAL JUROR:** Yes.

7 **THE COURT:** Friends or relatives who have been
8 involved in crimes like we discussed.

9 **POTENTIAL JUROR:** Yes, sir.

10 **THE COURT:** Thank you, Mr. Boyce.

11 Yes, ma'am.

12 **POTENTIAL JUROR:** I know somebody. The answer to
13 your last question.

14 **THE COURT:** And your name is?

15 **POTENTIAL JUROR:** Wilma Langford.

16 **THE COURT:** Ms. Langford. Thank you very much,
17 Ms. Langford.

18 **POTENTIAL JUROR:** I do too, Your Honor. Otis
19 Campbell.

20 **THE COURT:** Mr. Otis Campbell. Okay.

21 I do too. But I don't have to tell y'all about
22 it.

23 Yes, sir.

24 **POTENTIAL JUROR:** Ronnie Ridings.

25 **THE COURT:** Ridings?

1 **POTENTIAL JUROR:** Ridings.
2 **THE COURT:** All right. R-i-d-i-g-s?
3 **POTENTIAL JUROR:** Yes, sir.
4 **THE COURT:** All right.
5 **POTENTIAL JUROR:** Can I ask you a question? Does
6 suicide fall in that category?
7 **THE COURT:** Well, we will put it in that category.
8 We will talk to you about it. That's Mr. McHam.
9 And tell me your name again.
10 **POTENTIAL JUROR:** Tracy Brock.
11 **THE COURT:** Ms. Brock.
12 **POTENTIAL JUROR:** I know Trey Gowdy.
13 **THE COURT:** Okay. Thank you, Ms. Brock.
14 Ms. Hammitt?
15 **POTENTIAL JUROR:** Yes.
16 **THE COURT:** Thank you.
17 **POTENTIAL JUROR:** Creel. C-r-e-e-l.
18 **THE COURT:** C-r-e-e-l. Mr. Creel. Okay.
19 We're making progress. Okay. Is there any
20 member of the jury panel or any member of your
21 immediate family who is currently being prosecuted for
22 any crime by the Seventh Circuit Solicitor's Office?
23 If so, please stand. We have Ms. Hamby and Mr.
24 Campbell.
25 And your name is?

1 **POTENTIAL JUROR:** James Cottrell.

2 **THE COURT:** Mr. Cottrell. Okay.

3 All right. Now, you know, I guess it's always,
4 it's important that all of these questions have an out
5 for you all. So I'm including your immediate family
6 members in all of these questions. So if you stand
7 and give me your name, we're naturally going to assume
8 that it's your immediate family member and not you who
9 are answering the questions.

10 Is there any member of the jury panel or any
11 member of your immediate family who has ever been
12 arrested by the Spartanburg County Sheriff's Office or
13 the Inman Police Department? If so, please stand.
14 Now, if I get a 50 percent or better rate of
15 identifying correctly the names of those of you who
16 have already stood once or more, then I get to take a
17 break in just a few minutes. If I fall below 50
18 percent, we're going to be here a while.

19 You are Ms. Burdette.

20 And your name, sir?

21 **POTENTIAL JUROR:** Jon Krisher.

22 **THE COURT:** Krisher?

23 **POTENTIAL JUROR:** K-r-i-s-h-e-r.

24 **THE COURT:** K-r-i-s-h-e-r?

25 **POTENTIAL JUROR:** Yes.

1 **THE COURT:** Okay. Your name, ma'am?

2 **POTENTIAL JUROR:** Catherine Grubbs.

3 **THE COURT:** Grubbs.

4 **POTENTIAL JUROR:** G-r-u-b-b-s.

5 **THE COURT:** Okay. I'm about to buck. Tell me your
6 name.

7 **POTENTIAL JUROR:** Lori Burnette.

8 **THE COURT:** Burnette.

9 And here is where I'm going to blow it. You're
10 going to tell me. What's your name?

11 **POTENTIAL JUROR:** Emma Ellis.

12 **THE COURT:** Ellis. All right. I'm sorry, Ms.
13 Ellis.

14 **POTENTIAL JUROR:** Latrice Smith.

15 **THE COURT:** Ms., what was your first name?

16 **POTENTIAL JUROR:** Latrice.

17 **THE COURT:** Latrice Smith. And your name, sir?

18 **POTENTIAL JUROR:** Rick Lee.

19 **THE COURT:** Mr. Lee.

20 That's Ms. Hamby.

21 **POTENTIAL JUROR:** Yes.

22 **THE COURT:** I'm right at 50 percent so far. Your
23 name, sir?

24 **POTENTIAL JUROR:** Marvin Smith.

25 **THE COURT:** Oh, yeah.

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POTENTIAL JUROR: Pam Gardner.

THE COURT: Ms. Gardner.

And your name, ma'am?

POTENTIAL JUROR: Joyce Martin.

THE COURT: Ms. Martin, Joyce Martin?

POTENTIAL JUROR: Uh-huh (affirmative). Martin.

THE COURT: M-a-r-t-i-n?

POTENTIAL JUROR: Yes.

THE COURT: All right.

Ms. Wilkins?

POTENTIAL JUROR: Yes.

THE COURT: All right.

POTENTIAL JUROR: Sheila Vlieg.

THE COURT: Sheila Vlieg.

Your name?

POTENTIAL JUROR: Janet Prasanlack.

THE COURT: Ms. Prasanlack?

POTENTIAL JUROR: Uh-huh (affirmative).

THE COURT: Okay. Thank you.

Your name, sir?

POTENTIAL JUROR: Mark Simmons.

THE COURT: Mr. Simmons. All right.

You are Ms. Cope.

You are Mr. Boyce.

What's your name, ma'am?

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POTENTIAL JUROR: Heather Snite.

THE COURT: Stite.

POTENTIAL JUROR: Snite. S-n-i-t-e.

THE COURT: All right. And your name, sir?

POTENTIAL JUROR: Tom Brown.

THE COURT: Mr. Brown. I'm close.

Your name, sir?

POTENTIAL JUROR: Jeff Williams.

THE COURT: Mr. Williams.

And you are Mr. Hollie Williams.

And you are Mr. -- what's your name?

POTENTIAL JUROR: Daniels.

THE COURT: Daniels.

POTENTIAL JUROR: Isabell Williams.

THE COURT: Isabell Williams.

POTENTIAL JUROR: Candy Fowler.

THE COURT: Ms. Fowler.

Mr. Cottrell.

Mr. Hipp.

POTENTIAL JUROR: Pitts.

THE COURT: Pitts.

I'm going too fast? Sorry. You got everybody?

MR. GOWDY: So far, yes, sir.

THE COURT: You need me to back up and go through
it again?

1 **MR. GOWDY:** No, sir.

2 **THE COURT:** You're sure?

3 **MR. BARTOSH:** Yes, sir.

4 **THE COURT:** Mr. Bartosh, are we going too fast
5 for your side?

6 **MR. BARTOSH:** No, sir.

7 **POTENTIAL JUROR:** Ronnie Ridings.

8 **THE COURT:** Mr. Ridings.

9 Mr. Campbell.

10 Mr. Floyd.

11 Ms. Howell.

12 Ms. Sallis.

13 Your name, sir?

14 **POTENTIAL JUROR:** Stan Fields.

15 **THE COURT:** Mr. Fields.

16 Your name, sir?

17 **POTENTIAL JUROR:** Thaddeus Beck.

18 **THE COURT:** Thaddeus Beck.

19 And you are Mr. Robinson. All right.

20 **POTENTIAL JUROR:** Donald Ray.

21 **THE COURT:** What was your last name?

22 **POTENTIAL JUROR:** Ray. R-a-y.

23 **THE COURT:** Ray. Okay.

24 **POTENTIAL JUROR:** Joann Netherton.

25 **THE COURT:** Ms. Netherton.

1 **POTENTIAL JUROR:** Tracy Hollingsworth.

2 **THE COURT:** Ms. Hollingsworth.

3 Ms. Cochran.

4 **POTENTIAL JUROR:** Kevin Cartledge.

5 **THE COURT:** Carter?

6 **POTENTIAL JUROR:** Cartledge.

7 **THE COURT:** I'm sorry. Say it again.

8 **POTENTIAL JUROR:** Cartledge.

9 **THE COURT:** Mr. Cartledge. Okay.

10 And you are Ms. Boyce?

11 **POTENTIAL JUROR:** Brock.

12 **THE COURT:** Brock. I knew that.

13 **POTENTIAL JUROR:** Michael Weeks.

14 **THE COURT:** Mr. Weeks.

15 Your name, sir?

16 **POTENTIAL JUROR:** Jeff Rhineberger.

17 **THE COURT:** Mr. Rhineberger.

18 **POTENTIAL JUROR:** Lori Tallent.

19 **THE COURT:** I didn't hear you, ma'am.

20 **POTENTIAL JUROR:** Lori Tallent.

21 **THE COURT:** Ms. Tallent. Okay.

22 I don't think I got 50 percent.

23 **POTENTIAL JUROR:** Could I get you to repeat the

24 question again?

25 **THE COURT:** Yes, ma'am. The question is is any

1 member of the jury panel or any member of your
2 immediate family ever been arrested by the Spartanburg
3 County Sheriff's Office or the Inman Police
4 Department? If so, please stand.

5 **POTENTIAL JUROR:** My immediate family.

6 **THE COURT:** All right. You're Ms. Whitaker?

7 **POTENTIAL JUROR:** Yes, sir.

8 **THE COURT:** All right. We will talk to you about
9 that Ms. Whitaker.

10 He says I was one over 50 percent. Y'all want me
11 to take a break now or keep on going for a few more
12 minutes? Keep on going? All right. I'll tell you
13 what, you all are doing a very, I really do seriously
14 appreciate the serious way you all are approaching
15 this.

16 I really don't think that I have ever sat through
17 -- we call this process voir dire where I ask you all
18 questions about the case and about the people and the
19 questions are designed to kind of find out a little
20 bit about you. I don't think I've ever been through a
21 voir dire process where the jurors have sat as quietly
22 and as attentively as you all have. I really do
23 appreciate it.

24 Is there any member of the jury panel or any
25 member of your immediate family who has ever been a

1 victim of a crime involving domestic violence, assault
2 and battery, pointing of a firearm or assault of a
3 firearm? And it doesn't make any difference for
4 purposes of answering this question whether or not
5 that incident ever became the subject of a
6 prosecution.

7 In other words, perhaps you or your family member
8 for whatever reason never reported this incident to
9 law enforcement but if you or a member of your
10 immediate family has ever been the victim of a crime
11 involving domestic violence or the pointing of a
12 firearm or assault and battery or assault with a
13 firearm, please stand.

14 Ms. Whitaker, right?

15 **POTENTIAL JUROR:** Yes.

16 **THE COURT:** Your name, sir?

17 **POTENTIAL JUROR:** Stan Fields.

18 **THE COURT:** Mr. Fields.

19 Mr. Beck.

20 What's your name, sir?

21 **POTENTIAL JUROR:** Tim Brewton.

22 **THE COURT:** Brewton. Mr. Brewton.

23 Mr. Floyd.

24 Your name, sir?

25 **POTENTIAL JUROR:** Donald Ray.

1 **THE COURT:** Mr. Ray.
2 And your name, sir?
3 **POTENTIAL JUROR:** Todd Hillstock.
4 **THE COURT:** Is it Hillstock?
5 **POTENTIAL JUROR:** Hillstock.
6 **THE COURT:** Hillstock. All right. Your name
7 again?
8 **POTENTIAL JUROR:** Tracy Hollingsworth.
9 **THE COURT:** Ms. Hollingsworth.
10 Ms. Cochran.
11 Ms. Brock.
12 And Mr. Ridings?
13 **POTENTIAL JUROR:** Rhineberger.
14 **THE COURT:** Rhineberger.
15 You're Mr. Ridings.
16 **POTENTIAL JUROR:** Joyce Tallent.
17 **THE COURT:** Ms. Tallent.
18 **POTENTIAL JUROR:** Richard Smith.
19 **POTENTIAL JUROR:** Rodney Petty.
20 **THE COURT:** Rodney Petty?
21 **POTENTIAL JUROR:** Yes, sir.
22 **THE COURT:** And the previous Mr. Smith was
23 Richard Smith?
24 **POTENTIAL JUROR:** Yes, sir.
25 **THE COURT:** We had a lot of Smiths.

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Mr. Daniels.

And your name, ma'am?

POTENTIAL JUROR: Sheril Cudd.

THE COURT: Ms. Cudd.

And your name, please, ma'am?

POTENTIAL JUROR: Gail Fowler.

THE COURT: Ms. Fowler.

POTENTIAL JUROR: Wilma Langford.

THE COURT: Ms. Langford.

Mr. Bagwell.

Mr. Cottrell.

Mr. Pitts.

Mr. Ridings.

Please, your name.

POTENTIAL JUROR: Angela Haley.

THE COURT: Ms. Haley. All right. Thank you,
Ms. Haley.

Your name, sir?

POTENTIAL JUROR: Donnie Malone.

THE COURT: Mr. Malone.

POTENTIAL JUROR: Melva Martin.

THE COURT: Melva?

POTENTIAL JUROR: Martin.

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

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POTENTIAL JUROR: Patricia Thomas.

THE COURT: Ms. Thomas.

POTENTIAL JUROR: Candace Cathcart.

THE COURT: Ms. Cathcart.

Ms. Cope.

Mr. Boyce.

Mr. -- Mrs. Snite.

And your name?

POTENTIAL JUROR: Toni Smith.

THE COURT: Toni Smith?

POTENTIAL JUROR: Yes.

THE COURT: All right. Mr. Brown.

And your name?

POTENTIAL JUROR: Brent McKinney.

THE COURT: Mr. McKinney.

POTENTIAL JUROR: Rosa Hammitt.

THE COURT: And Ms. Hammitt. All right. I might
be ahead of everybody.

Y'all got it all written down?

Mr. Burdette.

Tell me your name again, sir.

POTENTIAL JUROR: Jon Krisher.

THE COURT: Mr. Fraiser.

POTENTIAL JUROR: Krisher.

THE COURT: Krisher. Okay.

1 Ms. Lee.

2 It is Burnette?

3 **POTENTIAL JUROR:** Uh-huh (affirmative).

4 **THE COURT:** Ms. Burnette.

5 Ms. Ellis.

6 **POTENTIAL JUROR:** Cheryl Dotson.

7 **THE COURT:** Ms. Dotson.

8 **POTENTIAL JUROR:** Lee.

9 **THE COURT:** Mr. Lee.

10 Ms. Hamby.

11 Mr. Martin?

12 **POTENTIAL JUROR:** Marvin Smith.

13 **THE COURT:** Marvin Smith. I'm sorry. Marvin
14 Smith.

15 **POTENTIAL JUROR:** Miguel Martinez.

16 **THE COURT:** Mr. Martinez.

17 **POTENTIAL JUROR:** Joyce Martin.

18 **THE COURT:** Ms. Martin. Okay.

19 Now, let me make that last question just a little
20 bit broader. Maybe this will include somebody who
21 didn't answer before. It really doesn't make any
22 difference if you knew who did it or not. Or maybe it
23 didn't happen. You just thought it happened. Any
24 member of the jury panel or any member of your
25 immediate family -- now by saying, I really did not

1 mean for that to be funny. That was perceived by some
2 of you as being funny. I didn't mean it that way.

3 I'm sitting here imagining several different ways
4 in which somebody could think that they were the
5 victim of one of those crimes that I went over when in
6 fact they were not. And perhaps after they thought it
7 back over, it turns out that it was not what they
8 thought. So, is there any member of the jury panel or
9 any member of your immediate family who has ever been
10 the victim of a crime such as domestic violence,
11 pointing of a firearm, assault and battery and assault
12 with a firearm whether they knew who did or whether
13 they maybe even later decided that it hadn't happened
14 as they thought it had. If you haven't already
15 answered that question, please do so now by standing
16 and I will get your name.

17 Tell me your name.

18 **POTENTIAL JUROR:** Danny Rollins.

19 **THE COURT:** Mr. Rollins.

20 **POTENTIAL JUROR:** Right.

21 **THE COURT:** All right. Mr. Rollins, we will talk
22 to you about that when we get around to speaking to
23 you individually. Okay?

24 **POTENTIAL JUROR:** Okay.

25 **THE COURT:** Okay. Ladies and gentlemen, this next

1 question is designed to see whether any of you have
2 any kind of affiliation with or involvement with any
3 organization that has as its object or as its goal the
4 promotion of victim's rights or the advocacy of
5 criminal penalties, different criminal penalties,
6 stiffer criminal penalties.

7 And some of those organizations might include
8 Mothers Against Drunk Drivers otherwise known as MADD.
9 There is a group called SADD. There is a group called
10 CAV which I believe is a group called Citizens Against
11 Violence or something like that. There are various
12 law enforcement organizations such as the South
13 Carolina Troopers Association, South Carolina Police
14 -- what do they call that? Fraternal Order of Police
15 or something like that. Any organization that deals
16 with law enforcement in that way.

17 There is another group of victims advocates
18 called the State Office of Victims Assistance. The
19 Victims Assistance, the South Carolina Victims
20 Assistance Network. There are a number of
21 organizations that have as their object or goal the
22 advocacy of criminal penalties or the promotion of
23 victims rights. If you have ever been a member of or
24 a contributor to or in any other way involved with any
25 of those victims organizations or organizations that

1 are involved in dealing with criminal penalties,
2 please stand.

3 All right. Ms. Sallis.

4 Ms. Whitaker.

5 Ms. Cochran.

6 **POTENTIAL JUROR:** John Poole.

7 **THE COURT:** Mr. Poole.

8 Mr. Atkins.

9 Mr. Cottrell.

10 Ms. Bagwell.

11 **POTENTIAL JUROR:** Langford.

12 **THE COURT:** Ms. Langford.

13 **POTENTIAL JUROR:** Vellines.

14 **THE COURT:** Ms. Vellines.

15 Mr. McHam.

16 Your name, ma'am?

17 **POTENTIAL JUROR:** Haley.

18 **THE COURT:** Ms. Haley.

19 Your name, ma'am?

20 **POTENTIAL JUROR:** Shirley McDowell.

21 **THE COURT:** Ms. McDowell.

22 **POTENTIAL JUROR:** Aletha Meisenheimer.

23 **THE COURT:** Okay. I didn't catch your last name,
24 ma'am.

25 **POTENTIAL JUROR:** Misenheimer.

1 **THE COURT:** Misenheimer. Mrs. Misenheimer.

2 Okay. Number 197.

3 Your name, sir?

4 **POTENTIAL JUROR:** Laurence Morda.

5 **THE COURT:** Morton?

6 **POTENTIAL JUROR:** Morda. M-o-r-d-a.

7 **THE COURT:** Mr. Morda.

8 And your name, ma'am?

9 **POTENTIAL JUROR:** Pam Gardner.

10 **THE COURT:** Ms. Gardner.

11 And your name?

12 **POTENTIAL JUROR:** Does it include like if a
13 trooper calls and asks for a donation on the
14 telephone?

15 **THE COURT:** Well, if you hung up the phone on him,
16 it probably wouldn't include it. If you gave it to
17 him, it would. Why don't you tell us your name.

18 **POTENTIAL JUROR:** Sarah Simms.

19 **THE COURT:** Ms. Simms. Okay.

20 Is there any member of the jury panel or any
21 member of your immediate family who has ever been
22 employed with any law enforcement agency whether that
23 be a city police department, a county sheriff's
24 department, a state law enforcement office such as the
25 State Law Enforcement Division, any federal law

1 enforcement agency such as the FBI, the drug
2 enforcement administration or agency. Anybody who has
3 themselves or who has a family member who has ever
4 been involved in law enforcement by, who has ever
5 worked for a law enforcement agency, please stand.

6 Ms. Howell.

7 Mr. Robinson.

8 Mr. Beck.

9 Ms. Whitaker.

10 **POTENTIAL JUROR:** Does that include a cousin?

11 **THE COURT:** We will say it does.

12 **POTENTIAL JUROR:** Donald Banks.

13 **THE COURT:** Mr. Banks.

14 Ms. Cochran.

15 Mr. -- I've got it close but I don't have it all
16 the way. What's your name, sir?

17 **POTENTIAL JUROR:** Rhineberger.

18 **THE COURT:** Rhineberger.

19 Mr. Floyd.

20 Tell me your name again, sir.

21 **POTENTIAL JUROR:** Tim Brewton.

22 **THE COURT:** Mr. Brewton.

23 Ms. Tallent.

24 Mr. Atkins.

25 **POTENTIAL JUROR:** Richard Smith.

1 **THE COURT:** Mr. Richard Smith.

2 **POTENTIAL JUROR:** Rodney Petty.

3 **THE COURT:** Mr. Petty.

4 All right. Mr. Daniels.

5 I'm sorry, ma'am. What's your name?

6 **POTENTIAL JUROR:** Gail Fowler.

7 **THE COURT:** Ms. Fowler.

8 Okay. Your name, ma'am?

9 **POTENTIAL JUROR:** Sandra Brady.

10 **THE COURT:** Ms. Brady.

11 Mr. Pitts.

12 **POTENTIAL JUROR:** Teresa Gilbert.

13 **THE COURT:** Ms. Gilbert.

14 **POTENTIAL JUROR:** Michael Dawson.

15 **THE COURT:** Mr. Dawson.

16 Mr. Campbell.

17 Ms. Haley.

18 Hold on a second. Your name, sir?

19 **POTENTIAL JUROR:** Larry Mauldin.

20 **THE COURT:** Say it again.

21 **POTENTIAL JUROR:** Mauldin.

22 **THE COURT:** Mauldin. All right. Thank you, Mr.

23 Mauldin.

24 Your name?

25 **POTENTIAL JUROR:** Creel.

1 **THE COURT:** Mr. Creel.

2 **POTENTIAL JUROR:** Toni Smith.

3 **THE COURT:** Ms. Toni Smith.

4 **POTENTIAL JUROR:** Brenda Smith.

5 **THE COURT:** Ms. Brenda Smith.

6 **POTENTIAL JUROR:** Brent McKinney.

7 **THE COURT:** Mr. McKinney.

8 Your name, sir?

9 **POTENTIAL JUROR:** Matt Kern.

10 **THE COURT:** Mr. Kern. All right. Your name,

11 ma'am?

12 **POTENTIAL JUROR:** Ms. Bedillion.

13 **THE COURT:** Ms. Bedillion.

14 **POTENTIAL JUROR:** Grubbs. Catherine Grubbs.

15 **THE COURT:** Catherine Grubbs.

16 Ms. Burdette.

17 Tell me your name again, ma'am.

18 **POTENTIAL JUROR:** Elizabeth Donald.

19 **THE COURT:** Ms. Donald.

20 Okay. Your name, ma'am?

21 **POTENTIAL JUROR:** Shirley McDowell.

22 **THE COURT:** Ms. McDowell.

23 You're Mr. Lee.

24 All right. On my left, your name?

25 **POTENTIAL JUROR:** Jami Sturgeon.

1 **THE COURT:** Ms. Sturgeon.

2 Mr. Hernandez?

3 **POTENTIAL JUROR:** Martinez.

4 **THE COURT:** Terrible, terrible, terrible. I'm
5 sorry.

6 **POTENTIAL JUROR:** Ms. Gardner.

7 **THE COURT:** Ms. Gardner.

8 **POTENTIAL JUROR:** Bailey. Dena Bailey.

9 **THE COURT:** Ms. Bailey.

10 **POTENTIAL JUROR:** Sheila Vlieg.

11 **THE COURT:** Sheila what?

12 **POTENTIAL JUROR:** Vlieg.

13 **POTENTIAL JUROR:** Sherba Wilkins.

14 **THE COURT:** Ms. Wilkins and Ms. Martin.

15 Is there any member of the jury panel or any
16 member of your immediate family who is currently or
17 formerly a victim or a witness in any case that has
18 been prosecuted by the Seventh Circuit Solicitor's
19 Office. If so, please stand.

20 Ms. Hamby.

21 All right. Is there any member of the jury panel
22 who knows about or who has ever used or who is in any
23 way familiar with any particular organization that
24 provides shelter to the victims of domestic or family
25 violence? If you know anything particular about a

1 particular place, please stand.

2 Ms. Bagwell.

3 Mr. Pitts.

4 Mr. McHam.

5 Ms. Martin.

6 Ms. Howell.

7 Mr. Floyd.

8 Ms. Whitaker.

9 Ms. Hollingsworth.

10 What's your name?

11 **POTENTIAL JUROR:** Netherton. Joann Netherton.

12 **THE COURT:** Netherton. Okay.

13 Your name, ma'am?

14 **POTENTIAL JUROR:** Elizabeth Morton.

15 **THE COURT:** Morton?

16 **POTENTIAL JUROR:** Yes.

17 **THE COURT:** Ms. Morton.

18 Ms. Tallent.

19 Mr. Atkins.

20 Mr. Richard Smith.

21 Ms. Brock?

22 **POTENTIAL JUROR:** Yes.

23 **THE COURT:** Mr. Poole.

24 And Ms. Cochran.

25 **POTENTIAL JUROR:** Yes.

1 **THE COURT:** I definitely get a break after that.
2 All right. Is there any member of the jury panel who
3 is a member of any organization or do you have a close
4 family member who is a member of any organization
5 where that organization officially refuses to
6 recognize the government of the State of South
7 Carolina or the United States of America? If so,
8 please stand.

9 (WHEREUPON, there was no response.)

10 **THE COURT:** All right. Now, I'm going to ask one
11 more question, then we're going to take a break. Let
12 me make sure I'm right about that. All right. Ladies
13 and gentlemen, I'm going to talk to you now about
14 those -- I want to know, and we're going to talk about
15 this. Who knows -- and don't answer it right yet.
16 Who knows anything or who has heard anything about
17 this case?

18 Now, before I get you to answer, let me tell you
19 something. When we get around to seating a jury int
20 his case, I'm going to tell that jury that it's your
21 responsibility under the oath that you will take as
22 jurors to listen carefully and attentively to the
23 evidence that will be presented here in this courtroom
24 and to render a verdict based on that evidence and in
25 light of the law as I will give it to you. It will

1 not be proper for members of the jury in any way to
2 base their verdict on something that they may have
3 learned or heard anywhere other than right here in
4 this courtroom under my supervision.

5 Now, we know that this case has gotten some
6 publicity. We can't hide from that. I know that
7 there are people out there, a lot of you who have read
8 stuff or seen news reports, read news reports about
9 this case. That's not necessarily a problem. But
10 nevertheless, I want each of you to think hard about
11 whether or not you have heard anything about this
12 case. And if you have, I want you to tell me about
13 that.

14 Over the next few days, we will talk to you about
15 it. Even if you don't remember it now but you go home
16 tonight and you think I believe I did hear something
17 about that case, then I want you to tell me about it
18 when you come back. Is there any member of the jury
19 panel who has heard anything about this case, who has
20 seen any kind of news report about this case, who
21 knows anything about this case other than my having
22 read you the indictment this morning?

23 Any member of the jury panel who knows or has
24 ~~heard anything about State versus Marion Alexander~~
25 Lindsey and what Mr. Lindsey is accused of having

1 done, please stand. All right. I'm going to go slow.
2 I'm going to try to call your names as I can. But I'm
3 going to make sure that the lawyers and my staff has
4 time to write down everybody's name.

5 So tell me your name, ma'am.

6 **POTENTIAL JUROR:** Aleta Misenheimer.

7 **THE COURT:** Mrs. Misenheimer. Okay.

8 Your name.

9 **POTENTIAL JUROR:** Timothy Roberts.

10 **THE COURT:** Mr. Roberts.

11 You are Ms. Lee.

12 You are Ms. Burnette.

13 You are Ms. Donald.

14 Your name, ma'am?

15 **POTENTIAL JUROR:** Kim Rogers.

16 **THE COURT:** Ms. Rogers.

17 And you are Ms. Wilkins.

18 And you are Ms. Martin.

19 And what's your name?

20 **POTENTIAL JUROR:** Linda Fuller.

21 **THE COURT:** Ms. Fuller.

22 What's your name?

23 **POTENTIAL JUROR:** Donnie Malone.

24 **THE COURT:** Mr. Malone.

25 You are Ms. Cathcart.

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POTENTIAL JUROR: Linda Jones.

THE COURT: Ms. Jones.

Mr. Boyce.

Ms. Snite.

Mr. Creel.

Ms. Smith. Tell me your first name.

POTENTIAL JUROR: Brenda.

THE COURT: Ms. Brenda Smith.

POTENTIAL JUROR: Gentry.

THE COURT: Mr. Gentry.

POTENTIAL JUROR: Rosa Hammitt.

THE COURT: Ms. Mammitt.

Tell me.

POTENTIAL JUROR: Matt Kern.

THE COURT: Mr. Kern. Okay.

Mr. Daniels.

Mr. Williams. Tell me your first name.

POTENTIAL JUROR: Hollie.

THE COURT: Hollie Williams.

POTENTIAL JUROR: Craig Ruff.

THE COURT: Mr. Ruff.

All right. Tell me your name again, ma'am.

POTENTIAL JUROR: Sarah Simms.

THE COURT: Ms. Simms.

POTENTIAL JUROR: Isabell Williams.

1 **THE COURT:** Isabell Williams.
2 **POTENTIAL JUROR:** Sheril Cudd.
3 **THE COURT:** Ms. Cudd.
4 **POTENTIAL JUROR:** Queen.
5 **THE COURT:** Ms. Queen.
6 Ms. Bagwell.
7 **POTENTIAL JUROR:** Langford.
8 **THE COURT:** Ms. Langford.
9 Ms. Vines?
10 **POTENTIAL JUROR:** Vellines.
11 **THE COURT:** Vellines. I'm getting too bold.
12 All right. Tell me your name, ma'am.
13 **POTENTIAL JUROR:** Carole Hill.
14 **THE COURT:** Ms. Hill.
15 Mr. Pitts.
16 **POTENTIAL JUROR:** Teresa Gilbert.
17 **THE COURT:** Ms. Gilbert.
18 Tell me your name, sir.
19 **POTENTIAL JUROR:** Michael Dawson.
20 **THE COURT:** Mr. Dawson.
21 Mr. McHam.
22 **POTENTIAL JUROR:** Judy Folk.
23 **THE COURT:** Folk?
24 **POTENTIAL JUROR:** Yes.
25 **THE COURT:** Ms. Folk.

1 Mr. Campbell.

2 **POTENTIAL JUROR:** Jeff Seay.

3 **THE COURT:** Mr. Seay?

4 **POTENTIAL JUROR:** Yes.

5 **POTENTIAL JUROR:** Melody Riddle.

6 **THE COURT:** Ms. Riddle.

7 **POTENTIAL JUROR:** Matthew Smith.

8 **THE COURT:** Mr. Matthew Smith.

9 **POTENTIAL JUROR:** Dean Israel. Dean Israel.

10 **THE COURT:** Mr. Israel.

11 Ms. Sallis.

12 Ms. Whitaker.

13 Mr. Beck.

14 Tell me your name.

15 **POTENTIAL JUROR:** Tim Brewton.

16 **THE COURT:** Mr. Brewton.

17 Mr. Floyd.

18 All right. And your name, ma'am?

19 **POTENTIAL JUROR:** Lynne Morgan.

20 **THE COURT:** Ms. Morgan.

21 I had it close. But I'm not so bold.

22 **POTENTIAL JUROR:** Joann Netherton.

23 **THE COURT:** Netherton. I was right.

24 Ms. Cochran.

25 Mr. Poole.

1 Ms. Brock.

2 And your name, sir?

3 **POTENTIAL JUROR:** Gedroic.

4 **THE COURT:** Gedroic.

5 **POTENTIAL JUROR:** With a G.

6 **THE COURT:** All right. Ms. Tallent.

7 And your name, sir?

8 **POTENTIAL JUROR:** Jackie Barham.

9 **THE COURT:** Barham?

10 **POTENTIAL JUROR:** That's correct.

11 **THE COURT:** B-a-r-h-a-m?

12 **POTENTIAL JUROR:** Correct.

13 **THE COURT:** All right. Mr. Atkins.

14 And your name again?

15 **POTENTIAL JUROR:** Rodney Petty.

16 **THE COURT:** Mr. Petty.

17 Anybody else?

18 (WHEREUPON, there was no response.)

19 **THE COURT:** Now, ladies and gentlemen, this is
20 very important. This is perhaps the most important
21 question that I have asked you. I -- over the next
22 several days, I want you to think deep about this. If
23 you decide that you have heard something, you must
24 tell me about it. You must.

25 Now, we're going to take a break. It's also

1 very, very important that from this point forward you
2 do not learn anything about this case except what you
3 learn in this courtroom under my supervision. So do
4 not discuss this case. I hate to sound like I'm
5 talking down to y'all, but it's just very important.
6 And my experience tells me that people will. Some of
7 you are going to talk about this case. And when I
8 find out about it, I'm going to put you in jail.
9 That's the only choice I have.

10 So please understand why I'm so adamant about
11 this. And please just be vigorous in trying to obey
12 my instruction not to talk about the case. And please
13 be vigorous not to let anybody talk to you about the
14 case.

15 Now, during your break, I can tell you, I've
16 already told you there was an article about this case
17 in the newspaper this morning. There will very well
18 perhaps be an article in the newspaper about this case
19 tomorrow morning. There could very well be an article
20 in the newspaper about this case every day until it's
21 over.

22 We haven't had any cameras in the courtroom yet.
23 But there will be. And you probably saw some out in
24 the hall. There is going to be a lot of publicity
25 surrounding this case. Please be very careful to help

1 me and don't allow yourself to become exposed to any
2 press or publicity about this case.

3 Now, during this break, and this could take a
4 little while. During this break, the Clerk of Court
5 is going to be taking your names and randomly putting
6 them in groups of six. And then we will give you a
7 time to come back. Some of you, it will be today.

8 Most of you, it will be either tomorrow or
9 Wednesday. Some of you, we will give you a time and
10 we won't ever reach you. We will get enough jurors
11 before we get to you. But we don't know how far out
12 that is. It is conceivable that we could be at this
13 until Thursday or Friday and still not have a jury.

14 If we give you a time and it's inconvenient, many
15 of you have said you've got something you need to do
16 today or tomorrow. We can adjust that. That's no
17 problem. We can put you in a different group to
18 accommodate any scheduling concern that you have over
19 the next couple of days. So don't hesitate if you
20 have a scheduling problem to tell us about your
21 scheduling problem. But do hesitate to be anywhere
22 but right here at your appointed time. We really need
23 for you to come back on time as we instruct you do.

24 So we're going to take a break. While we are
25 doing this now, remember, you can be free. You can go

1 to the restroom. You can go get a drink. You can walk
2 outside and smoke. You can anything you want to as
3 long as you stay here at the courthouse and don't talk
4 about the case.

5 And if you see somebody talking about -- now, as
6 you move around here, keep these juror tags on your
7 shirt. There are people around this courthouse who
8 are interested in this case. And there might be two
9 people standing out in the hall talking about the case
10 and they don't realize that you are coming up.

11 If you hear somebody talking about the State
12 versus Marion Lindsey, if you hear somebody talking
13 about a murder case, if you hear somebody talking
14 about a death penalty case, stop them. Say Wait a
15 minute, I'm a juror, I want you to understand that you
16 can't talk about that case in front of me. Please
17 help me out. Be very careful to let's make sure that
18 you don't learn anything about this case except right
19 here under my supervision.

20 How long is it going to take you?

21 Let me see Mr. Bartosh and Mr. Gowdy at the
22 desk. I'm going to walk out and come over there.

23 (WHEREUPON, a bench conference was held off the
24 record.)

25 **THE COURT:** All right. It is 25, 23 minutes until

1 5 o'clock. I'm going to ask you to be back in your
2 seats at five minutes after 5 o'clock. Now, at that
3 point, it will move pretty quickly. We're going to
4 call the names, give you a panel, give you a time and
5 you will be -- most of you will be able to leave then.
6 We're going to keep at least one panel of you for
7 tonight.

8 But most of you will be able to leave and you
9 will come back in the morning starting at 9:00. So
10 you can have your break now. Be back in your chair at
11 five minutes after 5:00.

12 (WHEREUPON, a short recess was taken at approximately
13 4:37 p.m.)

14 (WHEREUPON, the Court resumed in camera at
15 approximately 4:50 p.m.)

16 **THE COURT:** All right. Everybody here?

17 **MR. GOWDY:** Yes, sir.

18 **MR. BARTOSH:** Yes, sir.

19 **THE COURT:** Dr. Narayan, how are you?

20 **THE WITNESS:** Fine. Thank you.

21 **PRATAP NARAYAN**

22 having first being duly sworn testified as follows:

23 **DIRECT EXAMINATION**

24 **BY MR. WILLINGHAM:**

25 **Q** All right. You are a forensic psychiatrist?

1 **A** That's correct.

2 **Q** What type of educational background or training
3 have you had to allow you to perform your duties?

4 **A** I have completed medical school and obtained a
5 Post-Graduate Doctoral Degree in Psychiatry. Following
6 which, I did a residency in Psychiatry and a fellowship in
7 Forensic Psychiatry in the University of Florida. I am
8 board certified in General Psychiatry and Forensic
9 Psychiatry.

10 **Q** And part of your job at William S. Hall is to
11 conduct an evaluation to determine competency and criminal
12 responsibility?

13 **A** That's correct.

14 **Q** How many times have you done that?

15 **MR. BARTOSH:** Your Honor, we would stipulate to
16 Dr. Narayan as an expert in the field of forensic
17 psychiatry.

18 **THE COURT:** All right. And you are also satisfied
19 that he's competent and capable of testifying as to
20 his opinion on that subject here in this court and
21 that his opinion would be admissible?

22 **MR. BARTOSH:** Yes, sir. Dr. Narayan has
23 testified in many competency hearings that I've held
24 with him.

25 **THE COURT:** All right. Before we go any farther,

1 let's put this on the record. We have taken this
2 matter outside of the courtroom. We are now in a jury
3 room back behind the courtroom. The court reporter of
4 course is in here. Everybody agrees to do it this
5 way.

6 Correct, Mr. Bartosh?

7 **MR. BARTOSH:** Correct, Your Honor.

8 **MR. WILLINGHAM:** Yes, sir.

9 **THE COURT:** All right. The Clerk of Court is in
10 the courtroom now drawing the panel. And there are
11 some jurors in there. So we wanted to come out here
12 so we can do this hearing outside the presence of any
13 jurors. All right.

14 You may proceed.

15 **MR. BARNETT:** Thank you, Your Honor.

16 **BY MR. WILLINGHAM:**

17 **Q** Dr. Narayan, did you evaluate Marion Lindsey as
18 a result of a court order?

19 **A** Yes, I did.

20 **Q** And the purpose of evaluating him was to
21 determine initially if he was competent to stand trial?

22 **A** That's correct.

23 **Q** And what did you do to determine whether he was
24 competent?

25 **A** We reviewed a number of documents that were

1 provided to us. I was present for two clinical interviews
2 with Mr. Lindsey. And I also had the benefit of Dr.
3 Musick's evaluation. Dr. Musick is a clinical
4 psychologist. And he evaluated Mr. Lindsey also at my
5 request. The list of documents that I reviewed is outlined
6 in the report that I submitted to the Court. Would you
7 like for me to go over those?

8 Q I don't believe that is necessary. During your
9 evaluation, does he understand the charge against him?

10 A I believe he does.

11 Q You believe he understands the possible verdicts?

12 A Yes.

13 Q He understands the roles of the different court
14 officers, the judge, the jury, the Solicitor and the
15 defense lawyers?

16 A Yes, he did.

17 Q Was he able to communicate with his counsel?

18 A We only had Mr. Bartosh present when I
19 interviewed Mr. Lindsey this morning. He obviously
20 appeared to be able to communicate adequately with Mr.
21 Bartosh and --

22 Q Was he able to communicate with you?

23 A I'm sorry.

24 Q Was he able to adequately communicate with you?

25 A Yes, he was.

1 **Q** Do you believe that anything would prevent him
2 from being able to assist his own defense?

3 **A** At this point in time, I had the opportunity to
4 talk to Mr. Lindsey this morning. He did express that he
5 was undergoing some discomfort or distress consequences as
6 to the trial, which would be an appropriate response given
7 the circumstances. He is, I believe, on some type of drug
8 medications. And as long as the medications could address
9 the potential effects of the stress, I believe he would be
10 able to assist the defense in his trial.

11 **Q** To a reasonable degree of medical certainty, do
12 you have an opinion as to whether or not he is competent to
13 stand trial?

14 **A** I do.

15 **Q** What is that opinion?

16 **A** It is that Mr. Lindsey does have the mental
17 capacity to stand trial.

18 **Q** You also, after you determined he was competent,
19 made a determination as to whether he could differentiate
20 right and wrong?

21 **A** We did interview Mr. Lindsey on the previous two
22 occasions with respect to the alleged events. Based on the
23 number of responses he gave, as well as the number of
24 records we were able to review, it is our opinion that he
25 was or did have the ability to understand the difference

1 between right and wrong.

2 Q Did he likewise have the capacity to conform his
3 conduct to the requirements of the law?

4 A We believe he did.

5 Q And Doctor, I believe you prepared a report. It
6 appears to be a 7-page report plus a cover letter. I'll
7 show you a copy of that and see if you recognize it.

8 A Yes, I do. This is a copy of the report that we
9 submitted as a consequence of the evaluation.

10 Q Does that accurately reflect what you testified
11 to today and what you did in preparation for the Court?

12 A Yes.

13 MR. WILLINGHAM: Your Honor, at this time, I move
14 this, it's a Court's Exhibit. It's an evaluation.
15 It's about eight pages.

16 THE COURT: Without objection, it's admitted for
17 purposes of this hearing.

18 (WHEREUPON, State's Exhibit 1 was admitted into
19 evidence.)

20 MR. BARNETT: Thank you, Doctor. If you would
21 answer any questions the defense may have for you.

22 CROSS-EXAMINATION

23 BY MR. BARTOSH:

24 Q Dr. Narayan, Mr. Lindsey was seen on two
25 different occasions?

1 **A** By me, yes, sir.

2 **Q** Okay. And was there any difference between him
3 or his mental outlook or his affect between the first
4 interview and the second?

5 **A** When you're talking about his affect, I didn't
6 quite understand, sir.

7 **Q** Did he appear to be the same, did he exhibit the
8 same sort of affect the second time as the first time that
9 you saw him?

10 **A** Well, during both times, there was some signs of
11 depressive symptoms.

12 **Q** Okay.

13 **A** And that was pretty evident on both occasions.
14 He also obviously was preoccupied with the circumstances
15 of, I don't think we saw anything substantially different
16 between the two interviews that we had.

17 **Q** Okay. And so you felt that on both occasions, he
18 was competent and also criminally responsible?

19 **A** We didn't address all the issues in both the
20 occasions. The purpose of the second interview was to
21 complete what we couldn't finish on the first occasion. So
22 on the second occasion, we had Mr. Lindsey answer a
23 written questionnaire of the issues pertaining to
24 competence. And according to Dr. Musick who scored the
25 test, he appeared to maintain an adequate knowledge of the

1 court system and the functions of the various participates.

2 Q All right. Were there any neurological test that
3 were given to Mr. Lindsey?

4 A We did not give any neurological test.

5 Q Were there any imaging tests that were done?

6 A We did not do any imaging. We did not find any
7 clinical indications for neurological lines of inquiry.

8 Q So you saw no evidence of any kind of
9 neurological damage that Mr. Lindsey may have suffered?

10 A It's possible that Mr. Lindsey may have suffered
11 damage in the past. However, a review of record from the
12 Spartanburg Regional Medical Center which was the hospital
13 he was submitted to apparently right on the day of the
14 alleged offense, his neurological exam was normal. His
15 imaging studies were normal too. So we did not pursue
16 that.

17 Q So you had the benefit of reviewing those medical
18 records?

19 A Yes, we did. That's correct.

20 Q Okay. I think the diagnosis what your report
21 indicates was malingering and also borderline intellectual
22 functioning?

23 A That's correct.

24 Q Can you describe for us what borderline
25 intellectual functioning means?

1 **A** Borderline intellectual functioning is a
2 diagnosis that is used to characterize people that have
3 their IQ's just about a cut off for retardation. In other
4 words, borderline intellectual functioning is subnormal but
5 does not meet the criteria for mental retardation.

6 **Q** So it's on the cusp basically?

7 **A** Pretty much. Pretty much. Actually, if I could
8 be a little more specific, mental retardation, the cut off
9 for IQ is 70. And from my, from our psychologist
10 evaluation, he scored a 76.

11 **Q** So that would put his six points above --

12 **A** That's correct.

13 **Q** -- retardation?

14 **A** That's correct.

15 **Q** And with folks that would have this intellectual
16 or this IQ, would they have trouble handling stress on the
17 normal day-to-day problems that people encounter?

18 **A** Not necessarily just because of the intellectual
19 functioning. The intellectual functioning could certainly
20 contribute to somebody's impairment. But even people who
21 don't have intellectual impairment could still have
22 problems with stress --

23 **Q** Okay.

24 **A** -- without actually having made a diagnosis.

25 **Q** Okay. But it's possible that the borderline

1 intellectual functioning could have been a stresser for,
2 would have aggravated the stress?

3 **A** Again, it's hard for me to say what effect
4 borderline intellectual functioning has in Mr. Lindsey's
5 case simply because from an assessment of this adoptive
6 level of functioning, it does not appear to have interfered
7 much throughout his life. He's been able to hold a job.
8 He's been able to interact appropriate, have relationships,
9 maintain contact with his children and so on and so forth.

10 However, since I believe, I don't know if Mr. Lindsey
11 has ever been through this kind of a legal proceeding.
12 There is certainly a chance that the intellectual
13 functioning impairment could potentially compromise his
14 ability to understand things as quickly or as readily as
15 someone with a normal intelligence score. So in other
16 words, if somebody took the trouble to make sure that Mr.
17 Lindsey understood what was going on, I don't believe it
18 should necessarily lead to any stress on his own accord.

19 **Q** So it would just take him a little longer to
20 process things?

21 **A** Yeah. Especially if he expresses difficulty
22 understanding.

23 **Q** And were you told or had Mr. Lindsey indicated
24 to you that he had had a history of head trauma from early
25 childhood up until the incident we're talking about today?

1 typically be considered in the realm of psychotic symptoms.
2 The only thing with Mr. Lindsey's reporting was, his
3 symptom description was very atypical. And over the course
4 of time after discussion with Mr. Lindsey, we came to the
5 conclusion that he was fabricating these symptoms and he
6 did appear to have some secondary gain motive for this.

7 Q And you met with him on April the 14th, 2003 and
8 June the 2nd, 2003 and then again today?

9 A That's correct.

10 Q And you are basing your evaluation of him, this
11 morning I believe as of 9 o'clock, your opinion has not
12 changed?

13 A We didn't find any evidence of his malingering
14 symptoms today. There's no evidence of that. But we did
15 find evidence of that on the three occasions that Mr.
16 Lindsey came to our institution.

17 Q But as far as his competency to stand trial,
18 nothing has changed.

19 A Nothing has changed.

20 Q Thank you.

21 **RECROSS-EXAMINATION**

22 **BY MR. BARTOSH:**

23 Q And did --

24 **MR. BARTOSH:** Just briefly, Your Honor.

25 **BY MR. BARTOSH:**

1 **Q** Doctor, did Mr. Lindsey ever describe motorcycle
2 accidents and other head trauma that he had suffered as a
3 teenager to you?

4 **A** Let me check and tell you very quickly. I don't
5 believe he did.

6 **Q** And when you were --

7 **A** I take that back. He did report of surgeries to
8 his knee in 1986, leg in 2000. Fractured right arm
9 requiring surgery. Head trauma several times. He said he
10 went in the hospital for getting stitches and lost
11 consciousness on one occasion for about 30 minutes back in
12 '89 or '90. Admitted to the East Spartanburg Regional
13 Medical Center for two weeks. That's what I've got.

14 **Q** And when you would question him about the various
15 roles of people and he didn't seem to understand it, would
16 you then instruct him as to what they were and then ask
17 back?

18 **A** Yes. That's correct.

19 **Q** That's all I have.

20 **THE COURT:** Any further from the State?

21 **MR. WILLINGHAM:** That would be the State's
22 showing.

23 **THE COURT:** Anything from the defendant?

24 **MR. BARTOSH:** No, sir.

25 **THE COURT:** Mr. Bartosh, apart from what has been

1 put forth here, do you have any reason to suspect that
2 your client is not competent to stand trial?

3 **MR. BARTOSH:** No, sir.

4 **THE COURT:** Mr. Brennan?

5 **MR. BRENNAN:** No, sir.

6 **THE COURT:** Ms. Quimby?

7 **MS. QUIMBY:** No, sir.

8 **THE COURT:** Well, I see no reason to suspect that
9 he is not competent. He appears to me to have the
10 sufficient present ability to consult with his lawyer
11 to a reasonable degree of rational understanding. And
12 he appears to have a rational as well as factual
13 understanding of the proceedings against him at least
14 as far as what's been put before me. So I find him
15 competent.

16 **MR. BARTOSH:** Thank you, Your Honor.

17 **MR. BRENNAN:** Your Honor, we do have some motions
18 that deal with the jury. When would the Court like to
19 hear those motions?

20 **THE COURT:** Just tell me what they are.

21 **MR. BRENNAN:** Your Honor, it's actually, it's in
22 written form. It's four motions. One is a request
23 that the jury not be sequestered.

24 **THE COURT:** Yeah.

25 **MR. BRENNAN:** Two is that the jury not be guarded

1 by S.L.E.D. agents or local law enforcement officers.

2 **THE COURT:** You mean if they are sequestered?

3 **MR. BRENNAN:** If, well, even if they are not. We
4 would like then to be managed if you will, if not
5 sequestered, by the bailiffs.

6 **THE COURT:** All right.

7 **MR. BRENNAN:** We would ask the Court to allow the
8 jury itself to pick its foreman. And lastly, Your
9 Honor, we would ask that defense counsel be seated at
10 the table nearest the juror, jurors or in the
11 alternative that we be allowed to rotate.

12 **THE COURT:** All right.

13 **THE WITNESS:** Your Honor, may I be excused?

14 **THE COURT:** Yes, sir.

15 All right. Let me cover a couple of things. I
16 will decide shortly when I'm going to hear those
17 motions. Are there any objections to anything that
18 has happened so far? Anything that I have failed to
19 do or anything that I have done improperly so far?

20 **MR. BARTOSH:** Not so far, no, sir.

21 **THE COURT:** We had a discussion in the courtroom a
22 minute ago about exactly how the Clerk was going to go
23 about selecting the panels to question further. That
24 of course determines the order for how the jurors get
25 put into the panel that we will ultimately pick the

1 jury from. There may be some slight variations as to
2 that procedure from what is set forth in the statute.

3 Mr. Bartosh, are you familiar with exactly how
4 the Clerk was going to go about doing what I just
5 said?

6 **MR. BARTOSH:** Yes, sir. And I explained to Mr.
7 Lindsey that the statute requires that the individual
8 slips of paper be placed in capsules and then removed.
9 That way, I explained to him what the Clerk was going
10 to do. They were going to place the individual slips
11 of paper with the individual jurors' names and number
12 on those slips of paper into a small drum. The drum
13 would be, would then be turned and the Clerk would
14 remove the individual slips out. Mr. Lindsey has no
15 objection to that, Your Honor. He understands fully
16 what the procedure is going to be.

17 **THE COURT:** All right. Well, without having to
18 actually define the entire procedure right here, this
19 is not the first death penalty case that you tried
20 here in Spartanburg County. You are certainly
21 familiar with how Spartanburg County draws jurors.

22 **MR. BARTOSH:** Yes, sir.

23 **THE COURT:** Assuming that you know the process
24 that is going to be followed, do you have any
25 objections?

1 **MR. BARTOSH:** No, sir. I do not.

2 **THE COURT:** And you say that after consulting with
3 Mr. Lindsey?

4 **MR. BARTOSH:** I say that after consulting with
5 Mr. Lindsey.

6 **THE COURT:** Okay. Since we have Mr. Lindsey in
7 here, we also have representatives of the jail in
8 here. Does everybody have an understanding of how Mr.
9 Lindsey is going to be moved around the courthouse
10 during the trial?

11 **MR. BARTOSH:** I would leave that to Captain
12 Freeman. But my understanding is Mr. Lindsey is
13 going to be placed in the courtroom approximately a
14 half an hour before the jury arrives. No one is going
15 to be admitted into the courtroom until 9 o'clock so
16 that every effort is going to be made that no one
17 would see Mr. Lindsey being taken from the old jail,
18 up the corridor and into here.

19 Matter of fact, I think they're going to bring
20 them in through the side door. So that there should
21 be no opportunity for a juror to see Mr. Lindsey
22 prior to the voir dire.

23 **DETENTION OFFICER:** Which courtroom would we be
24 using?

25 **THE COURT:** We're going to use the one on the left

1 hand side. The one that Judge Cole usually uses. I
2 don't know if it's West A or B.

3 **DETENTION OFFICER:** That's West A.

4 **THE COURT:** The one at the end of the hall.

5 **DETENTION OFFICER:** The only problem with that is
6 we will have to transport him from the jail room down
7 the hall because we don't have an access door like we
8 do in West B.

9 **THE COURT:** Right. Well, --

10 **DETENTION OFFICER:** First of all, my plan was to
11 have him up here no later than 8:15 in the morning.
12 I've instructed the people on the door not to open the
13 doors until I confirm that he's in the jail room.
14 Once we get in the jail room, then the building is
15 open to the public. Now, when we get ready to go into
16 the courtroom, we're going to have to clear the
17 hallway to get him down.

18 **THE COURT:** The public hallway?

19 **DETENTION OFFICER:** Yes, sir. The public hallway
20 down to West A courtroom. We don't have an access
21 door like we got in West B.

22 **THE COURT:** Any problem with that?

23 **MR. BARTOSH:** No, sir.

24 **THE COURT:** Y'all rather use West B?

25 **DETENTION OFFICER:** The only problem with West B

1 is that the jury --

2 **THE COURT:** Goes through that same door. It's
3 really probably easier to use West A, isn't it?

4 **DETENTION OFFICER:** Yes, sir. It would be a lot
5 easier. We could clear that hall out like I said.

6 **THE COURT:** When you walk him down the hall, he's
7 not going to be wearing any restraints?

8 **DETENTION OFFICER:** The only thing I will do is
9 cuff him behind his back. Once I get him in the
10 courtroom --

11 **THE COURT:** And you are not going to do that until
12 you know where all the jurors are?

13 **DETENTION OFFICER:** Absolutely.

14 **THE COURT:** And you've done this a number of times
15 before. I'm quite confident that you all can keep him
16 from being seen by the jury.

17 **DETENTION OFFICER:** Yes, sir. Like I said, I'll
18 get him up here in the morning between 8:00 and 8:15
19 and the doors will be locked to the public until the
20 officers on the door --

21 **THE COURT:** You'll drive him in where nobody can
22 see him walking across that hallway on this floor.
23 And all that will happen and he will be secured before
24 the jury is even allowed in the building?

25 **DETENTION OFFICER:** We're looking at about 8:15.

1 More than likely, I will have him in. Lunch will be
2 provided in the jail room. He will have no reason to
3 leave.

4 **THE COURT:** All right. You satisfied with all
5 that, Mr. Bartosh?

6 **MR. BARTOSH:** Yes, sir. The only question I
7 have is where do you want his clothes?

8 **DETENTION OFFICER:** To the jail.

9 **MR. BARTOSH:** Up here to the jail.

10 **DETENTION OFFICER:** Yeah. We'll change him out in
11 there and put him in civilian clothes. Once we move
12 him, we make sure that it's completely clear. We have
13 an officer to come down the hall and check to make
14 sure.

15 **THE COURT:** Okay.

16 **MR. BARTOSH:** And you'll leave his clothes here
17 so we can pick them up tomorrow?

18 **DETENTION OFFICER:** That's correct.

19 **MR. BARTOSH:** So we can swap them out.

20 **THE COURT:** Okay. I'm satisfied with that. Now,
21 apart from the questions that relate to the witnesses,
22 I'm talking about voir dire, apart from the questions
23 that relate to witnesses and who might know or who
24 might be related to any of the witnesses and apart
25 from that three or four questions that are set forth

1 in the statute about whether or not they've made up
2 their mind or formed any opinion or have any bias or
3 prejudice or know of any reason why they can't be
4 fair, which I elected to save until just before we
5 picked the jury because I'm going to have to re-ask
6 that question anyway. Or do you want me to ask those
7 questions now?

8 I have to ask them again. I'll have to ask them
9 again. Can't ask about the witnesses. We agreed.
10 That we were going to give the jurors as the panels
11 come in a list of witnesses and ask them to review
12 that. At the beginning of each individual, we ask
13 them if they know or are related to any witnesses.
14 Have I left out any voir dire that anybody asked me to
15 present before the jury?

16 **MR. BARTOSH:** Not -- from earlier?

17 **THE COURT:** Yes.

18 **MR. BARTOSH:** No, sir.

19 **MR. BRENNAN:** Your Honor, you asked specifically
20 if anybody knew or was related to Ruby Nell Lindsey.
21 But the question about Marion Alexander Lindsey was
22 kind of buried between Mike Bartosh, Doug Brennan and
23 Karen Quimby. I don't have a problem with the way it
24 was asked. But you had Ruby Nell singled out. And
25 Mr. Lindsey was grouped with his attorneys when asked

1 if you were related by blood or marriage or knew
2 anybody sitting at our table. If I didn't bring it
3 up, you wouldn't have a concern about it. I don't
4 know if it needs to be asked singularly like Ruby Nell
5 was.

6 **THE COURT:** I'm not worried about it unless y'all
7 are.

8 **MR. BARTOSH:** I'll leave it up to you.

9 **MR. BRENNAN:** No, Your Honor, nobody stood up.
10 I'm going to say it was okay. I just wanted --

11 **THE COURT:** I went back and asked them each about
12 their families. I asked them if they knew anything
13 about the case. I asked them if they knew anything
14 about their families apart from the case. And then I
15 asked them if they knew anything about the case.

16 **MR. BARTOSH:** I think too whether they knew
17 them or not will probably come out in individual voir
18 dire anyway.

19 **THE COURT:** All right. Now, as far as the
20 qualification of the jury, I ruled on every issue that
21 came up except for Ms. Donald. We've got to address
22 whether or not she counts as a person employed within
23 the walls of any courthouse. Is it correct that I
24 have ruled on every juror except for her on statutory
25 qualifications?

1 **MR. BARTOSH:** The only three we have left over
2 was the lady that said she lived in Greenville. She's
3 been excused. The police officer. That was Mr.
4 Brock, I think. So she's the only one left.

5 **THE COURT:** All right. Good. Let's go back to
6 the courtroom.

7 (WHEREUPON, the in camera testimony ended at
8 approximately 5:24 p.m.)

9 (WHEREUPON, the Court resumed at approximately 5:30
10 p.m.)

11 **THE COURT:** All right. We are ready now to
12 announce the names that have been randomly put into
13 the different panels. We will -- you all agree that
14 two hours per panel is appropriate?

15 **MR. GOWDY:** Yes, sir. Two hours is a
16 gracious amount of time. We may can do it in an hour
17 and a half. Two hours would be clearly enough, I
18 think. Panels of six, Your Honor?

19 **THE COURT:** Yeah. And if we have a little extra
20 time, we will be able to take a breath between panels.

21 **MR. GOWDY:** Yes.

22 **THE COURT:** All right. That won't hurt us. All
23 right. So we're going to --

24 If you go ahead and call the panels and stop
25 after each one, I'll give them a time.

1 **THE CLERK:** Please stand as I call your name.

2 This is panel number 1. Number 213, Rodney C. Petty;
3 Number 133, John P. Hovelsrud; Number 63, Sheril
4 Cudd; Number 77, Ashley D. Driscoll; Number 162,
5 Rick J. Lee; Number 134, Carla S. Howell.

6 **THE COURT:** All right. You folks, we're going to
7 talk to you all tonight. Is there anybody among you
8 six who can't stick around here tonight for two hours
9 for us to talk to you tonight?

10 (WHEREUPON, there was no response.)

11 **THE COURT:** All right. Let me get each of you six
12 to come over here and we will seat you in the jury
13 box.

14 **THE BAILIFF:** We'll take them to the jury room.

15 **THE COURT:** Okay. Let me remind you all, and the
16 bailiffs will be keeping track of you, do not discuss
17 anything regarding this case.

18 **THE CLERK:** This is Panel number 2. Number 218,
19 Janet Prasanlack; Number 22, Tammy C. Queen; Number
20 65, Luther M. Culpepper; Number 153, Jon C. Krisher;
21 Number 115, Angela M. Haley; Number 274, Darcy J.
22 Thompson.

23 **THE COURT:** All right. You folks are Panel 2.
24 And you will report tomorrow morning at 9 o'clock.
25 Now, remember your panel number, okay? You are Panel

1 number 2. This won't apply to this particular panel.
2 But the rest of you, we're going to talk to you about
3 a telephone number that you will need to call at a
4 different time to check on the status of your
5 schedule.

6 You want to go ahead and take them now and show
7 them where they will report in the morning?

8 **THE BAILIFF:** Come this way please.

9 **THE COURT:** 9 o'clock tomorrow morning. Remember
10 my instructions now. Do not discuss this case. Hold
11 on just a second now. And this is for all of you.
12 You all are leaving tonight before we get a chance to
13 talk to you. TV, news, newspaper in the morning, be
14 very careful. Don't read the paper in the morning
15 without if you've determined to -- I enjoy reading the
16 paper in the morning -- get somebody to go through the
17 paper for you. Take out the articles or take out the
18 section that there might be about this case.

19 We will be asking in the morning whether or not
20 you read anything about the case. And you will be
21 giving us a truthful answer. I will be expecting you
22 to follow my instructions. All right. We look
23 forward to seeing you in the morning. 9 o'clock.

24 **THE CLERK:** Panel number 3. Number 35, Tommy D.
25 Brown, Number 100, James B. Gedroic; Number 205,

1 Joann C. Netherton; Number 103, Teresa R. Gilbert;
2 Number 81, Emma D. Ellis; Number 185, Shirley
3 McDowell.

4 **THE COURT:** All right. Now, is there any of you
5 all who can't be here tomorrow morning at 10:45 and
6 expect to stay here for approximately two hours? Any
7 one of you who can't be here tomorrow morning at
8 10:45?

9 (WHEREUPON, there was no response.)

10 **THE COURT:** All right. We're going to -- I'm
11 going to ask you all to be here tomorrow morning at
12 10:45.

13 . Let me see Mr. Bartosh and Mr. Gowdy before we
14 get any farther.

15 (WHEREUPON, a bench conference was held off the
16 record.)

17 **THE COURT:** All right. Ladies and gentlemen, --
18 You're going to show them where to go?

19 **THE BAILIFF:** Yes, sir.

20 **THE COURT:** Be here tomorrow morning before 10:45.
21 Now, you heard me say we were allowing two hours. I
22 am going to ask you to be here just a little bit
23 earlier. You may have to wait around a few minutes
24 before we get to you. But hopefully, we'll be able to
25 get to you as soon as you get here. We look forward

1 to seeing you all tomorrow morning at 10:45.

2 **THE BAILIFF:** Come this way, please.

3 **THE CLERK:** This is Panel 4. Number 60, James E.
4 Creel; Number 176, Miquel A. Martinez; Number 240,
5 Martha Sallis; Number 106, Danny Gomes; Number 127;
6 Todd Hillstock; Number 173, Harold T. Marcum, Jr.

7 **THE BAILIFF:** Come on out please.

8 **THE COURT:** Hold on. I want you all to be here
9 tomorrow at 2 o'clock. We will -- they are going to
10 show you where to come. Be here at 2 o'clock. We
11 look forward to seeing you then. Anybody who can't be
12 here at 2 o'clock tomorrow and stay for two hours?
13 (WHEREUPON, there was no response.)

14 **THE COURT:** All right. We'll see you, Panel 4, at
15 2 o'clock.

16 **THE CLERK:** This is Panel Number 5. Number 253,
17 Brenda M. Smith; Number 39, Lori J. Burnett; Number
18 179, Larry A. Mauldin. 179, Larry A. Mauldin; Number
19 294, Isabell Williams; Number 160, Mackenzie A.
20 Leake; Number 157, Wilma S. Langford. 157, Wilma S.
21 Langford.

22 **THE COURT:** All right. I'm going to ask you folks
23 to be here tomorrow afternoon at 3:30. Now, here is
24 -- where we're going to kick in the recordings. If you
25 want to -- I don't think we're going to go any faster

1 than that. We're not going to ask you to be here any
2 earlier than 3:30. But if we're running behind, we
3 will put an announcement on there. So remember your
4 panel number. This is number what?

5 **THE CLERK:** 5.

6 **THE COURT:** Panel number 5. If you want to check
7 on that recording tomorrow say after, between 12:00
8 and 2:00 to see if there's a message that might delay
9 you a little bit, you are welcome to do that. But
10 unless there is something on that recorder that says
11 anything other than 3:30, please be here tomorrow at
12 3:30. We will look forward to seeing you then. They
13 are going to show you where to go.

14 **THE BAILIFF:** Come this way, please.

15 **THE CLERK:** This is Panel 6. Number 187, Gary S.
16 McHam; Number 194, Jerlyn M. Miller; Number 257,
17 Richard K. Smith; Number 223, Donald Ray; Number
18 215, John S. Poole; Number 138, Dean T. Israel.

19 **THE COURT:** All right. Is there any one of you
20 who are Panel 6 who can not be here tomorrow afternoon
21 at 5:30 with the expectation of being here for two
22 hours?

23 (WHEREUPON, there was no response.)

24 **THE COURT:** All right. We'll see you tomorrow
25 afternoon at 5:30. You also are welcome to check the

1 recording to see if we changed your appointed time.
2 But I don't think that's going to happen. I've given
3 myself two hours in hopes that we can have a little
4 break before we get to you all at 5:30.

5 **THE BAILIFF:** Right this way please.

6 **THE COURT:** Let me see Mr. Gowdy and Mr. Bartosh
7 before we call the next panel.

8 (WHEREUPON, a bench conference was held off the
9 record.)

10 **THE COURT:** Go ahead.

11 **THE CLERK:** This is Panel 7. Number 225, Jeffrey
12 A. Rhineberger; Number 232, Kim Rogers; Number 224,
13 Kenneth J. Reese; Number 49, Kevin O. Cartledge,
14 Number 29, Timothy R. Brewton, Number 197, Aletha M.
15 Misenheimer.

16 **THE COURT:** All right. You all are Panel 7.
17 That's going to make it real easy for you. I'm going
18 to ask you to be here tomorrow night at 7:00. Anybody
19 who can't be here tomorrow night at 7:00 and expect to
20 stay two hours?

21 (WHEREUPON, there was no response.)

22 **THE COURT:** Really, I don't want to start y'all
23 off at 7 o'clock tomorrow night. And I might not do
24 it. I'm going to reserve the possibility, the
25 significant possibility that instead of you coming

1 tomorrow night at 7:00, you will come Wednesday
2 morning at 9:00. So anybody who can't be here
3 Wednesday morning at 9:00?

4 (WHEREUPON, there was no response.)

5 **THE COURT:** For now, you be here tomorrow night at
6 7 o'clock but check that recording some time around
7 5:00 to 5:30 and see what it says. We will either see
8 you tomorrow night at 7:00 or we will see you
9 Wednesday morning at 9:00.

10 **THE BAILIFF:** Come on out, please.

11 **THE CLERK:** This is Panel Number 8. Number 15,
12 Samuel K. Barnwell; Number 268, Jami Sturgeon;
13 Number 256, Matthew S. Smith; Number 89, Joseph H.
14 Floyd, Number 95, Linda J. Fuller; Number 4, William
15 T. Atkins.

16 **THE COURT:** Are we missing somebody?

17 **MR. GOWDY:** Did Mr. Atkins stand up?

18 **THE COURT:** Yeah, he's back there.

19 **THE CLERK:** Samuel Barnwell, Jami Sturgeon,
20 Matthew Smith, Joseph Floyd, Linda Fuller, William
21 Atkins.

22 **THE COURT:** All right. We got them now. You all
23 are Panel 8. I'm not going to give you a specific
24 time. I want to see how quickly things go tomorrow.
25 You can tell you are either going to be 9 o'clock

1 Wednesday morning or say 10:30 Wednesday morning. But
2 you definitely call the recording tomorrow night after
3 7:00. There will be a message on there telling you
4 what time to be here on Wednesday. You are Panel
5 Number 8.

6 Now, listen, ladies and gentlemen, I don't want
7 this to get too complicated. If it was me, I would go
8 home and I would say What panel they said I was on. I
9 can't remember. It's your responsibility to remember
10 what panel you are on. And if you forget, call the
11 Clerk's office. Give them your name and they will
12 tell you what panel you are on. They will show you
13 where to come on Wednesday morning. Come with them
14 now. We look forward to seeing you all Wednesday
15 morning.

16 **THE CLERK:** This is Panel Number 9. Number 255,
17 Marvin Smith; Number 59, James R. Cottrell; Number
18 261, Heather L. Snite; Number 19, Lori Bedillion;
19 Number 68, Michael T. Dawson; Number 97, Pam L.
20 Gardner.

21 **THE COURT:** All right. You all are Panel 9. You
22 will be here some time midmorning to lunchtime on
23 Wednesday. Call the recording tomorrow night after 7
24 o'clock for specific instructions about when to be
25 here. We look forward to seeing you all midmorning to

1 lunchtime on Wednesday.

2 **THE CLERK:** This is Panel Number 10. Number 14,
3 Jackie D. Barham; Number 90, Judy D. Folk; Number
4 273, Patricia A. Thomas; Number 297, Thomas A.
5 Williams; Number 117, Amanda J. Hamby; Number 85,
6 Stanley F. Fields.

7 **THE COURT:** All right. This is 10?

8 **THE CLERK:** Yes, sir.

9 **THE COURT:** This is Panel Number 10. Sometime
10 midday Wednesday is when we expect to get to you all.
11 But you need to call the recording, I would say
12 definitely call tomorrow night after 7:00. But we're
13 going to try to keep this thing updated so that we
14 move it as efficiently as we can. We got a lot of
15 work to do. We want to do it as quickly as we can
16 without killing anybody.

17 We don't want y'all to sit around and wait when
18 you don't need to. We certainly don't want you to be
19 late when we need you up here. So not only should you
20 all check the recording tomorrow night after 7:00, but
21 I would check the recording again Wednesday morning
22 between 10:00 and 11:00, between 10:30 and 11:30 or
23 something like that. Just check it. It won't take
24 you but a minute. Just check it and see what it says.
25 You are Panel 10. We'll see y'all some time

1 Wednesday.

2 **THE BAILIFF:** This way please.

3 **THE CLERK:** This is Panel 11. Number 247, Jeffrey
4 D. Seay; Number 230, Alonzo M. Robinson, Number
5 226, Melody M. Riddle, Number 175, Joyce P. Martin;
6 Number 287, Tracy D. Whitaker; Number 102, Sarah H.
7 Gibson-Simms.

8 **THE COURT:** All right. You are Panel 11. We
9 expect to get to you all some time Wednesday
10 afternoon. You can call Tuesday night but certainly
11 you need to call Wednesday between 11:00 and 12:00 to
12 get a better idea about when your schedule is. I'm
13 going to try to get, I think we're going to be on
14 track. But if you call Wednesday morning, Wednesday
15 at 11:00 and your schedule says come at 2:00, call
16 again at 1:00 to make sure that it's going to be ready
17 at 2:00.

18 We'll try to keep the schedule updated as much as
19 we can. You are Panel 11. If you need that number,
20 if you are like me and you are not confident that you
21 are going to be able to remember the number 11, one of
22 the bailiffs will write it down for you on your way
23 out. We'll see you Wednesday afternoon.

24 **THE BAILIFF:** Right this way.

25 **THE CLERK:** This is Panel Number 12. Number 212,

1 William D. Parnell; Number 130, Tracy S.
2 Hollingsworth; Number 112, Brandon J. Greenway;
3 Number 21, Joshua R. Bennett; Number 203, Traci T.
4 Muenger-Brock, Number 125, Carole E. Hill.

5 **THE COURT:** All right. You are Panel 12. We
6 expect to get to you all some time mid to late
7 afternoon Wednesday. Call the recording during the
8 course of the day on Wednesday and make sure that you
9 know your precise time to be here. We'll see you
10 Wednesday afternoon.

11 **THE CLERK:** This is Panel Number 13. Number 148,
12 Linda K. Jones; Number 281, Jane V. Vellines;
13 Number 151, Matt Kern; Number 18, Thaddeus A. Beck;
14 Number 45, Otis Campbell; Number 101, James T.
15 Gentry.

16 **THE COURT:** All right. You all are Panel 13.
17 Hopefully, we'll get to you all Wednesday evening.
18 Call the recording during the course of the day
19 Wednesday to find out your precise schedule. We look
20 forward to seeing you all Wednesday late afternoon or
21 evening.

22 **THE BAILIFF:** Right this way, please.

23 **THE CLERK:** This is Panel Number 14. Number 9,
24 Pamela C. Bagwell; Number 57, Clara V. Cope;
25 Number 208, Thomas N. Oliver; Number 53, Leonard F.

1 Cogdill; Number 285, Michael D. Weeks; Number 202,
2 Amanda E. Morton.

3 **THE COURT:** All right. Y'all are Panel Number 14.
4 Hopefully we'll get to you Wednesday. It's a little
5 too early to tell. Call during the course of the day
6 on Wednesday to see what your schedule is. We look
7 forward to hopefully seeing you Wednesday. I suppose
8 there is some possibility that we might not get to you
9 all until Thursday morning.

10 **THE BAILIFF:** Right this way, please.

11 **THE CLERK:** This is Panel Number 15. Number 72,
12 Elizabeth M. Donald; Number 50, Candace D.
13 Cathcart; Number 37, Carole S. Burdette; Number
14 236, Craig C. Ruff; Number 195, Kathleen C. Miller;
15 Number 214, Timothy K. Pitts.

16 **THE COURT:** All right. This is 15 or 14?

17 **THE CLERK:** 15.

18 **THE COURT:** They are Panel 15?

19 **THE CLERK:** Yes, sir.

20 **THE COURT:** All right. We don't know when we're
21 going to get to you. There's some chance we can get
22 to you Wednesday afternoon. I suppose it's a little
23 more likely that it will be Thursday. We do expect to
24 get to you all. I can see the looks on your faces.
25 You're thinking, Hot dog, they're not going to get to

1 me. We're far enough down the line. Don't count on
2 it. I promise you we will get to Panel 15.

3 So check the recording throughout the course of
4 the day on Wednesday to make sure that you know your
5 precise time for being here. We will see you sometime
6 Wednesday or Thursday.

7 **THE BAILIFF:** Right this way, please.

8 **THE CLERK:** This is Panel Number 16. Number 10,
9 Dena G. Bailey; Number 6, Michael W. Ausberry, Jr.,
10 Number 146, Ricky T. Johnson; Number 52, Betty S.
11 Cochran; Number 283, Sheila M. Vlieg; Number 221,
12 Jamie A. Puckett.

13 **THE COURT:** All right. Y'all are Panel 16. Call
14 the recording throughout the course of the day
15 Wednesday and if necessary into Thursday morning to
16 find out the time that you will need to be here. Come
17 on back this way. The bailiffs will show you where to
18 go when you get here whenever your appointed time ends
19 up being.

20 Now, before you all leave the room, this is Panel
21 16, right?

22 **THE CLERK:** Yes.

23 **THE COURT:** Don't let the passage of time cause
24 the memory of the forcefulness of my instructions to
25 you about reading the newspaper and watching the TV

1 fade. Keep that present at the tip of your mind.
2 Stay out of the newspaper and out of the TV news.
3 Come back in here Thursday with a clean slate in your
4 head. We will see you Thursday.

5 **THE CLERK:** This is Panel Number 17. Number 189,
6 Brent W. McKinney; Number 293, Hollie R. Williams,
7 Number 113, Catherine A. Grubbs, Number 171, Donald
8 L. Malone, Number 109, Melva D. Graham-Martin;
9 Number 200, Lynne L. Morgan.

10 **THE COURT:** All right. This is 17?

11 **THE CLERK:** Yes, sir.

12 **THE COURT:** Y'all are Panel 17. You need to check
13 during the course of the day Wednesday and also into
14 Thursday morning to see what your schedule is. We'll
15 see you when we get to you.

16 **THE BAILIFF:** Come on out please.

17 **THE CLERK:** This is Panel Number 18. Number 66,
18 Harold L. Daniels; Number 295, Jeffrey W. Williams;
19 Number 254, Latrice V. Smith; Number 258, Toni D.
20 Smith; Number 279, Gary G. Tucker; Number 161,
21 Elaine J. Lee.

22 **THE COURT:** 18?

23 **THE CLERK:** Yes, sir.

24 **THE COURT:** All right. Pay attention Wednesday
25 afternoon and into the day on Thursday to make sure

1 you know what your schedule is. We will see you at
2 the time that we give you. It's certainly possible
3 that we might not get to you all until Thursday
4 afternoon. So keep checking until it's right before
5 you're supposed to come and make sure you know
6 precisely when you are to come. We will see you then.

7 **THE BAILIFF:** Come on out please.

8 **THE CLERK:** This is Panel Number 19. Number 13,
9 Donald Banks; Number 199, Laurence D. Morda; Number
10 227, Ronnie H. Ridings; Number 93, Gail Fowler;
11 Number 27, Don J. Boyce; Number 118, Rosa Hammitt;
12 Number 271, Michael D. Taylor.

13 **MR. GOWDY:** That's seven.

14 **THE COURT:** We got seven in the last two panels.

15 **MR. GOWDY:** Oh, I'm sorry.

16 **THE COURT:** Y'all -- this is 20?

17 **THE CLERK:** 19.

18 **THE COURT:** 19. Okay. Y'all are Panel number 19.
19 You need to pay attention Wednesday afternoon and into
20 the day on Thursday by calling the recorded number and
21 see what your schedule is. We look forward to seeing
22 you all probably some time Thursday.

23 **THE BAILIFF:** Come on out please.

24 **THE CLERK:** This is Panel Number 20. Number 74,
25 Cheryl Dotson; Number 192, Dana C. Melton; Number

1 233, Danny R. Rollins; Number 270, Lori Talbert --
2 Tallent; Number 228, Timothy J. Roberts; Number 28,
3 Sandra Brady; Number 250, Mark P. Simmons.

4 **THE COURT:** Go ahead and put Ms. Wilkins in that
5 last panel.

6 Ms. Wilkins.

7 All right. You all are Panel 20. If we get to
8 you, it will be Thursday at the earliest I predict.
9 But we may catch fire. Y'all need to check with us
10 Wednesday afternoon and make sure that you're not up
11 for Wednesday. Certainly, you will know what the
12 schedule is for Thursday. Remember not to be reading
13 the paper and watching the television. And we will
14 see you all probably some time Thursday.

15 **THE BAILIFF:** Come on out please.

16 **THE COURT:** All right. Y'all got it all?

17 **MR. BARNETT:** Think so.

18 **MR. GOWDY:** Yes, sir.

19 **THE COURT:** Mr. Bartosh?

20 **MR. BARTOSH:** Yes, sir.

21 **THE COURT:** You ready to proceed in a few minutes?

22 **MR. BARTOSH:** I'm ready now, Your Honor.

23 **THE COURT:** Well, give me a minute. Is there
24 anything that either side anticipates in way of voir
25 dire that you might have an objection to that we could

1 go ahead and look at now? I know y'all just went
2 through a trial together recently right?

3 **MR. GOWDY:** No, I did not.

4 **THE COURT:** Who tried that case?

5 **MS. QUIMBY:** I did, Your Honor.

6 **MR. GOWDY:** Ms. Quimby, Clay Allen and Roger
7 Poole.

8 **THE COURT:** Y'all had one before, hadn't you?

9 **MR. GOWDY:** I don't believe Mr. Bartosh and
10 I had although we have had trials.

11 **THE COURT:** All right. Well, I mean, I just
12 wonder if there is anything y'all anticipate in terms
13 of each other's voir dire that you might want to
14 address now.

15 **MR. GOWDY:** There's an issue that may come up
16 if Mr. Bartosh don't mind me saying it. The court
17 reporter can hear. It ain't a whole lot of people in
18 here. I don't have any idea, heck, I don't know what
19 neurology reports they have. I certainly don't know
20 what defense they have. To the extent that there's
21 going to be allegations of marital infidelity, I would
22 think it's appropriate to ask jurors, Do you carve out
23 an exception for South Carolina's murder statute for a
24 wife who a husband suspects is being unfaithful?

25 In other words, despite what the law says about

1 not being able to kill them, do you have your own rule
2 that you would follow. It doesn't have anything to do
3 with the punishment. It has to do with whether or not
4 you think as it is in Brazil and other countries, it's
5 okay to shoot your wife if you suspect that she's
6 seeing somebody else.

7 Now, if they tell me that is not going to be part
8 of their defense or any line of questioning, there's
9 no need for me to ask any potential jurors about that.
10 But if it is, then I need to know whether there's a
11 juror out there that even at the mere suggestion that
12 a wife may be seeing somebody else thinks its okay to
13 shoot them.

14 **MR. BARTOSH:** As I understand it in 25 words or
15 less, if you catch your wife fooling around it's okay
16 to shoot them.

17 **MR. GOWDY:** I don't think so. I'm not
18 advocating that.

19 **MR. BARTOSH:** I understand that. But that's
20 the question to the jurors?

21 **MR. GOWDY:** Yeah, but I wouldn't ask it like
22 that. I would say here is the law in South Carolina,
23 murder is the unlawful killing of another person with
24 malice aforethought. Do you within the context of a
25 marriage of a husband and wife, do you think that

1 there are certain circumstances where it is okay for
2 one to take the life of another?

3 **MR. BARTOSH:** I can't imagine that coming up,
4 Your Honor.

5 **MR. GOWDY:** You can't imagine it coming up in
6 your defense?

7 **MR. BARTOSH:** I can't imagine that coming up as
8 to say that that's an excuse for killing somebody.

9 **MR. GOWDY:** How about as an excuse for saving
10 somebody's life in the sentencing part?

11 **MR. BARTOSH:** If you are saying that he was
12 justified for shooting her --

13 **THE COURT:** This is -- let me cut right to it.

14 **MR. BARTOSH:** Please.

15 **THE COURT:** Solicitor Gowdy wants to ask the
16 jurors questions about whether or not they think it is
17 important in either the guilt or sentencing phase of a
18 capital trial that the victim might be accused of
19 marital infidelity in terms of whether or not it would
20 justify the killing or affect the sentence. Do you
21 have an objection to him asking that line of
22 questioning during voir dire?

23 **MR. BARTOSH:** Let me see how I could put this.
24 We do not intend to offer the defense of he was
25 justified for killing his wife because she was engaged

1 in an extramarital affair. Now that does not preclude
2 us from going into the fact that there were many
3 separations during their marriage. And during those
4 separations, she was engaged in a marital affair,
5 extramarital affair. But as far as that being an
6 excuse for his actions, no.

7 **THE COURT:** No. Wait a minute. Do you have an
8 objection to Solicitor Gowdy engaging in voir dire
9 that is along the lines that he illustrated? Yes or
10 no.

11 **MR. BARTOSH:** Well, I'm confused. If he's
12 saying that that's an excuse for killing somebody,
13 then I object to it.

14 **MS. QUIMBY:** What is --

15 **THE COURT:** No. Look. I'm a little less formal
16 than some other judges might be. But I don't want
17 y'all asking each other questions during the course of
18 a legal argument.

19 Regardless to how he intends to use the evidence
20 or the information that he might get from a question
21 like that, do you object to him asking those questions
22 during voir dire?

23 **MR. BARTOSH:** Once again, Your Honor, I'm
24 unclear as to the question he's going to ask. Is he
25 going to ask that the fact that a wife is engaged in

1 an extramarital affair with a juror see that as
2 mitigation to a husband committing a murder?

3 **THE COURT:** That would have to be a question. I'm
4 not going to let anybody make an argument that marital
5 infidelity justifies murder. And I'm not going to let
6 Solicitor Gowdy ask somebody if they are so bold and
7 brazen as to come in here and think that they can
8 disobey my instructions on the law of what is murder.
9 But the law does allow the jury to consider mitigating
10 circumstances, mitigating facts that are not
11 necessarily listed in the statute, correct?

12 **MR. BARTOSH:** Correct.

13 **THE COURT:** And I think what Mr. Gowdy is getting
14 at is he wants to know if there's anybody on the jury
15 who thinks that it might mitigate what Mr. Lindsey is
16 accused of doing in terms of affecting himself if he
17 suspected that his wife was engaged in an extramarital
18 affair. And he wants to ask questions to identify,
19 see if he can identify who those jurors might be.

20 Did I get it right?

21 **MR. GOWDY:** Yes, sir. Perfect. And just so
22 the Court understands, I'm asking these questions in
23 vacuum. The evidence, whether or not we put it in or
24 not, I'm not certain. But the evidence is just after
25 Mr. Lindsey shot his wife, he began to tell anybody

1 who would listen that she was seeing somebody else.
2 And I've heard today from questions by Mr. Bartosh of
3 the psychiatrist about stress and whether stress would
4 trigger somebody who had borderline intelligence. And
5 what I'm trying to figure out is is that stress going
6 to be the notion that his wife was going to leave him
7 for somebody else.

8 And you are exactly right. Is that a mitigator?
9 I'm not concerned that somebody is going to disavow
10 the law and say it's okay although it does raise
11 another point. There is a lot of cases that would
12 tend to reduce murder to manslaughter provided the
13 passion was sufficient or the provocation was
14 sufficient enough. I don't have any idea of whether
15 they are going here or not. I don't know what their
16 defense is.

17 **THE COURT:** All right. Well, you know, I don't
18 think that either side is really going to be able to
19 get into during voir dire addressing each juror's
20 opinion about individual, mitigating factors, whether
21 they are listed in the statute or not. There are
22 cases on that. But nevertheless, and I'm not ruling.
23 I'm just saying that's what he wants to do. Do you
24 have an objection?

25 You know, and again, you don't have to raise the

1 objection now. I'm just simply giving you an
2 opportunity, both of you, to address the objections
3 that you anticipate so we could address -- I'll tell
4 you what let's do. You don't seem to be ready to
5 answer the question right now. Why don't let's just
6 skip the subject. We'll see what if any questions he
7 ask, if you have an objection, you raise it.

8 **MR. BARTOSH:** I will be fair. Truthfully, Your
9 Honor, I don't understand the question. But if he's
10 saying that somebody is willing to excuse a murder
11 because of infidelity on the part of the wife, I can't
12 imagine that subject coming up. But let's just go
13 ahead and start the voir dire and then --

14 **THE COURT:** I guess another thing that Mr. Gowdy
15 has got to think about before he starts asking
16 questions like that of every juror as to whether or
17 not he really wants to drill that subject into the
18 head of all these jurors before he knows whether or
19 not evidence of marital infidelity could ever even
20 come into court. I don't know.

21 **MR. GOWDY:** Well, Your Honor, I would love to
22 file a motion in limine and hash that out prior to
23 jury qualifications but I don't think that's an
24 option. That's been a concern frankly of the
25 prosecution from day one that this was going to turn

1 into a side trial about whether or not the victim was
2 leaving him or was she seeing somebody else despite
3 the fact that he's been seeing somebody else for two
4 years. I don't want it to turn into Family Court.
5 But if it's going to, I think I have a right to know
6 whether or not somebody is going to say if your wife's
7 seeing somebody else, the law be damned, you can shoot
8 them or murder them.

9 **THE COURT:** Why don't we do this? You don't have
10 to answer this question but I think you already
11 answered it. Do you intend to introduce into evidence
12 during the guilt phase of this trial any evidence that
13 Mrs. Lindsey was seeing somebody, having an
14 extramarital affair or whatever at the time shortly
15 preceding the alleged crime that we're dealing with in
16 this case during the guilt phase?

17 **MR. BARTOSH:** Your Honor, I don't think we are
18 required to answer that question.

19 **THE COURT:** Right. You are not. Okay.

20 **MR. GOWDY:** Your Honor, with all due respect,
21 there would be a question after that. As I understand
22 state law, it's not enough for somebody to be willing
23 --

24 **MR. BARTOSH:** Your Honor, let him ask the
25 question. Let him ask the question. Let him ask

1 whatever questions he wants to ask on murder, on
2 infidelity, on extramarital affairs. We don't care.

3 **MR. GOWDY:** Okay.

4 **THE COURT:** Well, as I'm sitting up here thinking
5 about it, I think there is a substantial question as
6 to whether or not that evidence could, and I don't
7 know a whole lot about this case yet. But I don't
8 know that there's a real possibility that that
9 evidence is admissible during the guilt phase.

10 And as far as the sentencing phase is concerned,
11 I understand your willingness to let him ask those
12 questions. But I don't want this to -- this is not
13 going to turn into an exercise of inquiring into each
14 individual juror's views about every mitigating
15 circumstance that might become relevant in this case.
16 I've got a responsibility to the jurors to make sure
17 that their private lives and private values are not
18 completely exposed unnecessarily during the voir dire
19 process of this case. Correct?

20 **MR. GOWDY:** Yes, sir.

21 **THE COURT:** Correct?

22 **MR. BARTOSH:** Yes, sir.

23 **THE COURT:** All right. And so I am, uh, we'll let
24 it go. We'll see how it goes with the first few
25 jurors. But you know, for example, a question like if

1 that were alleged, would you think that sufficient to
2 justify a life sentence as opposed to the death
3 penalty? I don't think that's a proper question.

4 **MR. BARTOSH:** No, sir.

5 **MR. GOWDY:** I don't think it's proper either.
6 But I also think this, it's not enough merely that you
7 be able to consider death, you have to impose it. And
8 if somebody has an automatic rule such as in the
9 Morgan case, we asked every juror, the law says you
10 can put somebody to death starting at age 16. Do you
11 have a rule that you would superimpose on that law?
12 And a good number of jurors said yes, I do. I
13 wouldn't put anybody to death under age 20 or under
14 age 18.

15 Well, the only way we would know that would be if
16 we would be able to ask it on voir dire which we did
17 over defense objections I might add. The judge
18 allowed us to do that. So we were able to ask jurors
19 in a round about way are you willing to follow the
20 law. Now, if a juror has an automatic no, I would not
21 consider or impose the death penalty if a husband
22 thinks his wife is seeing somebody else, that proves
23 he is not qualified to serve. That is not a specific
24 mitigator. That goes to your qualification to be a
25 juror in this case.

1 **THE COURT:** Yeah. Well --

2 **MR. BARTOSH:** Your Honor, I don't believe he is
3 comparing apples to apples. In the Morgan case, he
4 harped on a statutory mitigator which was someone
5 under the age of 17.

6 **MR. GOWDY:** I beg to differ. It had nothing
7 to do with mitigation. It had to do with the right to
8 follow the law which said 16, you are eligible.

9 **MR. BARTOSH:** Your Honor --

10 **THE COURT:** That's a fine line. You can say that
11 about any mitigating circumstance. Under that theory,
12 you could ask each juror questions about each listed
13 mitigator and each potential mitigator. Do you have
14 an automatic rule that you would not execute somebody
15 who had -- who killed his wife of having marital
16 infidelity. Let's just get into it. And let's see
17 how it goes.

18 You need a few minutes to think about whether you
19 want to get into it or are you ready to roll?

20 **MR. GOWDY:** I'm ready to roll.

21 **THE COURT:** All right. Give me a few minutes to
22 get ready. And we will -- I'm going to give Teresa a
23 chance to shift to this side of the courtroom. And
24 then we will get right to it.

25 **MR. BARTOSH:** Your Honor, may I have about 15

1 minutes or is that too long?

2 **THE COURT:** I think it would take about 15
3 minutes.

4 **MR. BARTOSH:** All right. Thank you.

5 (WHEREUPON, a short recess was taken at approximately
6 6:32 p.m.)

7 (WHEREUPON, the Court resumed at approximately 6:50
8 p.m.)

9 **THE COURT:** Bring us our first juror.

10 (WHEREUPON, Rodney Petty, Juror number 213, entered at
11 approximately 6:50 p.m.)

12 **RODNEY PETTY**

13 having previously been sworn, testified as follows:

14 **EXAMINATION**

15 **BY THE COURT:**

16 **Q** All right. You're Mr. Rodney Petty?

17 **A** Yes, sir.

18 **Q** Well, Mr. Petty, you recall that I put you under
19 oath and you are still under oath. Do you acknowledge
20 that?

21 **A** Yes, sir.

22 **Q** Now, Mr. Petty, you haven't had much of a chance
23 to hear or see anything since you left the courtroom. I'm
24 assuming you haven't heard any news or talked to anybody or
25 learned anything about this case since you left the

1 courtroom?

2 **A** No, sir. There's one thing I want to tell you so
3 that there are no questions asked.

4 **Q** All right.

5 **A** There was a legal pad left on the desk in there
6 where we were seated. It had some, a little bit of
7 information. I saw that.

8 **Q** What information was on there?

9 **A** It was just --

10 **Q** He will get the pad. And then we will come back
11 and take a look at it. Now, we're going to ask you some
12 questions. We hope this won't take all that long. We're
13 going to just kind of relax. And you relax also.

14 **A** I'll try.

15 **Q** And we will try not to pry too deep. But this is
16 a very important matter and we need to ask you some
17 questions. I hope you don't have any objection to that.
18 We want you to listen very carefully to the questions. I'm
19 going to start off asking you some questions. Then Mr.
20 Bartosh is going to ask you some questions. Then Mr.
21 Gowdy is going to ask you some questions.

22 Listen very carefully to those questions. Answer them
23 very truthfully. There's no correct answer. There's
24 nothing that's right or wrong. We just want the truth. We
25 want you to be candid with us and open with us. And we

1 certainly are confident that you will. And we appreciate
2 that you will.

3 We are going to talk about the penalty phase of this
4 trial. That's not to indicate anything about the
5 defendant. You've got to understand that the defendant is
6 presumed innocent. And we won't even get to discussing the
7 penalty unless the jury finds him guilty. But because that
8 is a possibility, we're going to talk to you a little bit
9 about what your views are on the different penalties that
10 would be available.

11 Now, as a juror in a criminal case, I will instruct
12 you that you must listen to the law as I give it to you.
13 You must accept the law as I give it to you and that you
14 must base your verdict on the testimony and evidence that
15 you hear in this courtroom in light of the law as I state
16 it to you. Do you believe you are able to do that?

17 A Yes, sir.

18 (WHEREUPON, the bailiff handed a legal pad to the
19 Court.)

20 **BY THE COURT:**

21 Q Is this the pad?

22 A Yes, sir. I believe it is.

23 Q All right. Show it to him without letting him
24 get close enough to read it.

25 Did you read any of the information on there?

1 A I saw some of the information. I didn't read the
2 whole thing.

3 Q Does that look like the right pad?

4 A That's it.

5 Q All right. Let me have that sheet of paper. How
6 many jurors saw that pad?

7 A I don't believe nobody did. I sat down in the
8 only chair that was like this. And it was right there in
9 front of me. I didn't say anything to anybody. When I
10 realized what it was, I was going to wait until one of
11 those came back in and just say something.

12 Q So you think you are the only juror who saw this?

13 A I really do. I believe I was the only one that
14 could have.

15 Q Now, this -- did you look behind the first sheet?

16 A No, sir. I did not pick the tab up.

17 Q I'm taking the first sheet off. And we'll mark
18 it as an exhibit. There is a yellow sticky note in the
19 middle of the sheet. Did you move or look under that
20 sticky note?

21 A Did not touch that pad or sheet.

22 Q All right. Did you look at it closely enough to
23 see anything that was written on the pad?

24 A Yes, sir. I did.

25 Q Tell me what you saw.

1 A About IQ.

2 Q What about IQ?

3 A Uh --

4 Q Please don't be bashful.

5 A I'm not. I want to be completely honest with
6 you. I saw about a score of 76.

7 Q Yes.

8 A And where a level was of 70.

9 Q Right. All right.

10 A And that's all that I can really say that I saw
11 period, and actually comprehended what I seen.

12 Q Do you know what that means?

13 A (No response).

14 Q Do you know what that 76 was?

15 A Yes, sir. I did see that.

16 Q What was that?

17 A The way I read it was the score of Mr. Lindsey.

18 Q All right. Did you see anything else on there?

19 A No, sir. Those are the only two items I saw.

20 Q All right.

21 A When I read that second part, that's when I said,
22 Oops, I shouldn't be seeing this.

23 Q Okay. Now, let me tell you a couple of things.

24 First of all, this is not evidence. You don't have any

25 idea who wrote this. You don't know anything about who

1 wrote it, what it meant, what they knew or anything like
2 that.

3 **A** No, sir.

4 **Q** Do you believe that you would be able to sit as
5 an impartial juror and make your decision in this case
6 based on the testimony and evidence that you hear in the
7 courtroom and not consider anything that you may have
8 learned off this sheet of paper?

9 **A** I believe I would be able to do that.

10 **Q** Do you have any hesitation in telling me that?

11 **A** I don't think so. Like you said, I don't know
12 who wrote that. That could have been written by anybody.

13 **THE COURT:** All right. I'm going to mark this as
14 an exhibit, as a Court's Exhibit. And you folks are
15 free to look at it and to ask him any follow up
16 questions that you want to ask him about it when the
17 time comes. And if you want to come get it now and
18 look at it while I'm asking him questions, you can.

19 **MR. BARTOSH:** I would like to.

20 (WHEREUPON, page of legal pad was marked for
21 identification as Court's Exhibit 1.)

22 **BY THE COURT:**

23 **Q** Mr. Petty, we appreciate you being open with us
24 about what you saw on that pad. Okay?

25 **A** Yes, sir.

1 Q We appreciate that very much. In a criminal
2 case, the State, as I told you earlier, has the burden of
3 proof and must prove the defendant guilty beyond a
4 reasonable doubt. I will give you some more detailed
5 instructions about what that means when it becomes time.
6 But do you understand what I'm telling you?

7 A Yes, sir.

8 Q And do you think you can follow that instruction?

9 A Yes, sir.

10 Q All right. Now, do you believe that based on the
11 facts and the evidence and under the law as I will give it
12 to you, could you find a defendant in a murder case either
13 guilty or not guilty depending on the evidence that you
14 hear?

15 A Yes, sir.

16 Q If you were a juror in a death penalty case and
17 if the jury had found the defendant guilty of murder, you
18 would then move to the sentencing phase of the trial. You
19 understand that?

20 A Yes, sir.

21 Q And I'm going to tell you a little bit about what
22 aggravating circumstances and mitigating circumstances are.
23 Aggravating circumstances are facts or incidents or details
24 of an occurrence which the legislature, the General
25 Assembly of our state has declared by statute would make

1 worse, that is, to aggravate a murder. In other words, the
2 aggravating circumstance which accompanying a murder
3 increases in the enormity or adds to the injury of the
4 crime of murder if it is committed in the commission of a
5 crime.

6 Now, mitigating circumstances are incidents, details,
7 or occurrences which the General Assembly has declared by
8 statute to reduce the severity of the offense of murder and
9 may be considered as extenuating or as reducing the degree
10 of moral culpability or responsibility. Do you understand
11 all of that?

12 A Aggravating, explain that one more time to me.

13 Q An aggravating circumstance is something that the
14 General Assembly has decided makes a murder worse than
15 another murder. And a mitigating circumstance is something
16 that the General Assembly has decided makes it not as bad.
17 And there may be mitigating circumstances that you would
18 come up with that are not listed by the General Assembly.
19 You understand all of that?

20 A Yes, sir.

21 Q Now, if you were a juror in a case such as this
22 in the sentencing phase, could you, depending on the
23 particular facts and circumstances of this case, including
24 the consideration of aggravating and mitigating
25 circumstances and the law that I give you, could you return

1 a sentence for someone convicted of murder of life in
2 prison if you were given a choice of either life or death?
3 Could you return a sentence of life?

4 A Life in prison?

5 Q Yes, sir.

6 A Yes, sir.

7 Q All right. Now, if you were a juror in that
8 situation and again depending on the circumstances and the
9 particular facts including the consideration of aggravating
10 and mitigating circumstances and in light of the law as I
11 will give it to you, could you return a sentence of death
12 if you were given a choice of a life sentence or a death
13 sentence?

14 A I would have a hard time doing that.

15 Q You would?

16 A Yes, sir.

17 Q Now, is this something that you thought about
18 before?

19 A I have not put a lot of deep thought into it. I
20 have this afternoon since all of this became known to me.
21 I'm really not sure. It depends on how the circumstances
22 would, I guess what the case would show.

23 Q So it does depend on the circumstances?

24 A On the case, on what the case would show. I
25 could tell you this, would be hard for me to take a man's

1 life.

2 Q Now, you heard me mention the possibility of the
3 jury being sequestered, in other words, kept in a hotel and
4 kept away from your family, your job for several days. Say
5 we start a case Thursday or Friday. It could go into
6 Monday or Tuesday or Wednesday of next week. And we would
7 go through the weekend. Is that going to pose a problem
8 for you?

9 A I will do whatever I need to do.

10 Q All right. I'm going to let the lawyers ask you
11 some questions. Then I may come back and ask you some more
12 in just a few minutes.

13 THE COURT: Mr. Bartosh.

14 MR. BARTOSH: Thank you, Your Honor.

15 EXAMINATION

16 BY MR. BARTOSH:

17 Q Mr. Pitts, as Your Honor said, I'm Mike Bartosh.
18 I represent Marion Lindsey. One of the things that struck
19 me is you said that you would have a hard time putting
20 someone to death?

21 A Yes, sir.

22 Q I would hope that there's never anyone who would
23 enjoy doing such a thing. It would be a very difficult
24 thing to do. However, given the right set of
25 circumstances, you could after hearing all the evidence

1 presented in the penalty phase, and that's assuming we're
2 getting to the penalty phase. Because as you know, this is
3 in two different phases. The first phase is like a regular
4 trial. The jury hears the evidence and decide whether or
5 not the State has proven beyond a reasonable doubt that a
6 person is guilty of a crime. If they haven't proved it, we
7 all go home. It's over with.

8 But if they have proved it, it goes into the second
9 phase, the penalty phase where the decision is life or
10 death. And what we're looking for are jurors who are
11 willing to listen to facts, who don't always give the death
12 penalty and don't never give the death penalty. But people
13 who could sit and listen in fairness and hear the testimony
14 and hear the facts and then decide based on that whether
15 life or death. Do you believe you can do that?

16 A Like I said a while ago, I would have a hard time
17 with death. Under the circumstances, depending on what was
18 brought out, --

19 Q So you --

20 A -- I feel like I could do the right thing. Yes,
21 sir.

22 Q But it would depend upon the circumstances?

23 A Yes, sir.

24 Q And if you felt it was an appropriate punishment,
25 you could vote that?

1 **A** Yes, sir.

2 **Q** Based upon the circumstances, right?

3 **A** Yes.

4 **Q** All right. Now, you said in the -- on the
5 general questioning that the judge gave you that you knew
6 something about this case. Can you tell us what you know
7 and what the source of your information was?

8 **A** Mostly the paper. I pretty much read the paper
9 every morning when I get up like 90 percent of us do. And
10 when the name start coming up, you start remembering a
11 little bit. Just the paper mostly.

12 **Q** And did you see the article this morning?

13 **A** I saw the highlighter of it.

14 **Q** You also said, Mr. Petty, that you had a -- in
15 your profession, you had a customer that was killed in an
16 armed robbery. There was a death penalty trial about a
17 couple of months ago.

18 **A** No, this had been several years ago.

19 **Q** So that was not the same one. Are you related to
20 Stephanie Petty?

21 **A** I don't think so.

22 **Q** You been a victim of an assault or gun or CDV?

23 **A** I was in an armed robbery.

24 **Q** All right. While you were --

25 **A** I was working.

1 Q Where you injured in that?

2 A Scared to death.

3 Q Thank you very much, Mr. Petty.

4 A Thank you.

5 MR. GOWDY: May it please the Court, Your
6 Honor?

7 THE COURT: Yes, sir.

8 EXAMINATION

9 BY MR. GOWDY:

10 Q Good evening, Mr. Petty. How are you?

11 A Fine, sir. How are you?

12 Q I'm doing good. Thanks. My name is Trey Gowdy.
13 I'm with the Solicitor's office here. That's Donnie
14 Willingham on your left. Barry Barnett in the middle.
15 Together, we're going to be prosecuting this case on behalf
16 of the State.

17 A Yes, sir.

18 Q I want to tell you first off, there are no right
19 answers. There are no wrong answers. There are just your
20 answers. Nobody is going to cross-examine you on what your
21 personal beliefs are. What they are is what they are.
22 We're just trying to figure what they are. I understand
23 this is a difficult issue. You mentioned that you thought
24 about it this afternoon. There's no reason to think about
25 it unless something like this comes up. But it is

1 important. So I'm going to have to ask you a few more
2 followup questions.

3 You mentioned, and I put quotes around it because I
4 think these were your exact words. You said that if
5 circumstances were right, you would do the right thing. I
6 want to make sure that you understand that under South
7 Carolina Law, you don't ever have to impose the death
8 penalty. You understand that?

9 A I didn't until just then.

10 Q Okay. You never have to impose the death
11 penalty. You always have the option of life without
12 parole. Now, accepting that, that the law never requires
13 you to impose the death penalty, you always have the option
14 of life, can you still tell me that you would vote and put
15 a man to death without the law requiring you to and with
16 life in prison always being an option?

17 A I'm going to be totally up-front with you.

18 Q That's what I want you to be, Mr. Petty.

19 A Not to bring religion into it, but I'm a
20 Christian. And I have strong beliefs about what I believe
21 in. There again, very few circumstances I believe I could
22 see myself voting for the death penalty.

23 Q All right. And I'm going to tell you again like
24 I did up front. Nobody is going to question or second
25 guess or challenge any of your beliefs whether they be

1 religious political or otherwise. But you said there is a
2 certain category of crimes that you could consider. And
3 what I'm trying to ask you, I'm not going to give you the
4 facts of this case. I can't do that.

5 **A** I understand that.

6 **Q** Are you saying if it's your family member, you
7 can vote for the death penalty, but if it's not, you
8 wouldn't? Or if it was a mass murderer, you would? I
9 mean, I've got to figure out whether your few circumstances
10 are so limited that in reality, your beliefs substantially
11 impair your ability to give a death penalty.

12 If it's such a limited number of times as to be, you
13 know, for all practical purposes, you don't believe in the
14 death penalty, then you can understand, we've got a right
15 to know that. What do you mean when you say a few
16 instances? Are you talking about Osama Bin Laden?

17 **A** I'm talking about, uh, somebody that would do
18 something to a child. Somebody that would stalk or make
19 plans and then stalk and just really brutalized murder.
20 Things of that nature.

21 **Q** You mean premeditated?

22 **A** Basically.

23 **Q** It would have to be premeditated?

24 **A** Yes, sir.

25 **Q** Is it fair to say that if the murder were not

1 premeditated, you would not be able to impose the death
2 penalty?

3 **A** Yes, sir. I would say that.

4 **Q** Is it fair to say that if the murder did not
5 involve a child that you would either not be able to impose
6 the death penalty or have substantial difficulty imposing
7 the death penalty?

8 **A** A handicapped person or something to that effect.

9 **Q** Someone that needs special protection?

10 **A** Right.

11 **Q** And again, there's nothing wrong with that
12 position. I've just got to know what it is. If the
13 killing wasn't premeditated and didn't involve somebody
14 that needed special protection because they were elderly or
15 a child or mentally handicapped, are you telling me that
16 you would not be able to impose the death penalty on that
17 defendant?

18 **A** Probably not.

19 **MR. GOWDY:** Your Honor, those are all the
20 questions I have for Mr. Petty.

21 Thank you very much for answering these difficult
22 questions.

23 **EXAMINATION**

24 **BY THE COURT:**

25 **Q** All right. Mr. Petty, you've been very

1 forthright with us. And we certainly do appreciate that.
2 Let me kind of follow up a little bit to the questions that
3 the lawyers asked you about whether or not you could bring
4 yourself to vote to impose the death penalty. And if you
5 did, could sign your name to the verdict form that would
6 impose the death penalty.

7 You mentioned some Christian views, religious beliefs.
8 And I believe you characterized those as strong beliefs.
9 Would those beliefs interfere with your ability to impose
10 the death penalty?

11 A No, sir. I do not think they would. Under the
12 right circumstances, they would strengthen that belief.

13 Q I see. Would -- do you believe that you would be
14 able to enter into this trial open-minded and to be able to
15 look at the circumstances of this case objectively and
16 after hearing all the evidence and the arguments that the
17 lawyers would make, do you believe that you would be able
18 to objectively evaluate the question as to whether or not,
19 if we get to that point, the defendant should receive a
20 life sentence or the death penalty?

21 A Yes, sir. It would be purely my -- my specu --
22 the way I look at it which is what you're asking me which I
23 think I would.

24 Q Right. Now, you told us initially, I believe the
25 very first thing you told us is you would have a difficult

1 time imposing the death penalty.

2 A Yes, I would.

3 Q Now, we don't want to impose the death penalty
4 every time somebody is charged with a crime or certainly
5 every time they are charged with murder. But do you
6 believe you would be able to look at the facts of this case
7 objectively and make a decision based on those facts that
8 are not interfered with by your own personal views,
9 religious views or your own reluctance to impose a death
10 penalty?

11 A Well, that question, my religious views without a
12 doubt will play into who I am.

13 Q Yes, sir.

14 A So it might be hard for me to do exactly what you
15 just said unless those circumstances that I mentioned to
16 Mr. Gowdy were there.

17 Q Okay. Now, I don't mean to -- again, this is --
18 there is no specific correct or incorrect answers. I'm a
19 little bit concerned that we might be getting inconsistent
20 answers. And that's okay. Mr. Gowdy mentioned some
21 specific circumstances to you. Are those the only
22 circumstances in which you would impose the death penalty
23 or are you open minded to hearing all circumstances and
24 would consider those and consider the facts of each case as
25 to whether or not you would impose the death penalty?

1 **A** I would use my own mind if that's what you're
2 asking me. Yes, sir. It would take into my religious
3 feelings. But if I were convinced that that was the right
4 thing to do, I will do it.

5 **Q** All right. Mr. Petty, I'm going to ask you to
6 step out in the hall for just a minute. And then we will
7 be in touch with you in just a second. All right.

8 **A** Yes, sir.

9 (WHEREUPON, the juror exits at approximately
10 7:15 p.m.)

11 **THE COURT:** Any argument?

12 **MR. GOWDY:** Yes, sir. Your Honor, clearly he
13 is not death penalty qualified. There are cases that
14 if you have a particular set of circumstances under
15 which you could give a death penalty, for instance,
16 there's a South Carolina case where a juror said I can
17 give the death penalty if it involved my family
18 member. Well, that person is not qualified to serve
19 on a death penalty case. Or I could give the death
20 penalty if I happen to witness the crime. Obviously,
21 that person is not qualified to serve in a death
22 penalty case.

23 This gentleman was very forthright. He was very
24 honest. But the truth is if it is not premeditated,
25 which is not an element of murder, but if it's not

1 premeditated, if it doesn't evolve somebody who is in
2 a protective or vulnerable class, he can't give the
3 death penalty. He's not qualified.

4 **THE COURT:** Mr. Bartosh.

5 **MR. BARTOSH:** Your Honor, I think his responses
6 to your questions in the very end indicated that he
7 felt if the facts were there and they warranted the
8 death penalty, he could give it.

9 **THE COURT:** Uh-huh (affirmative).

10 **MR. BARTOSH:** There were no kind of conditions
11 put upon whether they were -- whether it was
12 premeditated or whether it was a child. He just said
13 if they ask me that, I could do it and if the
14 circumstances were there.

15 **MR. GOWDY:** Your Honor, you can't consider
16 the answers to the last question in a vacuum.

17 **THE COURT:** I realize that. I -- when Mr. Petty
18 -- actually it wasn't even a question that he
19 answered. I haven't even gotten to the point of
20 asking him about his willingness to impose the death
21 penalty, I think. He said he would have a hard time
22 imposing the death penalty. He followed with that.
23 He first started to, I thought even farther down the
24 road of being unable to. He then came back and
25 appeared to me for a little bit to be able to be

1 pretty impartial. He went back the other way and came
2 back this way.

3 Now, one of the problems that I have with reading
4 the cases that South Carolina Supreme Court has
5 decided is that -- well, and I mean I'm not being
6 critical at all. But sometimes the facts aren't
7 spelled out in all that much detail. There's a recent
8 Fourth Circuit opinion, U.S. versus Tippin where there
9 was three jurors. And they were kind of like this
10 guy. They were back and forth. And it leaves me in a
11 situation where I've got to kind of predict where he's
12 going to land.

13 My impression is that this man has substantial
14 hesitation in imposing the death sentence. And those
15 arise from his religious beliefs. He was very careful
16 to point that out in the beginning. And he
17 characterized those as strong. He later then said
18 that under the right circumstances, his religious
19 beliefs would actually fortify his ability to impose
20 the death penalty.

21 So I am left with the situation of deciding
22 whether or not this man's beliefs or this man's values
23 would substantially impair his ability to follow the
24 law and to consider openly and objectively whether or
25 not to impose the death penalty.

1 Correctly stated, Mr. Bartosh?

2 **MR. BARTOSH:** Yes, sir.

3 **THE COURT:** And Mr. Gowdy?

4 **MR. GOWDY:** Correctly stated with this one
5 exception, Your Honor. I do take exception to Your
6 Honor's classification of this juror's testimony.
7 When I asked him give me the circumstances under which
8 you could give the death penalty, he said
9 premeditation or involving the child. That is not --
10 I mean --

11 **THE COURT:** I heard him say that. But those were
12 in response to specific questions that you asked him.

13 **MR. GOWDY:** I can't go through every -- I
14 can't give him the facts of this case. But the truth
15 of the matter is, it's impossible to listen to this
16 juror and not conclude that his religious views
17 substantially impair his ability to give the death
18 penalty which is the standard. Not prevent but
19 substantially impair.

20 **THE COURT:** Did -- I'm sorry. But were you not
21 just listening when that's exactly what I said a
22 second ago?

23 **MR. GOWDY:** Yes, sir. I was.

24 **THE COURT:** Let me get something cleared up. I've
25 got to rule. I do agree that this particular juror's

1 beliefs and values would substantially impair his
2 ability to impose the death penalty objectively under
3 South Carolina Law. Now, that is based primarily on
4 the fact that he jumped out of the box to say that
5 after having thought about it during the course of the
6 afternoon after he learned about what was going on
7 here, he jumped right out of the box and said that I
8 want to make one thing clear before we go any farther.
9 I would have a hard time imposing the death penalty.

10 Now, in response to questions that I asked him
11 and Mr. Bartosh asked him and Mr. Gowdy asked him,
12 it got less and less clear. It didn't move any
13 direction necessarily. It just got less and less
14 clear.

15 So being left with the responsibility of making a
16 judgment as to whether or not his values and beliefs
17 would impair, substantially impair his ability to
18 follow the law and impose the sentence that is
19 appropriate, it is my belief that his views would
20 substantially impair the performances of his duties
21 and his ability to act in accordance with the
22 instructions and to consider open-mindedly the various
23 aggravating or mitigating circumstances and impose the
24 sentence that is -- that he would think is
25 appropriate. And I believe that he would be unable to

1 be objective. And that's my ruling on that juror.

2 MR. GOWDY: Thank you, Your Honor.

3 THE COURT: All right. Bring in the next juror.

4 MR. BRENNAN: Your Honor, one thing came up. We
5 had our witness list made out. And Ms. Quimby was
6 unable to get hers until we went upstairs and got
7 them. I don't know if you want to see the witness
8 list before they came in.

9 THE COURT: Are both sets ready now?

10 MS. QUIMBY: Yes, sir. I fixed mine so it's
11 attached to the Solicitor's with no indication of
12 any --

13 THE COURT: Give me five of those. This is what
14 I'm going to do. I'm going to send -- I'm going to
15 send four of them back and ask you to tell the jurors
16 back there to look that witness list over carefully
17 and be ready to tell me whether or not they know or
18 are related to any of the people listed on that list
19 when they come out here in a few minutes.

20 The next juror is John Hovelsrud. And I'm going
21 to talk to him. Mr. Petty doesn't need a witness
22 list.

23 (WHEREUPON, Mr. Petty enters at approximately 7:21
24 p.m.)

25 THE COURT: All right. Mr. Petty, we have -- we

1 have, uh, completed our questioning of you. And you
2 are free to go. Your services will no longer be
3 needed in this case. Appreciate you coming and
4 appreciate you being open and honest with us.

5 (WHEREUPON, Mr. Petty exits at approximately 7:21
6 p.m.)

7 **THE COURT:** Before we bring the next juror in,
8 let me say this. As part of my -- I actually meant to
9 say this a minute ago. As part of my analysis of Mr.
10 Petty, I'm concerned about his having seen the pad
11 that was in the jury room. He latched right onto the
12 IQ level that had been written down there for Mr.
13 Lindsey.

14 I understand that that's probably all going to
15 come out in the sentencing phase. But whether it does
16 or not, that is a small factor in how I looked at his
17 qualification to serve. It did not enter into my
18 evaluation of whether or not he could be a fair and
19 impartial juror from the standpoint of his willingness
20 to impose the death penalty.

21 All right. Bring him in.

22 All right. What I propose to do with Mr.
23 Hovelsrud is if we find him to be --

24 Give him a witness list and let him look at it.

25 (WHEREUPON, John Hovelsrud, Juror number 133, entered

1 approximately 7:25 p.m.)

2 **JOHN HOVELSRUD**

3 having previously been sworn, testified as follows:

4 **EXAMINATION**

5 **BY THE COURT:**

6 **Q** Let me make sure I'm pronouncing your name
7 correctly. Your last name.

8 **A** Give it a shot.

9 **Q** Is it Howelsrud?

10 **A** Hovelsrud.

11 **Q** Hovelsrud. All right. Mr. Hovelsrud, you
12 understand that you are still under oath from the oath that
13 I gave you this morning, correct?

14 **A** Yes, sir.

15 **Q** All right. Now, has anybody been back there in
16 the back talking about this case?

17 **A** No.

18 **Q** Since I told you not to pay any attention to news
19 reports and all that stuff, have you learned anything about
20 this case?

21 **A** No.

22 **Q** Okay. Now, there was some discussion about there
23 being a pad back there on the table in the jury room. Did
24 you see the pad about this case?

25 **A** I saw a legal pad on the table but I didn't look

1 at it.

2 Q Were you able to read anything on it?

3 A (Shakes head negatively.)

4 Q Okay. And I will need you to say yes or no.

5 A No, I couldn't read anything.

6 Q You couldn't read anything on it. Okay. All
7 right. Now, we're going to ask you some questions. We
8 don't mean to be invading your privacy. I'm going to start
9 off asking you questions and then I'm going to turn it over
10 to the lawyers and they will. There aren't any right or
11 wrong answers to these questions. We just want to see what
12 you think. We want your truthful answers and your truthful
13 opinions.

14 We're going to be talking a little bit about penalty.
15 That doesn't imply anything. The defendant has pled not
16 guilty. And we may never get around to considering the
17 penalty if the jury finds him not guilty of the crime he's
18 charged with.

19 Do you believe that if you are a juror in a criminal
20 case such as this that you could look into the law as I
21 give it to you and accept the law as I give it to you and
22 to base your decision in this case solely on the testimony
23 and evidence that you hear in the courtroom and in light of
24 the law as I give it to you. Do you believe you could do
25 that?

1 **A** Yes, sir.

2 **Q** You understand the State has the burden of proof
3 and they must prove the defendant guilty beyond a
4 reasonable doubt?

5 **A** Yes, sir.

6 **Q** Could you, depending on the facts and the
7 circumstances and the law as I give it to you in a murder
8 case, find the defendant either guilty or not guilty
9 depending on whether or not you feel the State has proven
10 him guilty beyond a reasonable doubt?

11 **A** Yes.

12 **Q** Now, I'm going to tell you a little bit about
13 aggravating circumstances and mitigating circumstances.
14 Aggravating circumstances are facts, incidents or details
15 of an occurrence that the General Assembly of our state has
16 declared to make worse, that is, to aggravate a murder. In
17 other words, the aggravating circumstances which accompany
18 a murder increase the enormity or add to the injury of the
19 crime of murder.

20 Mitigating circumstances, on the other hand, is an
21 incident or detail or an occurrence with the General
22 Assembly has declared by statute to reduce the severity of
23 an offense of murder and may be considered as extenuating
24 or reducing the degree of moral culpability or
25 responsibility.

1 If you are a juror in the sentencing phase of a death
2 penalty case such as this, do you think that depending on
3 the particular facts and circumstances of that case
4 including the consideration of aggravating circumstances
5 and mitigating circumstances and the law as I will give it
6 to you, could you return a verdict of life in prison if you
7 were given the option of either a life sentence or the
8 death penalty?

9 **A** Based on what I've heard, yeah, I could probably
10 make a decision on that.

11 **Q** Could you also, if you were given both the option
12 of life in prison or the death penalty, could you impose a
13 death sentence depending on the facts and circumstances?

14 **A** I guess based on what I heard, I could.

15 **Q** All right. Now, if you are imposed -- if you are
16 sequestered, as we call it, with a jury and put into a
17 hotel away from your family and your work for five or six
18 or seven or eight days, hopefully it won't be that long but
19 it could be three to five days easily. Would that impose
20 an undue hardship on you?

21 **A** Uh, this weekend and next weekend, yes. I play
22 in a band on the weekends.

23 **Q** Yes, sir.

24 **A** And we contracted to do some weddings. On such
25 short notice, I don't know how I would be able to.

1 Q Well, of course, we understand the difficulty of
2 that. And you might have to lose some work. But is there
3 anything that would, other than just missing some work, is
4 there anything that being sequestered in the jury would do
5 to you?

6 A No. Huh-uh (negative.)

7 Q I'm going to let the attorneys ask you some
8 questions and then I may come back and ask you some more.

9 **THE COURT:** Mr. Bartosh.

10 **MR. BARTOSH:** Thank you, Your Honor.

11 **EXAMINATION**

12 **BY MR. BARTOSH:**

13 Q Let me make sure I say your name correctly. Is
14 it Hovelsrud?

15 A That's good.

16 Q Folks have trouble with my name to. You put on
17 your jury questionnaire that you have been a victim of a
18 robbery?

19 A Yes.

20 Q Can you describe the circumstances of that?

21 A Someone broke into -- I have a room on the side
22 of my carport. Someone broke in there and stole all of my
23 tools.

24 Q You yourself were not present?

25 A No, I just found them missing.

1 Q It was basically a burglary with a larceny?

2 A I guess.

3 Q But you have never been the victim of a robbery
4 where someone has taken something from your person?

5 A I have had stuff busted in my car. No one pulled
6 a gun on me or anything like that.

7 Q When you told the judge it would be based upon
8 what you were told or what you heard, you are talking about
9 as the trial unfolded and you heard the evidence that is
10 what you would base your decision on, correct?

11 A Yes.

12 Q Okay. As you know, this is a two-part procedure.
13 The first part is just like a regular trial where the State
14 presents evidence and the jury has to decide beyond a
15 reasonable doubt that the State has carried its burden of
16 proving to each and every one that the defendant is guilty
17 beyond a reasonable doubt. It is only then that it moves
18 on to the penalty phase where the decision is life or
19 death. You understand that part about it?

20 A Yes.

21 Q You could listen to all of the evidence both
22 presented by the State and the evidence presented at the
23 penalty phase. And based upon that evidence, you can
24 decide whether to vote for a life sentence or whether to
25 vote for a death sentence. Is that fair enough?

1 **A** That is what I said. You got to remember, I
2 never done this before. When you put me in a room and ask
3 me that question, I may feel differently. I'm trying to
4 answer the question the best I can.

5 **Q** I understand that. As it stands right now, you
6 can do it?

7 **A** Yes, sir.

8 **Q** You understand that the way the system works is
9 that every member of the jury has got to sign a sentencing
10 sheet in the guilt -- in the penalty phase. They have to
11 sign their name. If it is for life, you have to sign your
12 name for life. If it is for death, you sign your name for
13 death. Nobody enjoys doing that. We hope they would not.
14 But could you do that?

15 **A** Yes.

16 **Q** That's all I have.

17 **THE COURT:** Solicitor.

18 **MR. GOWDY:** May it please the Court.

19 **EXAMINATION**

20 **BY MR. GOWDY:**

21 **Q** Good evening, Mr. Howelsrud. How are you doing?

22 **A** Good.

23 **Q** My name is Trey Gowdy. I'm with the Solicitor's
24 Office here in Spartanburg. To your left is Donnie
25 Willingham. And in the middle is Trey Barnett. The three

1 of us will be representing the State of South Carolina in
2 this case. You work with Mr. Painter?

3 A Yes.

4 Q How long have you been there?

5 A Nine years.

6 Q Let me start off by telling you this, there are
7 no right answers. No wrong answers. Whatever your
8 beliefs are, your beliefs are. Nobody is going to
9 challenge you. But given the fact that this is a capital
10 case, I have to ask you some questions I would not
11 ordinarily ask you if I just bumped into you on the street.
12 What are your general beliefs, views on capital punishment?

13 A I guess in some cases, it is warranted. I guess
14 in some cases, it isn't.

15 Q What would determine whether it was warranted or
16 not?

17 A I don't track the judicial system like you folks
18 do. But some of the stuff that I read and some of the
19 things that been done wrong, things like that. You read
20 about the DNA cases.

21 Q Sure.

22 A I feel a little apprehensive about that.

23 Q When you say apprehensive, you mean apprehensive
24 about the notion that there may be somebody wrongfully
25 accused or wrongfully convicted that is facing the death

1 penalty?

2 A Exactly.

3 Q It is obviously a fair concern. You would not
4 want anybody convicted much less subject to the death
5 penalty. Under South Carolina Law, death is never
6 required. No matter how heinous a set of facts, life in
7 prison is always an option if you as a juror choose to vote
8 for life. Accepting and understanding that life in prison
9 is always an option, do you still believe that you would
10 vote for death if you thought the circumstances warranted
11 it?

12 A Like I said, I have to wait til I get there. I
13 have never done this before.

14 Q I can appreciate it. I can appreciate the fact
15 that you got a stranger up here asking you about it. But
16 waiting til you get into the jury room, you can appreciate
17 it's too late for me?

18 A I understand that. I'm trying to be honest with
19 you.

20 Q I want you to be honest. You told the Court and
21 I think you told Mr. Bartosh and I think you also told me
22 that, Yes, in the proper circumstance, you did think you
23 would be able to impose the death penalty?

24 A Yes.

25 Q What I'm asking you is that life in prison is

1 always an option. Life without ever getting out of prison.
2 Accepting that that is always an option, do you still think
3 there are circumstances out there where you would vote for
4 death?

5 **A** Phrased like that, yes.

6 **Q** Okay. In any capital case where a jury imposes
7 the death sentence, it has to be unanimous. All twelve
8 will have to vote for it and have to sign their name to it.
9 Would you be able to sign your name to a death form if you
10 thought that that was the proper judgment?

11 **A** If that is what I felt, Yes.

12 **MR. GOWDY:** One second, Your Honor.

13 Thank you. I have no further questions. Thank
14 you for answering my questions.

15 **THE COURT:** Mr. Hovelsrud, I'm going to ask
16 you to step in the hall for just one second. And I
17 will get you right back in here.

18 (WHEREUPON, Mr. Hovelsrud exited at approximately
19 7:37 p.m.)

20 **THE COURT:** Any argument?

21 **MR. BARTOSH:** (Shakes head negatively.)

22 **THE COURT:** You think he's qualified?

23 **MR. BARTOSH:** Yes, sir.

24 **THE COURT:** You?

25 **MR. GOWDY:** Yes, sir.

1 **THE COURT:** Bring him in.

2 (WHEREUPON, Mr. Hovelsrud entered at approximately
3 7:37 p.m.)

4 **THE COURT:** Mr. Hovelsrud, we appreciate you
5 answering these questions. We find that -- I find
6 that you are qualified. We are going to have you in
7 the panel that ultimately will become subject to being
8 placed on this a jury. Let me remind you that you
9 should not -- I believe you said you read the paper.

10 **MR. HOVELSRUD:** I read everything.

11 **THE COURT:** Don't read everything for the next
12 few days. You got somebody in your family you can
13 get to go through the paper for you.

14 **MR. HOVELSRUD:** I don't read the newspaper.

15 **THE COURT:** Oh, you don't read the newspaper?

16 **MR. HOVELSRUD:** Huh-uh (negative).

17 **THE COURT:** Well.

18 **MR. HOVELSRUD:** I get all my news over the
19 Internet. It is quicker.

20 **THE COURT:** Don't read anything that relates
21 to this case. Don't watch any news reports that
22 relates to this case. When you come back I'm going
23 to ask you, because I have to, whether or not you
24 have. And I want you to be able to tell me that you
25 have not.

1 So, you will need to be in touch by checking on
2 that recording to find out when to report. We will
3 also be in touch with you giving you information about
4 when to report. Keep in mind that the jury might be
5 sequestered. You might need to bring some clothes and
6 some things to keep you going for four or five days,
7 okay?

8 **MR. HOVELSRUD:** Can I play this weekend?

9 **THE COURT:** If you to get on the jury, you
10 will not be able to play this weekend.

11 **MR. HOVELSRUD:** All right.

12 **THE COURT:** All right. Thank you, Mr.
13 Hovelsrud. We will be in touch.

14 (WHEREUPON, Mr. Hovelsrud exits at approximately
15 7:39 p.m.)

16 **THE COURT:** Oh, yeah. Hold on just one second.
17 Bring him back in here.

18 (WHEREUPON, Mr. Hovelsrud enters at approximately
19 7:39 p.m.)

20 **THE COURT:** Mr. Hovelsrud, I forgot one thing.
21 Because we're getting started with this at the
22 beginning, we normally would have had this to you
23 before we talked to you. I need you to take this
24 witness list. It's got about 134 names on it. I
25 want you to go back and look at it right now. Then

1 I'm going to get you back in here and ask you whether
2 or not you know or are related to anybody on this
3 list. Okay?

4 **MR. HOVELSRUD:** Okay.

5 **THE COURT:** Don't take him in there with other
6 jurors. Take him to somewhere else.

7 Bring in the next juror and have that juror at
8 the door waiting so we can get him in here.

9 (WHEREUPON, Mr. Hovelsrud exited at approximately
10 7:40 p.m.)

11 **MR. BARNETT:** You can hear through that door.
12 You may not want them that close. They can hear
13 through that door.

14 **THE COURT:** Whoever the next juror is just
15 make sure they are ready but not there sitting right
16 outside the door.

17 (WHEREUPON, Sheril Cudd, Juror number 63, entered at
18 approximately 7:40 p.m.)

19 **THE BAILIFF:** They are sitting right outside the
20 jury door.

21 **THE COURT:** Sir?

22 **THE BAILIFF:** They are sitting right outside the
23 jury door. You want them closer than that?

24 **THE COURT:** No, that is fine. That's good. That
25 way they can't hear what is going on in here.

1 **THE BAILLIFF:** Yes, sir.

2 **SHERIL CUDD**

3 having previously been sworn, testified as follows:

4 **EXAMINATION**

5 **BY THE COURT:**

6 **Q** Okay. Ms. Cudd?

7 **A** Yes, sir.

8 **Q** How are you?

9 **A** Fine.

10 **Q** You remember you are still under oath from the
11 oath that I gave you this morning?

12 **A** Yes.

13 **Q** Now, we are going to ask you some questions about
14 different things. We're not trying to pry into your
15 private life, but we do need ask you about some subjects
16 that may be difficult subjects. But we are going to have
17 ask you.

18 We're going to talk about penalty. But the fact that
19 we are talking about penalty, it does not mean anything.
20 It just simply means that because this might come up, we
21 need talk about it. These questions we ask you, they are
22 not any right answers or wrong answers. We just want to
23 know what your answers are. We want you to tell us openly
24 and honestly how you feel. Do you understand me?

25 **A** Yes.

1 **Q** Do you think that as a juror in a criminal case,
2 that you can listen to the law and accept and apply the law
3 as I instruct you to do and that you can render a verdict
4 based on the facts and the circumstances and the evidence
5 that you hear in the courtroom in light of the law as I
6 give it to you. Do you think that you can do that?

7 **A** Yes, sir.

8 **Q** In a criminal case such as this, the State has
9 the burden of proof and must prove the defendant guilty
10 beyond a reasonable doubt. I will explain that in more
11 detail when it comes time for me to give you a full charge
12 on the law. But you understand what I'm talking about?

13 **A** Yes, sir.

14 **Q** Depending on the facts and circumstances and the
15 evidence that you hear in the trial, do you believe that
16 you could find the defendant either guilty or not guilty of
17 murder based on your view of the evidence and the law as I
18 state it to you?

19 **A** Yes, sir.

20 **Q** I'm going to talk to you just a little bit about
21 aggravating circumstance and mitigating circumstances.
22 Aggravating circumstances are facts or details or instances
23 or some occurrence that the General Assembly has declared
24 by statute to make worse or to aggravate the crime of
25 murder. In other words, an aggravating circumstance when

1 accompanying a murder increases the enormity or adds to the
2 injury of the crime of murder.

3 A mitigating circumstance, on the other hand, is a
4 detail or an incident or a fact or occurrence that the
5 General Assembly has declared by statute to reduce the
6 severity of the crime of murder. You may consider that as
7 a juror as extenuating or as reducing the degree of moral
8 culpability or responsibility.

9 If you were a juror in the sentencing phase of a trial
10 such as this, could you, depending on the facts and
11 circumstances of that particular case including the
12 consideration of any aggravating or mitigating
13 circumstances and the law as I would give it you at the end
14 of the case, could you, if you were given an option of
15 returning either a sentence of life in prison or the death
16 penalty, could you return a sentence of life in prison?

17 A Yes, sir.

18 Q Could you return a sentence of the death penalty?

19 A Yes, sir.

20 Q If you were required to be sequestered or held in
21 a group and denied the right to go home to your family at
22 night, we will put you up in a nice hotel and everything
23 and take care of you for four or five days. Could you do
24 that or would that cause any terrible burden on you or your
25 family?

1 **A** No burden.

2 **Q** I'm going to let the lawyers ask you a few
3 questions. Let me do this. Do you know of any reason why
4 you cannot be a fair and impartial juror in this case?

5 **A** Such as?

6 **Q** Any reason that you might have.

7 **A** I read the newspaper.

8 **Q** The lawyers are going to ask you a little bit
9 about that. Is that going to inhibit your ability to be a
10 fair and impartial juror?

11 **A** I don't know.

12 **Q** Okay. I am going to let them talk to you about
13 that. Did you get a chance to go over this list of
14 witnesses?

15 **A** Uh-huh (affirmative).

16 **Q** Did you make it through the entire list?

17 **A** Uh-huh (affirmative).

18 **Q** You need to tell me yes or no.

19 **A** Yes.

20 **Q** Did you -- were you able to read all of the
21 names?

22 **A** Yes.

23 **Q** Do you know anybody or are you related to anybody
24 on that list?

25 **A** No.

1 **THE COURT:** Thank you.

2 Mr. Bartosh.

3 **EXAMINATION**

4 **BY MR. BARTOSH:**

5 **Q** I am Mike Bartosh. I practice law here in
6 Spartanburg. This is kind of uncomfortable because of the
7 kinds of questions that we have the tendency to ask. I
8 appreciate your honesty. And I appreciate your working
9 with us. You noted on your jury questionnaire that you
10 were the victim of either an assault or of a gun or CDV or
11 criminal domestic violence?

12 **A** Grandparent abuse.

13 **Q** You were a victim of abuse by?

14 **A** It is my mother-in-law. So it would be mother-
15 in-law abuse, I guess, from a teenager.

16 **Q** Did it go on over a long period of time?

17 **A** It is still going on.

18 **Q** Okay. If it turned out that there was some
19 allegations of domestic abuse in this particular case and
20 you were to get on the jury, would your experience as being
21 the victim of domestic abuse, does that have an effect on
22 you as far as your ability to be fair and impartial to both
23 sides?

24 **A** Truthfully?

25 **Q** Yes, ma'am.

1 **A** Probably.

2 **Q** I notice you hesitated before you answered?

3 **A** You just have to go with the reasoning. There
4 is always two sides to a story. You know, you've got to
5 see what the pros and cons are, you know.

6 **Q** The reason for the domestic abuse would matter to
7 you?

8 **A** It could.

9 **Q** But the fact that you have been the victim of
10 domestic abuse would affect your ability to be fair in this
11 case?

12 **A** Probably.

13 **Q** Okay. Also you marked that you knew something
14 about the case?

15 **A** Yes.

16 **Q** Could you tell us what you know or what the
17 source is?

18 **A** Newspaper, TV and friends in Inman.

19 **Q** Let's start with the newspaper. There was an
20 article this morning in the paper, did -- you didn't see
21 it?

22 **A** (Shakes head negatively.)

23 **Q** When was the last time you read any article in
24 the newspaper about this particular case?

25 **A** Probably when it happened or when the write-ups

1 were.

2 Q That would have been in September of 2002,
3 something like that?

4 A Uh-huh (affirmative).

5 Q You said you also talked to people in Inman?

6 A Uh-huh (affirmative).

7 Q Did they discuss the details of what happened?

8 A Mostly.

9 Q As to what, who were involved and what had
10 happened and everything about the case?

11 A Yes.

12 Q Fair to say you know all about it?

13 A I know a lot of hearsay. I don't know facts.
14 I wasn't there to see so --

15 Q You have been told about it?

16 A I have been told.

17 Q Would you be able to put that aside, what you
18 have been told, and to listen to the facts?

19 A Probably.

20 Q It has to be little bit more than probably.

21 Could you put that aside and render a fair and just verdict
22 based upon what you hear from the witness stand and from no
23 other source?

24 A Yes.

25 Q You could do that?

1 **A** Maybe. I'm sorry, sir. I don't know.

2 **Q** As we said, there are no right answers or wrong
3 answers. We're just trying to determine.

4 **A** I'm trying to you know.

5 **Q** Fair to say you can't really say?

6 **A** In other words, there will always be hearsay that
7 you heard popping back into your brain like okay.

8 **Q** That could have happened or if you hear one
9 version and then you said well I heard this other thing.
10 If it is in conflict, it could different.

11 **A** It is always there. You're always going to
12 think about what you have heard before.

13 **Q** Have you been exposed to this hearsay even up
14 until today?

15 **A** No.

16 **Q** When was last time you had any conversations
17 concerning this case?

18 **A** Several months.

19 **Q** I keep saying fair to say. But what you are
20 saying is you cannot say definitely that I can put that out
21 of my mind and based my decision solely on what I heard
22 from the witness stand?

23 **A** It will always be there in your mind.

24 **Q** That's right. Okay.

25 **A** I mean --

1 Q I understand. Now, the way this works is it is
2 a two-part trial. The first part of the trial is the
3 State puts up their evidence. If the jury decides after
4 hearing the evidence that the State has carried its burden
5 of proving the defendant guilty of the crime he is charged
6 with beyond a reasonable doubt to all twelve jurors, okay?

7
8 If the jury decides that they haven't, we all go home.
9 If they decide that they have proved beyond a reasonable
10 doubt that the defendant is guilty of what he is charged
11 with, then it goes into a second phase. In that phase,
12 that is where the jury determines what the penalty should
13 be.

14 There are two possible penalties. There is death.
15 And there is life without parole, meaning that the person
16 will never ever get out of prison. Now, could you,
17 hearing all the circumstances and hearing all the facts,
18 putting aside all of the hearsay that you have heard,
19 everything you've read in the newspaper -- could you be
20 fair and listen to both sides and give a life sentence?

21 A Yes.

22 Q Could you also having heard all of the evidence,
23 could you give a death sentence?

24 A Yes.

25 Q You understand everybody signs the --

1 **A** Yeah.

2 **Q** Did you know that before?

3 **A** Yes.

4 **Q** Tell me how you knew that?

5 **A** From TV.

6 **Q** Okay. But, once again, I want to go back. You
7 would have a hard time putting aside the hearsay?

8 **A** Probably because it will always be there.

9 **Q** All right.

10 **A** In other words, you know, when you have heard
11 something, you know, and they start talking about that, it
12 is always going to be there.

13 **Q** Okay.

14 **A** You are always going to wonder and weigh the both
15 of them out.

16 **Q** All right. That is all I have.

17 **MR. WILLINGHAM:** Please the Court.

18 **EXAMINATION**

19 **BY MR. WILLINGHAM:**

20 **Q** My name is Donnie Willingham. Solicitor Trey
21 Gowdy and Solicitor Barry Barnett are going to be
22 prosecuting this case. I want to ask you a few more
23 questions. I want reiterate again that there are no right
24 or wrong answers. It is your answers which you know what
25 they are. You said what you know -- excuse me for a

1 second.

2 A All right.

3 Q Would you agree with me that not everything in
4 the paper is true?

5 A Right.

6 Q Not everything on TV is true?

7 A Right.

8 Q Would you -- you watched enough shows to know
9 that in a death penalty case, the jury verdict has to be
10 unanimous. Everybody has to sign it. You also watched
11 enough shows to know that the hearsay is generally not
12 admissible in court?

13 A Right.

14 Q The reason it is not admissible is because
15 sometimes it is not reliable?

16 A Yes.

17 Q You said you heard a lot of hearsay in this case?

18 A A lot.

19 Q Tell me what you heard.

20 A (No response).

21 Q It's okay. There are no other jurors in here.
22 I want to know what you heard about this case.

23 A Well, like there was abuse. She was trying to
24 get help. She went to the police for protection. He
25 followed her and that it was at the police department.

1 Q I am not able to comment on whether those things
2 are true or not. The judge will tell you though that the
3 only thing as a juror that you can consider are the
4 exhibits that are introduced and the testimony that comes
5 from that witness stand. Anything that has been heard
6 outside of this courtroom that you read or heard or seen
7 has to be disregarded. And only a verdict based on what
8 you hear in this courtroom can be rendered. Can you do
9 that?

10 A I don't know, sir. With our abuse that we have
11 now, we have tried to get help. And we cannot get help
12 from the police department.

13 Q Who have you talked to?

14 A Spartanburg County.

15 Q The sheriff's office?

16 A It's juvenile and they won't help us. It has
17 been going on the two years. That's why I said. We have
18 been through abuse and we can't get help. So I don't
19 know.

20 Q Let me ask this, as far as that abuse is
21 concerned, how would that sway on your thoughts. We have
22 Sheriff's Deputies testifying in this case. Would you
23 hold that against the Sheriff's Department or would you
24 hold that against someone who may have abused someone else?
25 How does that -- does that hurt or help as far as -- I may

1 not have asked that question very well. You said the
2 Sheriff's Office has not done anything --

3 A Right.

4 Q -- to help your situation with your mother-in-
5 law. Would you hold that against the sheriff's deputies
6 who testify in this case?

7 A I don't know.

8 Q Sometimes when you deal with law enforcement
9 agencies and they don't do what you think they should be
10 doing --

11 A You blame them.

12 Q -- that leaves a bad taste in your mouth.

13 A Right. You blame them.

14 Q Right. Do you think that would happen in this
15 case with you?

16 A I don't know,, sir.

17 MR. WILLINGHAM: I beg the Court's indulgence.

18 BY MR. WILLINGHAM:

19 Q Mrs. Cudd?

20 A Uh-huh (affirmative).

21 Q One last series of questions. Based on what you
22 have heard, based on the hearsay, you already have your
23 mind made up on what you think ought to happen in this
24 case?

25 A Like, what do you mean?

1 **Q** Have you made your mind up on verdict already?

2 **A** Okay. If -- can I say what I want?

3 **Q** Yes, ma'am.

4 **A** If you were abused and you go for help and you
5 are at the police department trying to get help, and they
6 come to follow you and you are trying to get help and they
7 end it there, I am sorry. To me, that is almost point-
8 blank you know.

9 **Q** There's nothing for you to apologize for?

10 **A** I am sorry. You know, if you end it there, that
11 is almost as much as saying I am guilty.

12 **Q** By the same code, do you have your mind made up
13 on what you think the sentence ought to be?

14 **A** The sentence is not as much as being guilty, you
15 know.

16 **Q** Again, like I said, there are no right and wrong
17 answers. They are just your answers.

18 **A** If you just end it there and you are at the
19 police department, you are guilty. The sentence is just
20 minor. It is just the point of innocence or guilty.

21 **Q** All right. Thank you. I appreciate it.

22 **THE COURT:** Let me get you to step out in the
23 hall for just a few minutes.

24 **MRS. CUDD:** This is the list that they gave to
25 me earlier.

1 **THE COURT:** You can leave it there.

2 **MRS. CUDD:** Okay.

3 (WHEREUPON, Mrs. Cudd exits at approximately
4 8:00 p.m.)

5 **MR. WILLINGHAM:** I don't think she is
6 qualified, Judge.

7 **MR. BARTOSH:** No, sir.

8 **THE COURT:** Bring her back.

9 (WHEREUPON, Mrs. Cudd enters at approximately
10 8:00 p.m.)

11 **THE COURT:** We certainly do appreciate your
12 honesty with us and your sharing your true feelings.
13 You're not going to need -- we're not going to need
14 you any more. You are free to go.

15 **MRS. CUDD:** Okay. Thank you.

16 (WHEREUPON, Mrs. Cudd exits at approximately
17 8:00 p.m.)

18 **THE COURT:** Let's take a short break.

19 (WHEREUPON, a short recess was taken at approximately
20 8:00 p.m.)

21 (WHEREUPON, the Court resumed at approximately 8:06
22 p.m.)

23 (WHEREUPON, Mr. Hovelsrud, Juror number 133, entered
24 at approximately 8:06 p.m.)

25 **THE COURT:** All right. Mr. Howelsrud, did

1 you get a chance to go over that witness list?

2 **MR. HOVELSRUD:** Yes.

3 **THE COURT:** Do you know anybody on that list or
4 are you related to anybody on that list?

5 **MR. HOVELSRUD:** No. But I can't speak for 91,
6 92, 110 through 113. I think you have several
7 duplicates on the last page.

8 **THE COURT:** That's very possible.

9 **MR. HOVELSRUD:** Unless they don't have a middle
10 initial. It's just that some of them have the same
11 names.

12 **THE COURT:** Very possible that we have duplicates.
13 So you don't know anybody and you are not related to
14 anybody on that list?

15 **MR. HOVELSRUD:** No.

16 **THE COURT:** Sir?

17 **MR. HOVELSRUD:** No.

18 **THE COURT:** All right. Thank you very much. We
19 appreciate you looking at it. We will be in touch
20 with you about when to come back.

21 **MR. HOVELSRUD:** I've got to call this thing on
22 the --

23 **THE COURT:** Call the recording. Probably not
24 right away but over the next few days, it will start
25 giving you an idea of when we think you might need to

1 come back.

2 **MR. HOVELSRUD:** Okay. I've got to make
3 alternative arrangements for somebody to take my place
4 which is tough to do on short notice.

5 **THE COURT:** This doesn't mean you're going to be
6 on the jury. It just means you're in the pool.

7 **MR. HOVELSRUD:** I can't take that chance.

8 **THE COURT:** That's fine.

9 **MR. HOVELSRUD:** I don't want to ruin somebody's
10 wedding.

11 **THE COURT:** You will have to, I suppose, then make
12 other arrangements to get somebody to take your place.
13 I'm sorry.

14 **MR. HOVELSRUD:** Yeah. I know.

15 **THE COURT:** All right. Thank you very much, sir.

16 **MR. HOVELSRUD:** I can go now?

17 **THE COURT:** Yes, sir.

18 **MR. HOVELSRUD:** I can work tomorrow then, right?

19 **THE COURT:** You can work tomorrow. You won't need
20 to be here until at least Wednesday afternoon.

21 **MR. HOVELSRUD:** Can I work Wednesday? I go in 4
22 o'clock in the morning and work 4:00 to 4:00.

23 **THE COURT:** In town? Why don't you just check
24 around noon on Wednesday. And if the recording says
25 anything about the possibility of us being ready on

1 Wednesday, then you might need to come on in.

2 MR. HOVELSRUD: Okay.

3 THE COURT: All right. Thank you.

4 MR. HOVELSRUD: Thank you.

5 (WHEREUPON, Mr. Hovelsrud exits at approximately
6 8:09 p.m.)

7 THE COURT: We got somebody? Bring them in.

8 (WHEREUPON, Ashley Driscoll, Juror number 77, entered
9 at approximately 8:09 p.m.)

10 **ASHLEY DRISCOLL**

11 having previously been sworn, testified as follows:

12 **EXAMINATION**

13 **BY THE COURT:**

14 Q Ms. Driscoll, how are you?

15 A I'm good. How are you?

16 Q I'm doing fine.

17 A A little bit hungry but that's okay.

18 Q Me too. I'm hungry too. You recall that I put
19 you under oath or the Clerk put you under oath. And you
20 are still under oath. Do you understand that?

21 A Yes, sir.

22 Q Has anybody been talking to you about the case in
23 the jury room where you were?

24 A No.

25 Q We're going to ask you some questions. We don't

1 want to invade your privacy but there are some questions
2 that we are going to perhaps get into some subjects that
3 you don't want to talk about. And we hope you bear with
4 us. There are not any right or wrong answers to these
5 questions. We just want to know how you think or how you
6 feel about these subjects.

7 We're going to talk about penalty. But talking about
8 penalty does not really mean anything. It just means that
9 because we might have to get into the penalty in this case,
10 we want to know your feelings and your thoughts about
11 certain subjects, okay?

12 A Okay.

13 Q If you were a juror in a criminal case, would you
14 be able to listen to the law and accept and apply the law
15 as I give it to you and render a verdict based solely on
16 the testimony and evidence that you hear in the courtroom
17 in light of the law as I give it to you?

18 A Yes, sir.

19 Q If you are a juror in a criminal case or a murder
20 case such as this, of course, you understand that the State
21 has the burden of proof and they have to prove the
22 defendant guilty beyond a reasonable doubt. Do you
23 understand that?

24 A Yes, sir.

25 Q If you are a juror in a murder case, do you

1 believe that you would be able to find the defendant either
2 guilty or not guilty depending on your view of the evidence
3 and in light of the law as I give it to you?

4 **A** Yes, sir.

5 **Q** If we moved on to the sentencing phase of this
6 trial, let me explain what aggravating circumstances and
7 mitigating circumstances are. Aggravating circumstances
8 are facts or incidents or details of an occurrence that the
9 General Assembly of our state has declared by statute to
10 make worse or to aggravate the offense of murder. In
11 other words, aggravating circumstance when accompanying a
12 murder increases the enormity or add to the injury of the
13 crime.

14 A mitigating circumstance, on the other hand, is an
15 incident or a fact or a detail or an occurrence that the
16 General Assembly has declared by statute to reduce the
17 severity of the offense of murder. It may be considered
18 as an extenuating circumstance or to reduce the degree of
19 moral culpability or responsibility.

20 If you are a juror in a sentencing phase of a murder
21 case such as this, could you, depending on the particular
22 facts and circumstances of that case including the
23 consideration of aggravating and mitigating circumstances
24 and the law as I will give it to you and if you were given
25 the option of either a life sentence or the death penalty,

1 could you impose a life sentence?

2 A I could.

3 Q Could you impose the death penalty?

4 A I could depending on the circumstances of course.

5 Q Depending on the circumstances. If you were
6 required to be housed in a hotel and sequestered from your
7 family and your job and your friends, could you do that or
8 would that be a terrible burden on you and your family?

9 A That will be fine. I'm a full-time student. And
10 I'm out of school.

11 Q I'm going to let the lawyers ask you -- did you
12 get chance to go over that witness list?

13 A Yes.

14 Q Did you know anybody or are you related to
15 anybody on that list?

16 A No, sir.

17 Q Do you know of any reason why you cannot be a
18 fair and impartial juror on this case?

19 A No, sir.

20 Q Thank you very much.

21 THE COURT: Mr. Bartosh.

22 MR. BRENNAN: Please the Court, Your Honor.

23 THE COURT: Mr. Brennan.

24 EXAMINATION

25 BY MR. BRENNAN:

1 Q My name is Doug Brennan. I'm a local attorney
2 here. This is Mr. Bartosh and Ms. Quimby. We are
3 defending Mr. Lindsey. We thank you for your patience
4 dealing with us today. As you have been told by the
5 Judge, there are no right or wrong answers here. There is
6 just your answers.

7 A Okay.

8 Q Ms. Driscoll, you said that given certain
9 circumstances that you could impose the death penalty?

10 A Uh-huh (affirmative).

11 Q Would you please tell me what those circumstances
12 might be.

13 A Well, I'm sure that if it were a serial murder
14 case or something like that, I would be more inclined to
15 impose the death penalty. And impose a life sentence just
16 if it was one murder maybe. I would have to see the
17 evidence of course. But I think that it -- I would be more
18 inclined to impose a life sentence rather than a death
19 penalty just because not that I don't believe in the death
20 penalty but because I think that life in prison, a life of
21 reflection, would give a person in chance for
22 reconciliation or thought or whoever they see fit with
23 their God.

24 Q Okay. Thank you. On your questionnaire that
25 you mailed back in, you mentioned that you have in the past

1 have suffered from depression, is that correct?

2 A Yes, sir.

3 Q Would service on this jury or potential service
4 affect that situation?

5 A No, sir.

6 Q You said that you would probably be inclined to
7 impose a life sentence over a death sentence.

8 A Yes, sir.

9 Q If you were on the jury and there were eleven
10 people in the jury room that were voting for a death
11 sentence, could you stand your ground and maintain life if
12 you felt that was what was proper?

13 A Most definitely.

14 MR. BRENNAN: I have nothing further, Your
15 Honor.

16 MR. GOWDY: May it please the Court, Your
17 Honor.

18 EXAMINATION

19 BY MR. GOWDY:

20 Q Good evening, Ms. Driscoll. My name is Trey
21 Gowdy. I'm in the Solicitor's Office here in Spartanburg.
22 That's Donnie Willingham on your left and Barry Barnett in
23 the center. Given the hour of the night, I'm going to
24 shorten my questions to the extent I can and tell you up
25 front that these are not questions that I would never ask

1 you if I ran into you on the street or the church or the
2 shopping center. I have no choice but to ask them to you.
3 I will start off with an easy one. Do you live at River
4 Falls?

5 **A** Actually my family lives in River Falls. I live
6 in an apartment by myself.

7 **Q** Okay. When Judge Few asked you whether or not
8 you can impose a death sentence, I noticed that you looked
9 up in a way of reflection and you said you thought you
10 could?

11 **A** Uh-huh (affirmative).

12 **Q** Then when Mr. Brennan asked you about it, he just
13 asked flat out what circumstances could you envision
14 yourself giving the death penalty. You mentioned a serial
15 killer?

16 **A** Uh-huh (affirmative).

17 **Q** If I'm wrong one this, you tell me I'm wrong?

18 **A** Uh-huh (affirmative).

19 **Q** I think you then followed that up by saying you
20 would be reluctant give it to somebody who just took one
21 life?

22 **A** Uh-huh (affirmative).

23 **Q** What I have to ask you, Ms. Driscoll, are your
24 views on the death penalty such -- and whatever your views
25 are, they are. I am not trying to change your mind about

1 any aspect of your political, social, religious, any other
2 kind of position. I just got to figure out what they are.
3 Do you have a set of rules internally that are such that if
4 they are not a serial murderer, you would not be able to
5 impose the death penalty?

6 A I don't have any strong views about that because
7 I never sat on a jury before. I have obviously never
8 sentenced anybody or known anybody to be sentenced like
9 that. I believe that I could be very impartial to what
10 the sentencing would be. Of course, I would not be
11 inclined to move my decision depending on the other jurors.
12 I am going to stand my ground. But let me elaborate on my
13 death penalty opinion.

14 Q Okay.

15 A It is my belief that the death penalty should
16 come to people who prove nonfunctional in society, they can
17 not get away from violence and they are a threat to
18 society. And the reason that the death penalty is here is
19 to prevent anything from happening to anybody else. With
20 serial murders, it is usually random people with fetishes
21 or stuff like that.

22 But the reason why I said if it's just one murder or
23 one death, there are usually circumstances surrounding that
24 that would make me think he wouldn't -- he or she would not
25 do it again to another random person. There are

1 circumstances surrounding a case that would make me think
2 or make me believe that this murder was a one-time thing.

3 Q All right. I think understand your answer at
4 least enough to an ask you this follow-up question. Some
5 murders are random. Such as, the most recent serial killer
6 would be John Muhammad up in D.C. Those were random
7 killings. Are your views on the death penalty such that
8 if it were not a random killing or if it were the murder of
9 -- let's assumed it's a female defendant hypothetically.

10 A Uh-huh (affirmative).

11 Q If she murdered somebody that she did know, --

12 A Uh-huh (affirmative).

13 Q -- would that change your views on the death
14 penalty? Are you unable to consider the death penalty if
15 the defendant knew the victim, if it weren't random?

16 A Uh-huh (affirmative). Uh, I understand that I
17 would have to know a lot more about the case. I am not
18 very well educated about why the death penalty is issued.

19 Q I think you are well educated about it. But I've
20 also got to tell you that this trial is not going to be a
21 debate about the merits of the death penalty. In fact, you
22 will never be required to impose the death penalty on
23 somebody. Life in prison will always be an option.

24 A Uh-huh (affirmative).

25 Q It does not matter how heinous the crime. It

1 does not matter how premeditated. It doesn't matter
2 anything.

3 A Uh-huh (affirmative).

4 Q If I heard you correctly when you were talking to
5 Mr. Brennan, you said that you were going to be more
6 inclined to impose life. What I want to make sure you
7 understand is not only can you be inclined to impose life,
8 you always have the option of life. And understanding
9 that you do always have that option, tell me what
10 circumstances you can envision yourself actually choosing
11 death?

12 A Actually choosing death. Mental illness perhaps.
13 As I said, a complete disregard for the care of people's
14 lives. Complete destruction, like I said, normally with
15 serial killers. You think they are unpredictable. They
16 just don't seem to have a definite pattern.

17 Q Why would life in prison not work for serial
18 killer? If they were in prison for the rest of their
19 lives, they are not going to kill anybody else.

20 A Because they seem to have it more trained into
21 their mind the ways of violence. If they are imprisoned,
22 I'm sure that they are going to be putting up some kind of
23 fight or something like that.

24 Q Let's get away from the serial killer for a
25 second. Are you telling me -- let me ask you this way,

1 can we -- do you see yourself -- is there a set of facts
2 where you can impose the death penalty on someone who was
3 not a serial killer and did not kill a stranger?

4 A You know what? I am not really sure. It would
5 just, it would weigh more on the brutality of the killing.
6 I just cannot tell you for sure.

7 Q Are you telling me that --

8 A In most cases though, if I had to decide all of
9 the cases in the world imposing the death penalty, I would
10 generally impose life, a life sentence in prison every day.

11 Q That is fair. And that is wonderful. That is
12 your opinion, and nobody is trying to change that. But
13 what I'm trying to get at is that not all the other cases
14 in the world, --

15 A Uh-huh (affirmative).

16 Q -- but the case that you may sit on, are you
17 going to be able to impose death in a case that does not
18 involve a serial killer?

19 A Uh-huh (affirmative).

20 Q I'm going to ask that question first. It does
21 not involve a serial killer. Are you going to be able to
22 impose death?

23 A I would be able to do it if I thought it was the
24 right thing to do.

25 Q Would you be able to impose death in a case that

1 did not involve a stranger killing? The wild abandonment
2 of a stranger killing, put that out of your mind. The
3 victim and the defendant knew each other.

4 A Right.

5 Q Are you going to be able to impose the death
6 penalty if you think that was the proper thing to do?

7 A If I thought that was the proper thing to do, I
8 would do it.

9 Q So if the fact that there was not a one-person
10 killing and that there is no stranger involved, that is not
11 going to prevent you from imposing the death penalty?

12 A No.

13 Q Again, you always have life as an option.

14 A Yes.

15 Q There is no law in this state that says, Ms.
16 Driscoll, you have got to impose the death penalty.

17 A Of course.

18 Q You always got life.

19 A Yes.

20 Q Are you saying that you're going to still impose
21 death even with the understanding that you could impose
22 life?

23 A I could if I thought that they deserved it. If
24 I honestly thought that they deserved it and under due
25 process of law that they deserved it.

1 **Q** Okay. One more question. And again this is not
2 something that is any of my business and it is not
3 something I would ever ask you outside of this setting?

4 **A** Right.

5 **Q** I read your questionnaire like Mr. Brennan did.

6 **A** Yes.

7 **Q** Do you believe people that are seeking any kind
8 of psychological, psychiatric assistance that that is --
9 would excuse a crime?

10 **A** It would have to depend on the severity of
11 psychological assistance. It would have to depend on the
12 severity of the problem. If it is obvious that insanity
13 is a problem, then, of course, there might be some kind of
14 leniency with the sentence or just excuse the people who
15 have real severe problems diagnosed by a real doctors.
16 Yes, I believe that that imposes a less penalty.

17 **MR. GOWDY:** One second, Your Honor.

18 **BY MR. GOWDY:**

19 **Q** One final question. What formed your views on
20 the death penalty? Is it a result of your studies, is it
21 a religious belief, is it a result of your parents put on
22 you?

23 **A** It is something that I discussed with my parents.
24 I discussed it with friends. It is not a religious
25 belief. It is just a personal belief. My influence is

1 not necessarily from other people as much as it is from me
2 and from what I believe to be right and fair and lawful.

3 Q Thank you for answering these difficult
4 questions.

5 THE COURT: Ms. Driscoll, let me get you to
6 step in the hall for just a second. We will be right
7 back in touch with you.

8 (WHEREUPON, Ms. Driscoll exited at approximately 8:27
9 p.m.)

10 THE COURT: Any argument?

11 MR. GOWDY: I believe she's qualified, Your
12 Honor.

13 MR. BRENNAN: I believe she's qualified, Your
14 Honor.

15 THE COURT: Bring her back.

16 (WHEREUPON, Ms. Driscoll enters at approximately 8:27
17 p.m.)

18 THE COURT: Ms. Driscoll, you are -- I find that
19 you are qualified. And we will be in touch with you
20 over the next several days as to when we need you
21 back.

22 MS. DRISCOLL: Okay.

23 THE COURT: Probably around midday Wednesday,
24 let's say late tomorrow or Wednesday to be optimistic,
25 you start checking the voice recorder to see if

1 there's anything on there about when you need to come
2 back.

3 **MS. DRISCOLL:** Okay.

4 **THE COURT:** Understanding that we might
5 sequester you and put you up in a hotel. So you might
6 want to get your bags packed. Okay?

7 **MS. DRISCOLL:** Okay.

8 **THE COURT:** Let me remind you now. Don't let
9 yourself be confronted with any news reports. Don't
10 watch the TV news. Don't read the newspaper if you
11 can help it.

12 **MS. DRISCOLL:** I haven't yet. I don't know
13 anything about this case.

14 **THE COURT:** When you come back, I will have to
15 ask you whether or not anybody has talked to you about
16 it or whether or you have read or heard anything
17 about. And I really want you to be able to tell me,
18 No, that they have not. Okay?

19 **MS. DRISCOLL:** Okay. Yes, sir.

20 **THE COURT:** I really look forward to seeing
21 you Wednesday or so.

22 **MS. DRISCOLL:** Thank you.

23 (WHEREUPON, Ms. Driscoll exits at approximately
24 8:28 p.m.)

25 **THE COURT:** Next.

1 (WHEREUPON, Rick Lee, Juror number 162, enters at
2 approximately 8:28 p.m.)

3 **RICK LEE**

4 having previously been sworn, testified as follows:

5 **EXAMINATION**

6 **BY THE COURT:**

7 **Q** Mr. Lee?

8 **A** Yes, sir.

9 **Q** Let me remind you that you are under oath from
10 the oath that the Clerk administered to you this morning.

11 Do you understand that?

12 **A** Yes, sir.

13 **Q** Has anybody talked to you back in the back about
14 this case or since I instructed you not to discuss the
15 case, has anybody talked to you about the case?

16 **A** No, sir.

17 **Q** All right. We're going to ask you a few
18 questions. I'm going to ask some and the lawyers are
19 going to ask some. There are not any right or wrong
20 answers to these question. We just want to know what your
21 answers are. So please be very open and candid with us,
22 okay?

23 **A** (No response).

24 **Q** Is that fine, Mr. Lee?

25 **A** Yes, sir.

1 Q We are going to talk a little bit about penalty.
2 But the fact that we are talking about penalty does not
3 mean anything about the defendant or about this case. We
4 may not get to this point, okay?

5 A Okay.

6 Q If you are a juror in a criminal case, could you
7 accept and apply the law as I give it to you and render a
8 verdict based solely on the testimony and evidence that you
9 hear in the courtroom?

10 A Yes, sir.

11 Q You understand that the State has the burden of
12 proof that requires the State to prove the defendant guilty
13 beyond a reasonable doubt?

14 A Yes, sir.

15 Q I will explain that to you in more detail if you
16 get onto this jury. In a murder case such as this, do you
17 believe that you can find the defendant either guilty or
18 not guilty depending on the facts and circumstances that
19 come out during the evidence in the case and in light of
20 the law as I give it to you?

21 A Yes, sir.

22 Q Now, if we were to make it into the penalty
23 phase, I'm going to ask you some questions about that. I'm
24 going to tell you about aggravating and mitigating
25 circumstances. Aggravating circumstances are facts or

1 incidents or details of an occurrence which the General
2 Assembly of our state has declared by statute to make worse
3 or to aggravate the crime of murder. In other words,
4 aggravating circumstances when accompanying a murder
5 increase the enormity of or add to the injury of the crime
6 of murder.

7 A mitigating circumstance, on the other hand, is an
8 incident or a fact or a detail of an occurrence which the
9 General Assembly has declared to reduce the severity of the
10 crime of murder and may be considered as extenuating or as
11 reducing the degree of moral culpability or responsibility.

12 If you were a juror in the sentencing phase of a
13 murder case, depending on the, could you, depending on the
14 facts and circumstances of that particular case included
15 the consideration of aggravating and mitigating
16 circumstances and the law as I would instruct you, could
17 you return -- let me back up. If you were given the option
18 of either a life sentence or the death penalty, could you
19 return a verdict for a life sentence?

20 A Yes, sir.

21 Q Could you return a verdict for the death penalty?

22 A Yes, sir.

23 Q If you were sequestered as a juror for several
24 days and not allowed to go home to your family, would that
25 impose a terrible burden on you?

1 **A** No, sir.

2 **Q** Have you been over the witness list that I gave
3 you?

4 **A** Yes, sir.

5 **Q** Do you know anybody or are you related to anybody
6 on the witness list?

7 **A** I think there was two. Number 52.

8 **Q** 52 is Sergeant Raymond Gist.

9 **A** I am not sure if he was a police officer in my
10 town or not. I think he is.

11 **Q** All right. Do you know him well?

12 **A** No, sir.

13 **Q** Would the fact that you know Sergeant Gist, if
14 you know him, would that interfere in any way with your
15 willingness or your ability to give both the State and the
16 defendant a fair and impartial trial in this case?

17 **A** No, sir.

18 **Q** Is there another witness you thought you knew?

19 **A** The attorney, the last one, 134.

20 **Q** Rod Tusk?

21 **A** No, sir. The very last one.

22 **Q** Benjamin Stephens.

23 **A** Yes, sir. I used him once.

24 **Q** How long ago was that?

25 **A** Three years.

1 Q If Mr. Stephens were to testify in this case,
2 do you think his testimony will interfere in any with
3 either your willingness or your ability to give the State
4 and the defendant a fair and impartial trial?

5 A No, sir.

6 Q All right, sir. Do you know any reason why you
7 cannot give both the State and the defendant a fair and
8 impartial trial in this case?

9 A I don't see any reason.

10 Q I'm going to let the lawyers talk to you for a
11 few minutes then I may come back and ask you some other
12 questions.

13 MR. BRENNAN: May it please the Court, Your
14 Honor?

15 THE COURT: Yes, sir.

16 EXAMINATION

17 BY MR. BRENNAN:

18 Q Mr. Lee, my name is Doug Brennan. I'm an
19 attorney here in Spartanburg. This is Mike Bartosh, Public
20 Defender, and Karen Quimby who is also with the Public
21 Defender's Office. We represent Marion Lindsey. Based on
22 Judge Few's questions, you said you could impose a life
23 sentence but you also can also impose a death sentence?

24 A Yes, sir.

25 Q What would sway you from a life sentence to a

1 death sentence?

2 **A** If I had doubts on circumstantial evidence or
3 something to that nature.

4 **Q** If you have doubt as to some of evidence,
5 wouldn't you find him not guilty?

6 **A** I assume.

7 **Q** So if for a moment you place yourself in a
8 sentencing phase where the question is life or death, what
9 piece of evidence or what set of facts or circumstances
10 would take you from life to death?

11 **MR. BARNETT:** Your Honor, I'm going to object at
12 this point. He's starting to stake the witness out
13 based on certain circumstances and whatever. I
14 understand general questions, but we're getting to the
15 point where we're starting to stake jurors out.

16 **THE COURT:** Rephrase the question.

17 **BY MR. BRENNAN:**

18 **Q** I'll ask the first question again. You told the
19 Judge that you could impose a life sentence and you could
20 impose a death sentence. My question is, what would sway
21 you from a life sentence to a death sentence?

22 **MR. BARNETT:** Objection, Your Honor. He's going
23 to basically starting to stake out the juror on what
24 situations or whatever.

25 **THE COURT:** Mr. Lee, let me get you to step

1 out in the hall for just one second please.

2 **MR. LEE:** Sure.

3 (WHEREUPON, Mr. Lee exits at approximately 8:38 p.m.)

4 **THE COURT:** That's what y'all all been doing
5 the whole time we've been in here.

6 **MR. BARNETT:** Your Honor, we're asking any
7 circumstances. He's not giving any situations or
8 whatever.

9 **THE COURT:** The last juror, and I don't even
10 remember which one of you it was. But one of you said
11 what would be a circumstance when you would impose the
12 death penalty. And she said if it was a serial
13 killer. And for the next ten minutes, y'all tried to
14 either pin her down as someone who would not impose
15 the death penalty unless it was a serial killer.

16 And the other side was trying to pin her down as
17 someone who would impose a death penalty for a much
18 wider variety of circumstances. And then the question
19 Mr. Gowdy asked the last time is what is the basis of
20 your views on the death penalty. What's the
21 difference between those two questions?

22 **MR. BARNETT:** Basically you're trying to find
23 out the beliefs of what they are doing from their
24 backgrounds.

25 **THE COURT:** Yeah.

1 **MR. BARNETT:** Here we're asking about certain
2 circumstances. What circumstances would make you
3 swing to the death penalty.

4 **THE COURT:** Yeah.

5 **MR. BARNETT:** And that is not what we're looking
6 at. I think you are staking out a juror because you
7 are trying to say when you are looking at beliefs
8 religious beliefs that is different. He's looking at
9 specific circumstances and trying to stake that juror
10 out for that.

11 **THE COURT:** I do think that the question is
12 designed to sort of stake the juror out. But I don't
13 think that distinguishes that question from half the
14 questions that have been asked so far.

15 **MR. GOWDY:** Your Honor, I will concede the
16 question that Mr. Brennan asked of Ms. Driscoll was
17 an objectionable question. Now, I concede that. And
18 I should have objected to it.

19 **THE COURT:** Was he the one that asked the
20 question about the serial about killer?

21 **MR. GOWDY:** Well, Your Honor, her answer was a
22 serial killer. That's why I had to go into it. I
23 concede fully the question was objectionable. Tell me
24 what circumstances you would give somebody the death
25 penalty. That is the one thing you cannot do is

1 stake out somebody to try to figure out would this
2 evidence appeal to him, would that evidence appeal to
3 them.

4 When you say what will take you from life to
5 death or death to life, that is exactly what you are
6 not to suppose to ask. I should've objected that.
7 The Court is correct. I should have.

8 **THE COURT:** All right. I will see if I
9 cannot fashion an appropriate remedy to punish you for
10 not objecting when you should have.

11 **MR. GOWDY:** Well --

12 **THE COURT:** I am kidding.

13 Mr. Brennan, anything you want to say in response
14 to that?

15 **MR. BRENNAN:** Well, I did not question the first
16 three witnesses.

17 **THE COURT:** Let's just focus where we are
18 right now.

19 **MR. BRENNAN:** Every witness has been asked under
20 what circumstances would you fashion a death penalty.
21 And that's all I'm asking this gentleman.

22 **THE COURT:** Mr. Bartosh, you have anything you
23 want to say?

24 **MR. BARTOSH:** No, sir.

25 **THE COURT:** Well, I think that I want you to.

1 We need to decide whether or not it is going to be
2 appropriate for both sides to ask questions like that.
3 You are basically putting the witness in a position, I
4 mean the juror in a position not knowing really what
5 the aggravating circumstance is here, not knowing what
6 the details of the case are, of kind of shooting blind
7 to come up with something that would justify the death
8 penalty. Do you think it is an appropriate question?

9 **MR. BARTOSH:** No, sir. Not what would it take
10 to swing you from life to death.

11 **THE COURT:** Well, we'll, uh --

12 **MR. BRENNAN:** I will withdraw the question, Your
13 Honor.

14 **THE COURT:** We would go with that. And ask
15 Mr. Lee to come back in here. And we will sustain the
16 objection. I will sustain the objection.

17 **MR. BARNETT:** Thank you, Your Honor.

18 **THE COURT:** Bring him in.

19 (WHEREUPON, Mr. Lee enters at approximately 8:40
20 p.m.)

21 **BY MR. BRENNAN:**

22 **Q** Mr. Lee, again I thank you for your patience.
23 In your questionnaire that you mailed back in, you
24 mentioned that you have a cousin that is a guard at
25 Dutchman Corrections?

1 **A** He used to be. He has since quit his job last
2 month.

3 **Q** Okay. While he was employed there at Dutchman,
4 did you have frequent conversations with him?

5 **A** About once a month.

6 **Q** Did he ever talk about his job?

7 **A** Not much. It was not very interesting to me.

8 **Q** Would the fact that you did have conversations at
9 some point with him affect your ability to serve in this
10 jury?

11 **A** No. No, sir.

12 **Q** Okay. You also mentioned in your questionnaire
13 that you had a cousin that was convicted of a crime?

14 **A** Yes, sir.

15 **Q** Is that cousin serving time in prison?

16 **A** Yes, sir.

17 **Q** Okay. Would his relationship, would your
18 relationship with this cousin and the fact that he is
19 serving or has served time, would that affect your ability
20 to render a judgment in this manner?

21 **A** No, sir.

22 **Q** Okay. You also mentioned in your questionnaire
23 that you had in the past or maybe still suffer from
24 depression, is that correct?

25 **A** Yes, sir.

1 trying to find out information as we go. This is the
2 first time you and me met was right here?

3 A Yes, sir.

4 Q One thing I noticed when you were answering
5 questions with the Judge or whatever, have you been
6 arrested by the sheriff's office or the police department?

7 A No, sir.

8 Q I guess I was mistaken.

9 A I've never been arrested whatsoever.

10 Q You work for the Town of Packard, is that right?

11 A Yes, sir.

12 Q You are a truck driver down there?

13 A Yes, sir.

14 Q You know Judge Henson down there?

15 A Yes, sir.

16 Q You went to Athens High School?

17 A Yes.

18 Q Are you from up here or from down there
19 originally?

20 A I am from up here. My father was a traveler.

21 Q You traveled through there and so forth. You
22 understand the judge will be giving you instructions.
23 Will you be able to follow the instructions?

24 A Yes, sir.

25 Q Based on those instructions, you would be able to

1 look at the facts of this case and make your decision based
2 off those facts?

3 A Absolutely.

4 Q You realize at the end of this case if it does
5 get through the guilt phase and it does get to the
6 sentencing phase that at the end of it, all twelve jurors
7 have to agree on the verdict?

8 A Yes, sir.

9 Q If all twelve of you agree that it would be
10 death, you will have to sign a sentencing sheet?

11 A Yes, sir.

12 Q Could you sign a sentencing sheet?

13 A Yes, sir.

14 Q And based on the evidence, you would determine if
15 it would be life or death based on that?

16 A Yes, sir.

17 MR. BARNETT: One moment, Your Honor, please.

18 I have no further questions of this witness.

19 THE COURT: Mr. Lee, let me get you to step
20 back into the hall for just a second please.

21 (WHEREUPON, Mr. Lee exits at approximately 8:42 p.m.)

22 THE COURT: Any objection to Mr. Lee?

23 MR. BARNETT: We think he is qualified, Your
24 Honor.

25 MR. BRENNAN: Your Honor, he appeared a little

1 anxious to me to say Yes, sir, I could sign that and
2 Yes, sir, I could impose the death sentence. For
3 those reasons, I would argue that he is not qualified,
4 Your Honor.

5 **THE COURT:** I think he is qualified. I think
6 that he was clear that he could impose the death
7 penalty. He was also clear that he could impose a
8 life sentence. I got from Mr. Lee a very clear
9 indication that he would be an objective juror who
10 would listen to the evidence and impose the verdict,
11 the sentence that he thought was the appropriate
12 sentence under the circumstances. I think he is
13 clearly qualified.

14 Bring him in.

15 (WHEREUPON, Mr. Lee enters at approximately 8:43
16 p.m.)

17 **THE COURT:** I find that you are qualified. We
18 will be in touch with you over the next couple of
19 days. You may want to stay in touch with that
20 recording that you heard me discussing earlier. And
21 maybe some time around Wednesday morning, you start
22 checking that recording to see what it says about when
23 you need to come back.

24 We will try to stay in touch with you. You heard
25 me say that you might be sequestered. So you may want

1 to pack some clothes and be ready to spend as much as
2 four or five days with us. Let me remind you not to
3 allow yourself to be exposed to any press coverage
4 about this case. Do not allow anybody to talk to you
5 about this case and do not talk about it yourself.
6 Do you understand?

7 **MR. LEE:** Yes, sir.

8 **THE COURT:** When you come back, I will be
9 forced to ask you whether or not you discussed the
10 case or whether anybody discussed it with you. I
11 want you to be able to tell me that the answer to that
12 question is no.

13 **MR. LEE:** Absolutely.

14 **THE COURT:** All right. You are free to go.

15 **MR. LEE:** Thank you, sir.

16 (WHEREUPON, Mr. Lee exits at approximately 8:44 p.m.)

17 **THE COURT:** All right. Give us a juror.

18 (WHEREUPON, Carla Howell, Juror number 134, enters at
19 approximately 8:45 p.m.)

20 **CARLA HOWELL**

21 having previously been sworn, testified as follows:

22 **EXAMINATION**

23 **BY THE COURT:**

24 **Q** Ms. Howell, good evening.

25 **A** Fine. Thank you.

1 Q I'm sorry we had to keep you here so late. You
2 will you forgive me?

3 A Yes, sir.

4 Q Ms. Howell, you recall that you are still under
5 oath from the oath that the Clerk gave you this morning?

6 A Yes, sir.

7 Q Has anyone talked to you about the case since I
8 instructed you not to allow that to happen?

9 A No, sir.

10 Q Now, we're going to ask you some questions. I'm
11 going to ask you some questions. And then the lawyers are
12 going to ask you some questions. We don't mean to pry too
13 deep in your privacy but we do need to have these questions
14 answered. There aren't any right or wrong answers. We
15 just want to know what your answers are. So please be open
16 and honest with us and tell us what's on your mind, okay?

17 A Okay.

18 Q We are going to talk about penalty. But I want
19 you to understand that that really doesn't mean anything.
20 It is just that because there is a possibility that we
21 would get to the penalty phase of the trial, we are going
22 to talk to you about some of your views. The defendant is
23 presumed innocent. We may not ever even get to the penalty
24 phase of this trial. You understand that?

25 A Yes, sir.

1 Q If you were a juror in a criminal case such as
2 this, would you be able to accept and apply the law
3 precisely as I state it to you in light of the facts and
4 circumstances that are proven and the evidence of this
5 case?

6 A Yes, sir.

7 Q Could you make that decision based solely on the
8 testimony and evidence that you hear in this courtroom?

9 A Yes, sir.

10 Q And in light of the law as I give it to you?

11 A Yes, sir.

12 Q You understand that in a criminal case, the State
13 has to prove the defendant's guilt beyond a reasonable
14 doubt?

15 A Yeah.

16 Q Ma'am?

17 A Yes, sir.

18 Q In a murder case such as this, could you,
19 depending on the facts and circumstances and the law as I
20 state it to you, could you find the defendant either guilty
21 or not guilty based on your view of the evidence and
22 whether or not the State has proven their case?

23 A Yes, sir.

24 Q If we were to move into the penalty phase of the
25 case, I'm going to talk to your little bit about your views

1 there. Let me explain to you what aggravating
2 circumstances are and what mitigating circumstances are.
3 Aggravating circumstances are facts or incidents or details
4 of an occurrence which the General Assembly of our state
5 has declared to make worse or to aggravate the crime of
6 murder. In other words, aggravating circumstances when
7 accompanying a murder increase the enormity or add to the
8 injury of the crime of murder.

9 Mitigating circumstances, on the other hand, are
10 incidents or details or facts of an occurrence which the
11 General Assembly has declared to reduce the severity of the
12 events of the crime of murder. And they maybe considered
13 as extenuating or as reducing the degree of culpability or
14 responsibility.

15 If you were a juror in the sentencing phase of a
16 murder trial, could you, depending on the particular facts
17 and circumstances of that case including the consideration
18 of aggravating circumstances and mitigating circumstances,
19 could you -- and if you were given the option of either a
20 sentence of life in prison or the death penalty, could you
21 impose a life sentence?

22 A Depending on the facts and what was stated to me
23 --

24 Q Yes, ma'am.

25 A -- and depending on the degree, --

1 **Q** Yes, ma'am.

2 **A** -- then yes, sir, I would make a decision on that
3 based on what you said the facts were on either/or, on the
4 substantial or what have you. That will be part of my
5 jury duty in carrying out a decision.

6 **Q** So you believe that under the right
7 circumstances, you could impose a life sentence?

8 **A** Yes, sir.

9 **Q** Could you impose the death penalty if you thought
10 that was the right thing to do?

11 **A** Yes, sir.

12 **Q** Now if the jury is sequestered and you are
13 required to be put up in a hotel for several days is that
14 going to impose a terrible burden on you and your family or
15 could you do that?

16 **A** I could do that. I was in the military for some
17 time.

18 **Q** Did you get a chance to go over that witness list
19 that I gave you?

20 **A** Yes, sir. I sure did.

21 **Q** Did you know anybody or are you related to
22 anybody that on that list?

23 **A** No, sir, I'm not.

24 **Q** Do you know of any reason why you cannot be a
25 fair and impartial juror in this case?

1 a brother-in-law who is a police officer?

2 A My uncle was Chief of Police.

3 Q In Florida also?

4 A Yes. My brother-in-law was also an officer and
5 I have two cousins that branched off in the divisions of
6 law-enforcement.

7 Q Once again in Florida?

8 A Yes, sir.

9 Q Are you and I don't mean to pry but all of your
10 family is in Florida. You are here in Spartanburg County
11 pretty much on your own?

12 A Yes.

13 Q Also you said that you or a member of your family
14 was accused of criminal domestic violence?

15 A Yes, sir.

16 Q Could you tell me about that?

17 A Sure. My ex-boyfriend and I got into a dispute.
18 And we had some pushing and shoving. I have gotten one
19 night a week for classes. And his is still pending.

20 Q So you been to court on the charge?

21 A Yes, sir.

22 Q Also said that you've been arrested by the
23 Sheriff's Department. I assume that was the Sheriff's
24 Department?

25 A Yes, sir.

1 Q And that was that charge?

2 A Correct.

3 Q Now, the judge has gone over how the trial will
4 proceed. This is a special kind of trial where it is well
5 composed of two parts. The first part is just like a
6 regular trial where the jury sits and listens to all the
7 evidence against the defendant. They decide whether or
8 not the State has proven beyond a reasonable doubt that the
9 defendant is guilty of what he is charged with. If they
10 haven't, if they don't prove it, we all go home.

11 If they do prove it and jury believes they have
12 carried their burden unanimously, then we move to the
13 second phase. Some people call it the penalty phase.
14 Some people refer to it as the sentencing phase.
15 Basically what it is is the jury decides life or death.
16 It is the jury's decision. Now, if this case were to
17 involve -- and you don't know anything about the case, is
18 that correct?

19 A That's correct.

20 Q If this case were to involve criminal domestic
21 violence, --

22 A Uh-huh (affirmative).

23 Q -- would that make a difference to you in any
24 way?

25 A Depending on the situation and the extent of the

1 criminal domestic violence. I am a firm believer in law.
2 And everybody should obey it including myself. I believe
3 punishment should be brought down or everything situated
4 occurs on that basis.

5 Q Would the fact that there was domestic violence
6 involved, let's say it had been over a long period of time.
7 Would that affect your ability to, would that be a factor
8 to consider in what penalty you would feel would be
9 appropriate?

10 A I would treat it just like I would in anything
11 that comes up. This is a separate issue.

12 Q You understand this is a murder trial?

13 A Correct.

14 Q What the jury will have to decide if we get that
15 far is whether Marion Lindsey is going to spend the rest of
16 his life in jail. And life means life. So life without
17 parole or whether he will receive the death sentence.
18 Would you be able, based on everything that you know, would
19 you under those circumstances be able to impose the death
20 penalty?

21 A Depending on the case and what I find out and
22 what the other jurors and I decide upon, yes.

23 Q Let me ask you about that. Supposed the other
24 jurors felt death was appropriate and it was 11. And you
25 felt that it was inappropriate and you said it was life?

1 **A** I would state my opinion.

2 **Q** Would the fact that the eleven voted for death,
3 would you be able to stand your ground and say I don't
4 believe this is a death penalty case, I believe it is life?

5 **A** Yes, sir.

6 **Q** Would you go along with the rest of them?

7 **A** No, sir. I meant for us to be able to make a
8 decision together. But I do stand up for what I believe
9 in.

10 **Q** You would stake out your own position?

11 **A** Yes, sir.

12 **Q** So fair enough to say, you would have to listen
13 to both sides?

14 **A** Very fair, yes, sir.

15 **Q** And be true to your oath as a juror?

16 **A** I feel that is what a juror is for.

17 **Q** Okay. And as far as criminal domestic violence,
18 that would be a factor you would consider?

19 **A** Yes, sir. Depending on the situation, I would
20 say so.

21 **Q** Would it be an important factor?

22 **MR. BARNETT:** Objection, Your Honor. This has
23 been asked and answered about four or five times.

24 **THE COURT:** I will allow it.

25 **MS. HOWELL:** I'm trying to be as clear and

1 precise as I can. What I'm saying is I think there's
2 law. And the laws are there for these reasons. And
3 whether I broke part of it or whatnot have you, I
4 still think that is what the law is for. It is
5 carried out regardless. Do you know what I'm saying?
6 If I am caught speeding, then by all means I should
7 get a ticket.

8 **BY MR. BARTOSH:**

9 **Q** What I'm saying is, the law, of course, we are
10 asking you would that affect your ability to consider both
11 sides and to say I think that this is a life sentence or I
12 think this should be death or would one been precluded by
13 the criminal domestic violence?

14 **MR. BARNETT:** Objection, Your Honor. I think
15 now he is staking out.

16 **MR. BARTOSH:** I just think -- Your Honor, she's
17 talked about her views on criminal domestic violence.
18 I think I am entitled to ask her that.

19 **THE COURT:** Let me hear you repeat the
20 question.

21 **MR. BARTOSH:** The question is would the fact
22 that she has been the victim of criminal domestic
23 violence, would that preclude her ability to give a
24 life sentence.

25 **THE COURT:** I think that it is a fair

1 question.

2 MS. HOWELL: I do too.

3 MR. BARNETT: No objection to that question,
4 Your Honor.

5 THE COURT: All right.

6 BY MR. BARTOSH:

7 Q I --

8 A I am neutral. Do you understand? I'm trying to
9 be fair. And I'm going to listen to both. And I'm going
10 to gather every little bit of information. And all of
11 that I feel is going to depend on not just one separate
12 issue. It's not going to persuade me either way.

13 Q Fair to say, you would look at the whole picture?

14 A Correct.

15 MR. BARTOSH: That is all I have.

16 THE COURT: Mr. Barnett.

17 MR. BARNETT: Just a couple questions.

18 **EXAMINATION**

19 BY MR. BARNETT:

20 Q I'm Barry Barnett. Along with me are Donnie
21 Willingham and Trey Gowdy. We are prosecuting this case
22 together. I'm going to ask you a few questions. I know it
23 is kind of late and everything. I'm sorry about asking
24 these questions. I normally would not be asking these type
25 questions except under these type settings. The CDV case

1 that you are talking about.

2 A Uh-huh (affirmative).

3 Q Who prosecuted that case?

4 A Magistrate.

5 Q Was it downstairs?

6 A Yes.

7 Q Do you know what whether it was a solicitor or a
8 police officer?

9 A I believe it was a police officer.

10 Q Did you go in -- did you plead guilty to it?

11 A Yes. We both did.

12 Q Do you feel that you were treated fairly in that
13 situation?

14 A I think they had made a good decision based on
15 the information they were given. It was really their
16 choice. I stated simply the facts. And they made that
17 decision and they carried it out. And I accepted that.

18 Q Did you have a bench trial or did you go in front
19 of jurors?

20 A No, right in front of the magistrate.

21 Q Right in front of the magistrate. And he or she
22 made the decision?

23 A Correct. He stated he would take it off my
24 record if I went to class. That was it.

25 Q Did he actually hear evidence or did you just

1 plead guilty?

2 **A** He listened to the evidence too. Because like I
3 said, the second part of it, the other gentleman involved,
4 it is still pending.

5 **Q** Do you know any police officers here in
6 Spartanburg or is that just in Florida?

7 **A** I do know some police officers here also.

8 **Q** And you were in the Navy, is that correct?

9 **A** That is correct.

10 **Q** Your view on the death penalty. Do you feel like
11 you would listen to both sides and be fair about it? What
12 in specific are your views on the death penalty?

13 **A** Depending on the situation and what has occurred.
14 I can't make a decision based on something I do not know.

15 **Q** That is, what you've learned about the case and
16 hear the evidence that is presented in the case?

17 **A** Yes, sir.

18 **Q** You would listen to the judge and apply the law
19 according to the way he asks you to apply it, is that
20 correct?

21 **A** That is correct.

22 **Q** I know you know very little about the case such
23 as the parties and so forth. But you would listen to the
24 evidence and make a decision based on that?

25 **A** That is correct.

1 **MR. BARNETT:** One moment, Your Honor.

2 No further questions, Your Honor.

3 **THE COURT:** Ms. Howell, let me get you to
4 step into the hall for just one second. We will get
5 right back to you.

6 **MS. HOWELL:** Sure.

7 (WHEREUPON, Ms. Howell exits at approximately 9:01
8 p.m.)

9 **THE COURT:** Any objection?

10 **MR. BARTOSH:** No, sir. Anybody ask her if she
11 recognized anybody?

12 **MR. GOWDY:** Yes.

13 **MR. BARTOSH:** She said she cannot recognize
14 anybody?

15 **MR. GOWDY:** Right.

16 **MR. BARTOSH:** No objection.

17 **MR. BARNETT:** No objection, Your Honor.

18 **THE COURT:** All right. Bring her back.

19 (WHEREUPON, Ms. Howell enters at approximately 9:02
20 p.m.)

21 **THE COURT:** Ms. Howell, I find that you are
22 qualified to serve as a juror in this case. It is
23 going to be several days before we will be ready for
24 you to come back. What I would like for you to do is
25 sometime mid-morning Wednesday start checking the

1 recorder. At some point -- I don't know if it would
2 be that quick. But at some point, we will give you
3 some information about when you need to be back. We
4 will also be in touch with you to make sure that
5 you're getting that information.

6 Let me remind you about not letting yourself be
7 exposed to newspaper or TV accounts. There will be
8 some. Be very careful not to allow yourself to be
9 exposed to those. If anyone tries to talk to you
10 about this case, tell them they can not do it. Don't
11 you talk to anybody about this case. And when you
12 come back, I will have to ask you about whether or not
13 you talked to anybody about the case and whether or
14 not anybody has talked to you. I want you to be able
15 to tell me that the answer to that is no.

16 **MS. HOWELL:** Yes, sir.

17 **THE COURT:** You heard me say that the jury
18 might be sequestered. So you might want to think
19 about starting to get your stuff packed and be ready
20 to spend four or five days in a hotel. Okay?

21 **MS. HOWELL:** Okay.

22 **THE COURT:** We look forward to seeing you on
23 Wednesday, maybe as late as Thursday. All right.
24 Bye-bye.

25 (WHEREUPON, Ms. Howell exits at approximately

1 9:03 p.m.)

2 **THE COURT:** All right. Anything y'all want to
3 put on the record now before we quit?

4 **MR. GOWDY:** Your Honor, it is almost nine
5 o'clock. I'm reluctant to ask about any print sketch
6 or anything else that might be available for us to get
7 our experts to look at based on the cross-examination
8 of the psychiatrist today. Mr. Bartosh tells me it
9 does not exist. I believe him, but of course --

10 **THE COURT:** Hold on. When are you going to
11 give him whatever it is that you are going to give
12 him?

13 **MR. BARTOSH:** My understanding is that
14 everything is being Fed Ex'ed tomorrow.

15 **THE COURT:** It should be here tomorrow.

16 **MR. BARTOSH:** It should be. If not tomorrow,
17 on Wednesday at the latest.

18 **THE COURT:** Am I not entitled to a straight
19 answer about that?

20 **MR. BARTOSH:** Well, Your Honor --

21 **THE COURT:** When is it going to be delivered?

22 **MR. BARTOSH:** We're telling them to send it one-
23 day.

24 **THE COURT:** Did she send it today?

25 **MR. BARTOSH:** She is sending it tomorrow.

1 **THE COURT:** Sending it tomorrow.

2 Mr. Gowdy, he's offering to deliver that stuff
3 to you on Wednesday.

4 **MR. GOWDY:** I will do my best not to delay the
5 trial while I have find an expert to look at whatever
6 they've got.

7 **MR. BARTOSH:** Your Honor, I suspect to have an
8 expert in the week.

9 **THE COURT:** Are you satisfied with that
10 answer?

11 **MR. GOWDY:** I have to ignore that answer
12 because he doesn't have any idea whether I've got an
13 expert in the week or not.

14 **THE COURT:** I'm not talking about that answer.
15 I'm talking about the answer of Wednesday.

16 **MR. GOWDY:** I don't have any choice but to be
17 satisfied with it. I'm sure Mr. Bartosh will get it
18 to me as quickly as he can. The trial has started.
19 We have asked for it for weeks and weeks and weeks.
20 I'm sure he had not had it for weeks and weeks and
21 weeks or he would've given to me.

22 But I noticed a mitigation expert on their
23 witness list. I haven't seen anything she relied upon.
24 I've seen neurologist. I haven't seen anything she
25 relied upon. I've seen a psychologist. I haven't

1 seen anything that she is relying upon. And we are
2 two or three days into starting the trial.

3 **THE COURT:** All right. I mean, what do you
4 want me to do?

5 **MR. GOWDY:** There is nothing you can do. I
6 can tell you as the prosecution I know what the remedy
7 would be. But because it is the defense, we can't
8 have that remedy. I would just ask that we get it as
9 quickly as we can with the Court's understanding that
10 we have our expert to look at whatever it is that they
11 come up with.

12 **THE COURT:** We will start -- wasn't there
13 something else we needed to do in the morning?

14 **MR. BARNETT:** Your Honor, there is one other
15 thing. Mr. Anthony left me a message about the pro
16 bono information. Whenever the Court sees an
17 appropriate time, during the break or whatever, we can
18 just call him. And I think we can take care of that
19 shortly and very quickly.

20 **THE COURT:** Just have him come over here.
21 Have him come over here whenever he wants to in the
22 morning. When he gets to here, at the end of the
23 next juror, we'll stop and see if we can deal with it
24 right then.

25 **MR. GOWDY:** Are you going to want us to have

1 the personal representative of Nell's estate here?
2 That will be her father Stanley Staggs. I think the
3 Court's had more experience with privilege information
4 than -- certainly than I have. I do not know whether
5 the attorney/client privilege belongs to the personal
6 representative.

7 **THE COURT:** I think -- I believe -- and I
8 should be more reluctant than I am to say things when
9 I am not sure that I'm right. I believe that the
10 attorney-client privilege is no longer around upon the
11 death of the client.

12 Let's go home.

13 **MR. GOWDY:** Can I speak to you about a matter
14 that is unrelated to this?

15 **THE COURT:** Yes. And then I would like to speak
16 to you two about a -- just very casually and off the
17 record and anybody else also about a matter that is
18 related to the jury selection.

19 (WHEREUPON, the Court recessed at approximately
20 9:15 p.m.)

21 (WHEREUPON, the Court resumed on May 18, 2004 at
22 approximately 9:11 a.m.)

23 **THE COURT:** Everybody ready?

24 **MR. GOWDY:** The State is ready, Your Honor.

25 **MR. BARTOSH:** Yes, sir.

1 **THE COURT:** All right. Bring us a juror.

2 We've got Mr. Culpepper from yesterday whom you
3 may recall said, I think he was the one that said the
4 grandmother was sick. He's got a medical excuse. Not
5 much detail. We'll look at it and we will address it
6 when he comes out.

7 (WHEREUPON, Janet Prasanlack, Juror number 218 enters
8 at approximately 9:11 a.m.)

9 **JANET PRASANLACK**

10 having previously been sworn, testified as follows:

11 **EXAMINATION**

12 **BY THE COURT:**

13 **Q** Good morning.

14 **A** Good morning.

15 **Q** Ms. Prasanlack?

16 **A** Uh-huh (affirmative).

17 **Q** Ms. Prasanlack, let me remind you that you are
18 still under oath from yesterday.

19 **A** Okay.

20 **Q** Now, have you been exposed to any information
21 about this case since I instructed you not to discuss it or
22 not to see any press reports or read the newspaper?

23 **A** No, sir.

24 **Q** Have you learned anything about this case since
25 you left here yesterday?

1 **A** Huh-uh (negative.)

2 **Q** Ma'am?

3 **A** No, sir. Sorry.

4 **Q** That's all right. Now, we're going to ask you a
5 few questions. We don't want to invade your privacy. But
6 this is an important matter. We need to just inquire into
7 a few things. There are no right or wrong answers to any
8 of the questions that we ask you. We just want you to be
9 open and honest with us and tell us how you feel and how
10 you think. Okay?

11 **A** Okay.

12 **Q** We're going to talk about the penalty phase. But
13 the fact that we're going to be talking about the penalty
14 phase doesn't mean anything except that because we might
15 get there, we need to know how you feel about that. Okay?

16 **A** Okay.

17 **Q** If you were a juror in a criminal case, would you
18 be able to accept and apply the law precisely as I would
19 state it to you and to render a verdict based solely on the
20 testimony and evidence that you hear in the courtroom and
21 in light of the law as I give it to you?

22 **A** Yes.

23 **Q** In a criminal case, you understand that the State
24 has the burden of proof and must prove the defendant guilty
25 beyond a reasonable doubt. Do you understand that?

1 **A** Yes, sir.

2 **Q** In a murder case, could you, depending on the
3 facts and the evidence and in light of the law as I give it
4 to you, could you find the defendant either guilty or not
5 guilty depending on whether or not you believe the State
6 has met its burden of proof?

7 **A** Yes, sir.

8 **Q** If the jury were to find the defendant guilty and
9 we were to move into the sentencing phase, now we're going
10 to talk to you a little bit about some issues that will
11 come up in the sentencing phase.

12 **A** Okay.

13 **Q** First of all, let me explain to you about
14 aggravating circumstances and mitigating circumstances.
15 Aggravating circumstances are facts or incidents or details
16 of an occurrence that the legislator of our state have
17 deemed to make worse or to aggravate the crime of murder.
18 In other words, aggravating circumstances when accompanying
19 a murder increase the enormity of or add to the injury of
20 the crime of murder.

21 Mitigating circumstances, on the other hand, are
22 incidents or facts or details of an occurrence which the
23 legislature have deemed to reduce the severity of the crime
24 of murder and may be considered as extenuating or as
25 reducing the degree of moral culpability or responsibility.

1 Now if you were a juror in the sentencing phase of the
2 death penalty trial, depending on the particular facts and
3 circumstances of that case and considering aggravating and
4 mitigating circumstances and considering the law as I will
5 instruct you, if you were given the choice of either a
6 sentence of life in prison or the death penalty, could you
7 impose a sentence of life in prison?

8 **A** Yes.

9 **Q** Could you impose the death penalty?

10 **A** Yes.

11 **Q** Now, if you were to be sequestered as I mentioned
12 as a possibility yesterday and put up in a hotel where you
13 cannot go home to your family for four or five days, would
14 that pose a terrible problem for you?

15 **A** No.

16 **Q** Have you gone over the witness list that was
17 given to you this morning?

18 **A** Yes.

19 **Q** Have you had time -- you are the first juror this
20 morning. Have you had plenty of time to go over that list?

21 **A** Yes.

22 **Q** Did you recognize any names on there?

23 **A** No.

24 **Q** Do you know anybody or are you related to anybody
25 whose name is on that witness list?

1 **A** No.

2 **Q** Do you know of any reason why you cannot give
3 both the State and the defendant a fair and impartial trial
4 in this case?

5 **A** No.

6 **Q** I'm going to let the lawyers ask you some
7 questions. And I may come back and ask you some more
8 myself.

9 **A** Okay.

10 **THE COURT:** Mr. Bartosh.

11 **MR. BARTOSH:** Thank you, Your Honor.

12 **EXAMINATION**

13 **BY MR. BARTOSH:**

14 **Q** Mrs. Prasanlack, did I say it correctly?

15 **A** That's fine.

16 **Q** Uh, you have -- I have been going over your jury
17 questionnaire. You have one child?

18 **A** Yes.

19 **Q** Are you the custodial parent for the trial?

20 **A** Yes.

21 **Q** That child is four years old now?

22 **A** Yes, sir.

23 **Q** Is he or she in day care now?

24 **A** No, he stays with my mother.

25 **Q** You live with your mother?

1 **A** Yes.

2 **Q** You are a full-time student also?

3 **A** I'm not going through the summer.

4 **Q** Okay. You intend to enroll back?

5 **A** During the fall, yes.

6 **Q** During the fall. Okay. Uh, also on your
7 application, you talk about a brother had been questioned
8 by the police?

9 **A** Yes.

10 **Q** You don't recall what that was about?

11 **A** He has been in jail before for grand larceny.

12 **Q** Okay. You believe that was what it was about?

13 **A** Yes.

14 **Q** When he was questioned, was he arrested?

15 **A** Yes.

16 **Q** He was charged with a charge?

17 **A** Uh-huh (affirmative).

18 **Q** You gave a statement in that case to the police?

19 **A** No.

20 **Q** You did not?

21 **A** No, this is when I was younger.

22 **Q** About how long ago?

23 **A** Maybe probably 9 or 10. I can't remember.

24 **Q** As a child?

25 **A** Yes.

1 Q This is your older brother?

2 A Yes, it is.

3 Q Okay. Also in response to some questions we had
4 yesterday, you said you been arrested by either the
5 Sheriff's Department or the police department?

6 A Not me, I thought he was saying a family member.

7 Q Okay.

8 A I was referring to my brother.

9 Q You were referring to your brother. You never
10 had any experience with law-enforcement?

11 A No.

12 Q Other than through your brother?

13 A Yes.

14 Q What year were you in college?

15 A This is my third semester.

16 Q Okay. So sophomore?

17 A Uh-huh (affirmative).

18 Q As the judge told you, this is a split trial, I
19 guess, if you want to call it.

20 A Uh-huh (affirmative).

21 Q At the beginning of the trial or the first part
22 of the trial is just like a regular trial. The jury sits
23 in the jury box over there. They will listen to the
24 evidence that the State will produce. They will decide
25 based upon that evidence whether the State had bore its

1 burden of proving the defendant's guilt beyond a reasonable
2 doubt. Okay?

3 **A** Uh-huh (affirmative).

4 **Q** Should the jury decide that it is not proven
5 beyond a reasonable doubt the defendant's guilt as to what
6 he was charged to, we will all go home. Okay?

7 **A** Okay.

8 **Q** If they do prove to all twelve of the jurors'
9 satisfaction beyond a reasonable doubt that the defendant
10 was guilty, then we will go into a second phase. As the
11 judge told you, in the second phase, there will be evidence
12 presented both by the State and by the defense. Of
13 course, the State is presenting evidence to try to convince
14 the jury that the death penalty would be an appropriate
15 punishment.

16 As the judge said, those are, those are aggravating
17 circumstances. Those are circumstances which the State
18 would present in hopes of persuading the jury to impose the
19 death penalty in Mr. Lindsey's case. Okay?

20 **A** Okay.

21 **Q** Also in that portion, the defense has the
22 opportunity to present mitigating circumstances. That is
23 something that would lessen the severity of the crime.

24 **A** Uh-huh (affirmative).

25 **Q** Of course, that would be an effort to convince

1 the jury that death is not appropriate and that life would
2 be appropriate punishment. Of course, in this state, life
3 is life without parole. All right?

4 A Okay.

5 Q Were Mr. Lindsey to be given life, he would never
6 get out of jail.

7 A Okay.

8 Q Would you be willing to listen to both the
9 defense's arguments as to why Mr. Lindsey should be given
10 the death penalty and the defense's arguments as to why he
11 should not be given the death penalty, and would you make
12 your decision based on what you heard in this courtroom and
13 not on anything else?

14 A Yes.

15 Q That would be the sole decision-maker in your
16 mind as to what you heard in here and how you felt about
17 the circumstances and how you felt about the way the case
18 was presented and the issues in the case?

19 A Uh-huh (affirmative).

20 Q There would be no other extraneous outside of
21 that. You have no feelings one way or the other as to
22 whether the death penalty should always be imposed or
23 whether it should never be imposed?

24 A Of course.

25 Q I mean you do not?

1 A No.

2 Q Correct?

3 A Uh-huh (affirmative).

4 Q You look at how it is?

5 A Uh-huh (affirmative).

6 Q You look at the circumstances and then make your
7 decision?

8 A Uh-huh (affirmative).

9 Q Let me ask you this. Let's say of the twelve
10 people on the jury, eleven voted for death. And you felt
11 that life was appropriate. Would you be able to stick by
12 your guns against those eleven people and go with your
13 conscience rather than cave in on the 11?

14 A Yes.

15 Q You would?

16 A Yes.

17 Q Have you thought much about this?

18 A Yeah, I have.

19 Q You knew when you were coming in here that this
20 was going to be a capital case, right?

21 A Yes.

22 Q How much have you thought about it? It is not
23 something that you want to think about. How much have you
24 thought about it?

25 A I thought about the questions you asked me. If

1 it did come down to 11 to 1 or 1 to 10. And I feel like --

2 Q Right?

3 A I have my opinion about it and I should just
4 state how I felt no matter if the other ten felt
5 differently.

6 Q So, of course, you know not to belabor the point
7 but should it be death or should it be life, --

8 A Uh-huh (affirmative).

9 Q -- every juror has to sign to the indictment form
10 or the sentencing form?

11 A Yeah.

12 Q Either way you will be able to do it?

13 A Yes.

14 Q Thank you.

15 A Uh-huh (affirmative).

16 MR. WILLINGHAM May it please the Court, Your
17 Honor.

18 THE COURT: Yes, sir.

19 EXAMINATION

20 BY MR. WILLINGHAM:

21 Q Mrs. Prasanlack, my name is Donnie Willingham.
22 This is Barry Barnett. And this is Trey Gowdy. We are
23 prosecuting this case for the State. I just want to make
24 sure you understand. I think you do. You always have a
25 choice between life and death.

1 **A** Uh-huh (affirmative).

2 **Q** Death is never going to be required.

3 **A** Uh-huh (affirmative).

4 **Q** The judge is not going to tell you and the jurors
5 are not going to tell you got vote death. It is not
6 required. Given a choice, knowing that you always have a
7 choice between life and death, would you be more inclined
8 to vote one way versus the other?

9 **A** I don't quite understand. Am I more --

10 **Q** I will rephrase the question.

11 **A** Okay.

12 **Q** There's some jurors that say no matter what, when
13 given a choice between life and death, I'm going to choose
14 life. There are other jurors that say no matter what I
15 hear, if I was given a choice between life and death, I'm
16 going to choose death. There's the third type of juror
17 that says if I'm given the choice, I'm going to consider
18 both life or death.

19 **A** Yeah.

20 **Q** How would you fall in that category?

21 **A** I will consider both.

22 **Q** The third category?

23 **A** Yes.

24 **Q** Mr. Bartosh asked you about your brother. You
25 said he had gone to jail for grand larceny. Was that here

1 in Spartanburg?

2 A Yes. I believe that's where. I can't -- well,
3 then again, I don't know.

4 Q How old is your brother?

5 A He is probably 28.

6 Q How old was he when it happened? How old was he
7 when it happened?

8 A When he --

9 Q When he was arrested for grand larceny?

10 A Like I said, probably when I was 9 or 10.

11 Q He was how old?

12 A I am 23 now. So that would make it 14. When I
13 was 14.

14 Q He was probably, if it happened in Spartanburg
15 County, prosecuted by the solicitor's office, the same
16 office that is prosecuting Mr. Lindsey. Would that enter
17 into your consideration or would that influence you? Would
18 you hold that again us is what I'm asking?

19 A No. I did not know. Honestly, I did not know
20 what was going on. I did not even go to court. I do not
21 what was going on at that point.

22 Q Okay. You were going to Spartanburg Technical
23 College?

24 A Uh-huh (affirmative).

25 Q What were you majoring?

1 **A** Accounting and trying to get a major in Business
2 Management.

3 **Q** How much longer you have to go?

4 **A** I have about a year and a half.

5 **Q** Thank you.

6 **THE COURT:** Mrs. Prasanlack, I'm going to ask
7 you to step out into the hall for just a second. And
8 we will be right back with you.

9 **MRS. PRASANLACK:** Uh-huh (affirmative). Okay.
10 (WHEREUPON, Mrs. Prasanlack exits at approximately
11 9:26 a.m.)

12 **THE COURT:** Any objection to Mrs. Prasanlack?

13 **MR. BARTOSH:** No, sir.

14 **MR. BARNETT:** No, sir.

15 **THE COURT:** Bring her in.

16 (WHEREUPON, Mrs. Prasanlack enters at approximately
17 9:26 a.m.)

18 **THE COURT:** You are qualified. And we are going
19 to keep you in the panel for this case. We hope to
20 be able to get around to picking a jury sometime late
21 Wednesday or early Thursday.

22 **MRS. PRASANLACK:** Okay.

23 **THE COURT:** Please stay in touch by calling
24 that recorded number -- that telephone number that you
25 were given. There will be a message on there.

1 Maybe some time Wednesday, we will start putting on
2 there something about when you need to come back. We
3 will also try to stay in touch with you. But you
4 stay in touch through that telephone number.

5 **MRS. PRASANLACK:** I will.

6 **THE COURT:** As we get close to Wednesday
7 afternoon, as I mentioned to you, you might be
8 sequestered. So you need to start thinking about
9 putting some clothing together that would last you
10 four or five days.

11 **MRS. PRASANLACK:** Okay.

12 **THE COURT:** All right?

13 **MRS. PRASANLACK:** All right. Thank you.

14 **THE COURT:** Ma'am, remember my instructions
15 not to allow yourself to be exposed to any news
16 reports about this case. And don't talk to anybody
17 about this case. And don't allow anyone to talk to
18 you about this case. Do you understand that?

19 **MRS. PRASANLACK:** Yes.

20 **THE COURT:** Thank you very much.

21 **MRS. PRASANLACK:** Thank you.

22 **THE COURT:** When you come back, I'm going to ask
23 you about whether or not you complied with my
24 instructions just like I'm going to ask all the
25 jurors. I want you to be able to tell me that you have

1 complied with it and you have not learned anything
2 about this case since we have last talked.

3 **MRS. PRASANLACK:** All right.

4 **THE COURT:** Thank you.

5 (WHEREUPON, Mrs. Prasanlack exits at approximately
6 9:27 a.m.)

7 **THE COURT:** All right. Give us a juror.

8 Hold them at the door for a second. I'm going to talk
9 to the lawyers.

10 Is it suitable to you all if you have any
11 objection to the qualifications of the jurors. I'm
12 just going to say Any objections. If you have an
13 objection, you argue it then. If you say no
14 objection, I'm assuming that you agree that the juror
15 is qualified.

16 **MR. BARTOSH:** Yes, sir.

17 **THE COURT:** Is that fair?

18 **MR. BARTOSH:** Yes, sir.

19 **THE COURT:** All right. Bring him in.

20 (WHEREUPON, Tammy Queen, Juror number 222, enters at
21 approximately 9:28 a.m.)

22 **TAMMY QUEEN**

23 having previously been sworn, testified as follows:

24 **EXAMINATION**

25 **BY THE COURT:**

1 Q Good morning, Ms. Queen.

2 A Good morning.

3 Q How are you?

4 A Fine.

5 Q You recall that I put you under oath yesterday.
6 You are still under oath.

7 A Yes, sir.

8 Q Since we left yesterday, has anyone talked to you
9 about this case or have you seen any news reports about
10 this case?

11 A No, sir.

12 Q Or learned anything about this case since
13 yesterday?

14 A No, sir.

15 Q Ma'am, we are going to you talk to you now and
16 ask you some questions. We don't want to really invade
17 your privacy but these are going to be some interesting
18 questions that you probably have not been asked before.
19 There are not any right or wrong answers to these
20 questions. We just want you to be open and honest with us
21 and tell us how you feel and tell us how you think.

22 We are going to talk about penalty and the penalty
23 phase of this case if we ever get to the penalty phase.
24 The fact that we're talking about it does not mean
25 anything. We may never get there. You understand that?

1 **A** Yes, sir.

2 **Q** In a criminal case, if you were a juror in a
3 criminal case, could you accept and apply the law precisely
4 as I will give it to you and render a verdict based solely
5 on the testimony and the evidence that you will hear in
6 this courtroom and in light of the law as I have given it
7 to you?

8 **A** Yes, sir.

9 **Q** You understand the State has the burden of
10 proving a criminal case and must prove the defendant guilty
11 beyond a reasonable doubt?

12 **A** Yes, sir.

13 **Q** If you were a juror in a criminal case, in a
14 murder case such as this, depending on the facts and the
15 circumstances and the law as I give it to you, could you
16 return a verdict of either guilty or not guilty depending
17 on whether or not you believe the State has met its burden
18 of proof?

19 **A** Yes, sir.

20 **Q** Now, if a guilty verdict is found, we would move
21 into the penalty phase. So let's talk a little bit about
22 that. Let me tell you what aggravating circumstances and
23 mitigating circumstances are. Aggravating circumstances
24 are facts, incidents or details of an occurrence which the
25 State of South Carolina has deemed to make worse or to

1 aggravate the crime of murder. In other words,
2 aggravating circumstances when accompanying a murder
3 increase the enormity or add to the injury of the crime of
4 murder.

5 Mitigating circumstances, on the other hand, are
6 incidents or facts or details of an occurrence which the
7 State of South Carolina have deemed to reduce the severity
8 of the crime of murder. Mitigating circumstances may be
9 considered as extenuating or as reducing the degree of
10 moral culpability or responsibility.

11 Now, if you were a juror in the sentencing phase of a
12 murder trial, could you, depending on the facts and the
13 circumstances that were proven in the case including the
14 consideration of any aggravating or mitigating
15 circumstances and if you were -- and in light of the law as
16 I give it to you and if you were given the choice of either
17 a life sentence or the death penalty, could you impose a
18 life sentence?

19 **A** Sure.

20 **Q** Could you -- ma'am?

21 **A** Yes, sir.

22 **Q** Could you impose the death penalty?

23 **A** Yes, sir.

24 **Q** Now, ma'am, if you are chosen as a juror in this
25 case and if I choose to sequester you, is that going to

1 impose a hardship on you?

2 A I am a single parent.

3 Q Do you have somebody who can take care of your
4 children?

5 A Yes, sir.

6 Q You do?

7 A Uh-huh (affirmative).

8 Q All right. Now, have you been over the witness
9 list?

10 A Yes, sir.

11 Q Do you know anybody or are you related to
12 somebody on that list?

13 A I know somebody.

14 Q Would you tell me who that is please.

15 A That will be Officer Godfrey.

16 Q Officer Godfrey. And do you know the number
17 offhand on that list?

18 A I think it is number four.

19 Q Number four. Officer Harvey Godfrey of the Inman
20 Police Department. How you know him?

21 A He dated my sister and I been doing his income
22 taxes for over ten years.

23 Q Did you do his income taxes for this year?

24 A Uh-huh (affirmative).

25 Q For 2003?

1 **A** Yes, sir.

2 **Q** And you've been doing that for ten years. Is
3 that your business to do people's income taxes or do you do
4 it on the side?

5 **A** No. That is what I do.

6 **Q** Is he still dating your sister?

7 **A** No.

8 **Q** All right. If Officer Godfrey were to testify in
9 this case, do you feel that judging his credibility would
10 put you in an uncomfortable position?

11 **A** No.

12 **Q** You don't think so.

13 **A** No.

14 **Q** Would the fact that Officer Godfrey might be a
15 witness in this case interfere in any way with either your
16 willingness or your ability to give both the State and the
17 defendant a fair and impartial trial?

18 **A** As far as Officer Godfrey, no.

19 **Q** All right. Let me explore that just a little
20 bit. Is there anything about Officer Godfrey, whether you
21 like him, dislike him, trust him, don't trust him or
22 whatever that would interfere -- if he testifies that would
23 interfere with your ability and your willingness to give a
24 fair trial to the State and a fair trial to the defendant?

25 **A** As far as Officer Godfrey, no.

1 Q I want to know what would. Something hesitated
2 you right there. Something caused you to --

3 A I know the defendant and I know the victim.

4 Q All right. We will talk about that in just a few
5 minutes. But just as far as Officer Godfrey is concerned,
6 nothing will interfere with your ability to give a fair
7 trial?

8 A No.

9 Q All right. I'm going to -- you've mentioned that
10 you know the victim and that you know the defendant. That
11 is obviously something that you have been thinking about.
12 I am going to let the lawyers talk to you for a few minutes
13 about that and I'm going to maybe come back and ask you
14 some more questions.

15 A Okay.

16 Q Other than the fact that you know the defendant
17 and that you knew the victim, do you know of any reason why
18 you cannot give both the State and the defendant a fair and
19 impartial trial?

20 A Other than just those circumstances.

21 Q I'm not suggesting that that's would prevent you.
22 I'm just going to let the lawyers talk to you about that
23 subject. But other than that subject, is there any reason
24 why you cannot give a trial to both sides?

25 A No, sir.

1 Q All right. Thank you.

2 THE COURT: Mr. Bartosh.

3 MR. BARTOSH: Thank you.

4 EXAMINATION

5 BY MR. BARTOSH:

6 Q Ms. Queen, when we had the general questioning
7 yesterday, you indicated that you knew someone in the
8 solicitor -- it is too early in the morning -- in Solicitor
9 Gowdy's office?

10 A Yes, sir.

11 Q Who do you know?

12 A I went to school with Mr. Gowdy.

13 Q All right. Would that fact affect your ability
14 to give both sides a fair trial?

15 A No.

16 Q What school is that?

17 A Spartanburg High.

18 Q Say it again.

19 A Spartanburg High.

20 Q Did you graduate?

21 A Yes.

22 Q You also said you knew some folks in our office?

23 A Actually, the defendant. Not anyone in your
24 office.

25 Q You say that you met Marion Lindsey?

1 A Yes.

2 Q How long have you known Mr. Lindsey?

3 A I've only had an occasion of meeting him twice.

4 Q Was it through his wife?

5 A He was with her at the time, yes.

6 Q You said you knew her?

7 A Yes.

8 Q How do you know her, you knew Mrs. Lindsey?

9 A My best friend's daughter was a good friend of
10 Nell's.

11 Q How long had you known Mrs. Lindsey?

12 A Five years.

13 Q Were you social friends?

14 A Actually, maybe longer than that.

15 Q Were you social friends with her?

16 A Not really. No, sir.

17 Q Would you visit?

18 A When she would be at Christy's mother's house.

19 That's where we would have baby showers and stuff.

20 Q You would visit her --

21 A Sure.

22 Q -- on social occasions?

23 A Yes, sir.

24 Q Okay. You know, you also know Mr. Godfrey?

25 A Yes, sir.

1 Q Officer Godfrey was the investigating officer of
2 this case or one of the investigating officers. Did you
3 have conversations with Officer Godfrey concerning this
4 case?

5 A No.

6 Q You never discussed it with him at all?

7 A No, sir.

8 Q How do you know about the case?

9 A Only from when it originally happened. Of
10 course, it was published and knowing Nell and Mr. Godfrey.

11 Q Okay.

12 A When I filled out the paperwork when the original
13 paperwork was sent to me, I did not know who Marion Lindsey
14 was.

15 Q You knew him as Myron?

16 A I know him as Myron. It wasn't until the case
17 was actually delayed that someone called me and said, cause
18 we didn't know who Marion Lindsey was.

19 Q Right.

20 A And they said you do know who that is too. And
21 then they said it was Myron. And of course, I do know
22 Myron. And I called immediately said I knew him by that
23 name.

24 Q So somebody called you?

25 A Yes.

1 Q To discuss the case?

2 A Only to tell me that I did know who Marion
3 Lindsey was.

4 Q You've been talking to people before?

5 A Only to the fact that I had been called for
6 Marion Lindsey. And we did not know who it was.

7 Q You know the facts?

8 A Yes.

9 Q And you got those facts from newspapers -- you
10 got those facts from when you talked with different people?

11 A Yes, sir.

12 Q You got those facts from Mrs. Lindsey's family?

13 A It would only have been secondhand.

14 Q I understand that. But --

15 A Like I said, my best friend's daughter was a very
16 close friend with Nell. I'm sure she was in contact with
17 the family.

18 Q Your best friend's daughter would have told you
19 all about the facts?

20 A Yes.

21 Q Have you formed an opinion about the case?

22 A Probably.

23 Q Well --

24 A I know that is not really an answer but --

25 Q You have made up your mind?

1 **A** Basically, yes.

2 **Q** And you have made up your mind that Mr. Lindsey
3 is guilty?

4 **A** Do I have to say?

5 **A** Yes please.

6 **A** In my honest opinion, yes, sir.

7 **Q** Is that your opinion that he is guilty?

8 **A** (No response).

9 **THE COURT:** Let me, if you don't mind, stop
10 you right there and ask you and a representative of
11 the solicitor's office to come over here for one
12 second and speak to me.

13 (WHEREFORE, a bench conference was held off the
14 record.)

15 **THE COURT:** Ms. Queen, let me ask if you
16 don't mind please to step out for just a minute. We
17 will come back and resume your questioning a minute.

18 **MS. QUEEN:** Okay.

19 (WHEREUPON, Ms. Queen exited at approximately
20 9:40 a.m.)

21 **THE COURT:** Now what I said at the sidebar
22 conference was to raise the question as to whether or
23 not it would be appropriate now at this point in the
24 questioning for me to take a minute to explain to the
25 juror what the juror's obligations are in terms of the

1 presumption of innocence coming into this court with
2 an open mind, rendering a verdict based solely on the
3 testimony and the evidence that they hear in the
4 courtroom and not based on anything that they may have
5 learned before they came in here and to do that in
6 light of the law as I give it to them.

7 And then to ask them whether they can do that or
8 do they feel that the information that they gained
9 prior to coming to trial would interfere with their
10 ability to do that. And then turn it over to you to
11 let you explore that rather than boxing her in to
12 answer when she doesn't even understand yet what her
13 obligations are and what her oath as a juror would
14 entail. Would it not be appropriate for me to do
15 that, then we see how it goes?

16 There are a lot of jurors. It comes up all the
17 time where jurors will say Yeah, I know the answer to
18 this question. Then you tell them that is not what
19 you are here for. You are here for what you hear and
20 then make a decision as to what the answer to this
21 question is. And they say, Yeah, I can do that.

22 **MR. BARTOSH:** My only concern, Your Honor, is
23 there is a thin line between trying to rehabilitate a
24 witness.

25 **THE COURT:** I realize that. With this

1 particular juror, as far as the questioning went, it
2 might be that it is over. But in the future, I don't
3 think, I got my doubts as to whether or not it is
4 appropriate for you to have an opportunity to pin her
5 down like that without me explaining to her what her
6 obligations are first.

7 **MR. WILLINGHAM:** Judge, what I would suggest, and
8 I mean seeing it happen before, is that those few
9 jurors or several jurors had prior knowledge of the
10 case. If the Court has a list of those, would you
11 question them additionally if they have prior
12 knowledge initially before either of us ask questions,
13 you go ahead and ask if that will have an influence on
14 whether they can be fair and impartial?

15 **THE COURT:** Any objection to that?

16 **MR. BARTOSH:** No, sir. But I will tell you
17 there are fifty some-odd jurors in this pool who
18 indicated that they have knowledge.

19 **MR. WILLINGHAM:** In the alternative, if Mr.
20 Bartosh gets them there --

21 **THE COURT:** Yeah.

22 **MR. WILLINGHAM:** -- and we have an opportunity to
23 rehabilitate then you again will decide.

24 **THE COURT:** With this particular juror, there
25 is tremendous potential for confusion. I have

1 already asked her could you come in here as a juror in
2 this case and listen to the law as I give it to you
3 and render a verdict based solely on the testimony and
4 the evidence that you hear in this courtroom. She
5 said yes. In response to your question, she said she
6 made up her mind because of what she knows. Those are
7 conflicting answers. The question I asked is more
8 general. The question you asked is more specific.

9 Let's figure out what to do here in this
10 situation. The next time it comes up I will go ahead
11 and ask that question a little more explicitly before
12 you start. You want to make a motion to excuse her
13 for cause right now?

14 **MR. BARTOSH:** Yes, sir.

15 **THE COURT:** Or do you want me to bring her
16 back in here and ask her, explain to her her
17 responsibility.

18 **MR. BARTOSH:** Like I say, Your Honor, I believe
19 given enough time, she could be brought around to just
20 about anything. But I think by her body language on
21 the stand when she hesitated --

22 **THE COURT:** Okay. Motion to excuse for cause
23 now. How do you respond?

24 **MR. WILLINGHAM:** Just, I would like to have an
25 opportunity to see if she sticks by that or if she

1 goes back to what she told you originally. I don't
2 have any real hope that she will be able to do that.

3 **THE COURT:** All right. Let's bring her in. You
4 may very well be right. But I think at this point,
5 I've got to do what I suggested.

6 **MR. BARTOSH:** And just so that we understand
7 too, Your Honor, you are going to accept -- and we
8 have no objection to Mr. Willingham's suggestion
9 that folks who have said --

10 **THE COURT:** I'm going to do that. My staff is
11 over here right now making up a list of the questions
12 that they've answered and raised a hand to give me as
13 each juror comes up. What happens though is just
14 glancing over that after I finish, I'm going to tell
15 them that if they answered the question that they knew
16 about the case to kind of pop me in the side of the
17 head with the questionnaire as I'm finishing so that I
18 know to ask that question.

19 **MR. BARTOSH:** As I said, Your Honor, I think
20 there is a substantial amount of people --

21 **THE COURT:** Right.

22 **MR. BARTOSH:** Maybe over half.

23 **THE COURT:** Right. And let's do this. If you
24 find that I miss somebody, you just say, it doesn't
25 have to be anything, just stand up and kind of look at

1 me or something.

2 (WHEREUPON, Ms. Queen enters at approximately 9:46
3 a.m.)

4 **EXAMINATION**

5 **BY THE COURT:**

6 **Q** Ms. Queen.

7 **A** Yes, sir.

8 **Q** Let me take a minute to just talk to you. Then
9 I'm going to ask you a question. And then the lawyers are
10 going to resume. You have told us very candidly, we
11 certainly appreciate your candor. You told us that you
12 learned a good deal about this case before when it happened
13 and over the course of several months after that even up as
14 recently as March, I believe it was, when you had a
15 conversation with somebody who reminded you that Marion
16 Lindsey was Myron Lindsey.

17 **A** Yes, sir.

18 **Q** And then you recalled that you knew about the
19 case. Now, we've acknowledged that there has been a fair
20 amount of press coverage about this case. And there are a
21 lot of people in this jury pool who have learned about the
22 case either through the press or just by hearing about it.

23 **A** Okay.

24 **Q** What the juror's responsibility is and what your
25 responsibility as a juror would be if you were placed on

1 this jury is to put all of that aside and to come in here
2 with an open mind and a clean slate and to listen to the
3 law as I give it to you and listen to the evidence that is
4 presented before you in this courtroom under my
5 supervision. And when the time comes, to deliberate over
6 the evidence that you have heard in this courtroom and to
7 render a verdict based solely on that testimony and
8 evidence.

9 Now, that is your responsibility. But there are some
10 people who have become so intertwined with a situation that
11 they can't do that. That's what I want to know from you
12 now. Do you feel that you can come in here and follow my
13 instruction and render a verdict based solely on the
14 testimony and the evidence here in this courtroom
15 understanding that the defendant is presumed innocent and
16 that he is not guilty unless and until the jury finds that
17 the State has proven him guilty beyond a reasonable doubt?
18 Could you accept that presumption of innocence based on
19 what you know and what you had learned about this case or
20 what you heard about this case?

21 **A** In theory, yes, sir. I'm not sure emotionally
22 that I can.

23 **Q** All right. So do you then believe that your
24 previous involvement with hearing about this case, your
25 relationship, with your sister's -- with your best friend's

1 daughter and what she knew about the case, do you believe
2 that that would interfere with your ability to be a fair
3 and impartial juror in this case?

4 **A** Yes, sir.

5 **Q** Do you believe -- so you don't believe that you
6 would be able to render a verdict based solely on the
7 testimony and evidence that you hear in the courtroom?

8 **A** I don't know that I could honestly -- and it's
9 not necessarily the event that occurred that this case is
10 about but other things that had occurred beforehand.

11 **Q** Like what?

12 **A** I just know things that went on with Nell with
13 Myron earlier.

14 **Q** All right. You're telling me and you are being
15 very candid and I appreciate that. Are you telling me that
16 you don't think you will be able to set that information
17 aside?

18 **A** I don't think so.

19 **Q** All right. Ms. Queen, again, I'm going to ask
20 you to step in the hall just a second. And I will be right
21 back with you.

22 (WHEREUPON, Ms. Queen exits at approximately 9:49
23 a.m.)

24 **THE COURT:** All right. Before I bring her back,
25 let me ask you this, anything overbearing or improper

1 about the way that I went about trying to explain that
2 to her? Do you feel that I was going -- I was trying
3 not to falsely rehabilitate her. Was I too strong in
4 it? Did I do anything, cause that's the way I'm going
5 to handle it unless you tell me you think that's a
6 problem the next time it comes up.

7 **MR. BARTOSH:** In her case, Your Honor, I don't
8 believe that she could have been rehabilitated.

9 **THE COURT:** Right.

10 Bring her back in.

11 (WHEREUPON, Ms. Queen enters at approximately 9:50
12 a.m.)

13 **THE COURT:** All right. Ms. Queen, again, we
14 appreciate your candor. Because of your involvement,
15 we don't believe you are qualified as a juror in this
16 case. So we're going to excuse you.

17 (WHEREUPON, Ms. Queen exits at approximately 9:51
18 a.m.)

19 **THE COURT:** Come up here and look at these.

20 Hold him right there for a second.

21 (WHEREUPON, a bench conference was held off the
22 record.)

23 **THE BAILIFF:** Yes, sir.

24 **THE COURT:** All right. Mr. Culpepper is the
25 juror who told us yesterday that his grandmother is in

1 the hospital. The doctors have called the family in.
2 And he is concerned about his involvement in the case
3 this week and wants to be excused. He's got an excuse
4 from a Doctor Steven E. Freeman saying that Mr.
5 Culpepper's grandmother is gravely ill at Easley
6 Hospital. And both sides have agreed to excuse him
7 based on that family issue.

8 MR. GOWDY: That's correct, Your Honor. The
9 State has.

10 THE COURT: Mr. Bartosh?

11 MR. BARTOSH: No objection, Your Honor.

12 THE COURT: All right. Bring him in.

13 (WHEREUPON, Luther Culpepper, Juror number 65, entered
14 at approximately 9:51 a.m.)

15 THE COURT: All right. Mr. Culpepper, you, uh,
16 your grandmother is ill?

17 MR. CULPEPPER: Yes, sir.

18 THE COURT: And you went to check on her and she's
19 still not doing well. The family is very concerned
20 about how far she is going to make it?

21 MR. CULPEPPER: Yes, sir. They're saying she
22 isn't going to pull through.

23 THE COURT: All right. We've got your note here
24 from the doctor. We certainly sympathize with you and
25 the family and hope that it goes as well as it can.

1 We're going to excuse you from this case because of
2 that situation.

3 **MR. CULPEPPER:** Okay.

4 **THE COURT:** And wish you the best.

5 **MR. CULPEPPER:** Thank you, sir.

6 **THE COURT:** You're welcome.

7 (WHEREUPON, Mr. Culpepper exits at approximately 9:52
8 a.m.)

9 (WHEREUPON, Jon Krisher, Juror number 153, enters at
10 approximately 9:53 a.m.)

11 **JON KRISHER**

12 having previously been sworn, testified as follows:

13 **EXAMINATION**

14 **BY THE COURT:**

15 **Q** Mr. Krisher.

16 **A** Yes, sir.

17 **Q** Did I pronounce it correctly?

18 **A** Yes, you did.

19 **Q** You recall that you are -- that I put you under
20 oath yesterday. And you are still under oath.

21 **A** (Nods head affirmatively.)

22 **Q** And you will have to answer all of my questions
23 out loud so that my court reporter can take it down. You
24 understand that you are still under oath?

25 **A** Yes, sir.

1 Q All right. Now, since we left yesterday, has
2 anybody talked to you about this case or have you talked to
3 anybody about the case or have you learned anything about
4 the case or any press reports or news reports?

5 A Nope.

6 Q We're going to ask you some questions that we
7 don't intend to be an invasion of your privacy. But we do
8 have to ask these questions. There are not any right or
9 wrong answers to these questions. We just want to know --
10 we want you to be open and honest with us and tell us what
11 your feelings are and your thoughts are. Okay?

12 A Yes, sir.

13 Q We're going to talk about the penalty phase. The
14 fact that we're talking about the penalty phase doesn't
15 mean anything other than that we might get there. And
16 since we might get there, we need to know how you feel
17 about it. If you are a juror in a criminal case, in a
18 murder case, could you accept the law and apply the law
19 precisely as I give it to you and render a verdict based
20 solely on the testimony and evidence in this case and in
21 light of the law as I give it to you?

22 A Yes.

23 Q Based solely on the testimony and evidence that
24 you heard in the courtroom?

25 A Yes.

1 **Q** You understand in a criminal case, the State has
2 the burden of proof and must meet that burden of proof
3 beyond a reasonable doubt?

4 **A** Yes, sir.

5 **Q** Now, if you were a juror in a murder case such as
6 this, could you, depending on the facts and the
7 circumstances that are proven during the trial, could you
8 render a verdict of either guilty or not guilty depending
9 on whether or not you think the State has met its burden of
10 proof?

11 **A** I believe so.

12 **Q** You have any hesitation about that?

13 **A** Kind of.

14 **Q** What's your hesitation?

15 **A** Obviously, if they have enough evidence and I
16 thought it was exactly what everybody was thinking.

17 **Q** Say that again please.

18 **A** If there was enough evidence to where I thought
19 for sure.

20 **Q** Right. Let me back up just a little bit. As I
21 said, the State has the burden of proof. And the burden of
22 proof is beyond a reasonable doubt. Could you, and you are
23 sitting there as a juror, listen to the testimony and the
24 evidence that is presented during the trial and listen to
25 the law as I give it to you and render a verdict of either

1 guilty or not guilty depending on whether you think the
2 State has proven the defendant guilty beyond a reasonable
3 doubt?

4 A Yes.

5 Q You could do either one of those depending on
6 your view of the evidence?

7 A Yes.

8 Q Now, if that happened, we're going to now talk
9 about the penalty phase. Let me explain something to you.
10 If the defendant is found guilty, we'll be talking about
11 mitigating circumstances and aggravating circumstances.
12 Aggravating circumstances are facts and incidents and
13 details of an occurrence which the State of South Carolina
14 has deemed to make worse or to aggravate the crime of
15 murder. In other words, aggravating circumstances which
16 accompany a murder increase the enormity or add to the
17 injury of the crime of murder.

18 Mitigating circumstances, on the other hand, are facts
19 or details or incidents or an occurrence which the State
20 has declared to reduce the severity of the crime of murder
21 and may be considered as extenuating or as reducing the
22 degree of moral culpability or responsibility.

23 Now, if you were a juror in the sentencing phase of a
24 murder case, could you, depending on the facts and the
25 circumstances that are proven including the consideration

1 of any aggravating or mitigating circumstances, and if you
2 were given the choice of either the life sentence or the
3 death penalty, could you impose a life sentence?

4 A Yes.

5 Q Could you impose the death penalty?

6 A I don't know. I really don't know if I could or
7 not.

8 Q You don't know if you could or not. Well, that's
9 -- I appreciate the honesty of your answer. Now, if you
10 were on this jury and if you -- if I sequester the jury and
11 put you up in a hotel so you can't go home to your family
12 for five or six days, is that going to impose a terrible
13 burden on you?

14 A Not terrible, but it would be a burden.

15 Q Well, it's going to be a burden on anybody. But
16 you could do it?

17 A Yeah.

18 Q Now, you've been given a copy of that witness
19 list?

20 A Yes.

21 Q Have you had a chance to go over it in detail?

22 A Yes.

23 Q Is there anybody on that witness list who you
24 know or who you are related to?

25 A Nobody sounds familiar by name.

1 Q All right.

2 THE COURT: All right. Mr. Bartosh.

3 MR. BARTOSH: Thank you, Your Honor.

4 EXAMINATION

5 BY MR. BARTOSH:

6 Q Krisher, is that --

7 A Krisher.

8 THE COURT: Krisher, he says.

9 BY MR. BARTOSH:

10 Q Good morning. I'm Mike Bartosh with the Public
11 Defender's office. And we represent Marion Lindsey.
12 There's just a few questions that I would like to ask you.
13 In going over your juror questionnaire, there are a couple
14 of things that I would like to kind of expand on. You had
15 marked down that a family member had been killed by a drunk
16 driver?

17 A No.

18 Q You did not?

19 A No.

20 Q Have you been arrested by either the sheriff's
21 office or --

22 A Oh, wait. I take that back. The questionnaire
23 that everybody filled out.

24 Q Yes.

25 A I had a cousin, a distance cousin, years ago, I

1 never knew him, that was killed. He was drunk himself.

2 Q No one close or anything recent?

3 A No, sir.

4 Q You also said that you were arrested by the
5 Spartanburg County Sheriff's office or the Inman Police
6 Department?

7 A Spartanburg County.

8 Q Was that the DUI?

9 A No. I got arrested for possession at one time
10 and I was driving while my license was suspended.

11 Q Possession of marijuana?

12 A Yeah.

13 Q Okay. Also and I don't mean to thrive on this
14 either, but you indicated that your father was abusive when
15 you were growing up and you were a victim of domestic
16 violence?

17 A Yes.

18 Q And you grew up with your father, that's correct?

19 A Yes, sir.

20 Q How long did this abuse go on?

21 A It wasn't me that was abused. It was more verbal
22 abuse most of the time.

23 Q Okay. Did that have a great affect on you?

24 A Not really. It did when I was younger. But it's
25 good now.

1 Q Okay. Now, as the Judge told you, this trial is
2 going to be two different sections. The first section is
3 going to be dealing with the guilt phase. It will be just
4 like a regular trial where the jury will sit and listen to
5 the evidence presented by the State. If all twelve jurors
6 believe the State has carried their burden of proving the
7 defendant guilty beyond a reasonable doubt, then we go into
8 the second phase.

9 If they don't, if the jury doesn't believe that they
10 have, then we all go home. Now, if we do go into a second
11 phase, sometimes it is known as a sentencing phase,
12 sometimes known as a penalty phase. Basically that is to
13 determine what the appropriate penalty is going to be and
14 it is different in a way because in these type cases, the
15 penalty is the jury's decision. Okay?

16 A (Nods head affirmatively.)

17 Q As the judge says what happens is the solicitor
18 or the prosecutor will stand up, and he will present as
19 much aggravating circumstances as he possibly can to
20 convince all twelve folks to put Mr. Lindsey to death. Of
21 course, what we would do is as our time comes, we will put
22 up as much mitigating circumstances the try to convince the
23 jury that Mr. Lindsey does not deserve to die and that life
24 would be an appropriate response or appropriate penalty.

25 Now two questions. The first one will be, there are

1 going to be some allegations of domestic abuse in this
2 case. Would that affect your ability to give either side
3 a fair trial?

4 A No, sir.

5 Q Would that affect your ability -- in the penalty
6 phase, would that influence your decision as to whether or
7 not life or death would be appropriate?

8 A I don't know, sir.

9 Q In other words, and I don't want to put words in
10 your mouth, but as I understand what you are saying is you
11 will be able to listen to both sides in the penalty phase
12 and render what you feel to be the most appropriate penalty
13 whether it be life or whether it be death?

14 A Right.

15 Q You will be able if you felt death was
16 appropriate, you would be able to impose the death penalty?

17 A Yes.

18 Q If you felt it was appropriate?

19 A Yes.

20 Q Likewise if you believe it was appropriate, if
21 you believe that life was appropriate, you be able to
22 impose that?

23 A Yes, sir.

24 Q One other question, well two. Let's say the jury
25 is 11 to 1 for death. It must be unanimous. Would you be

1 able, if you believe that life was appropriate, would you
2 be able to hold out and go with your beliefs against the
3 other eleven?

4 **A** Yes, if that's what I think.

5 **Q** The other thing about it is, of course, life is
6 always an option. You do not have to give the death
7 penalty. Life is always an option. You are not required
8 to give the death penalty not unless you feel it is
9 appropriate. If you do feel it is appropriate, every
10 juror -- like I said, it has got to be unanimous either
11 way. Life or death.

12 Every juror has to sign the sentencing document. And
13 if it meant, clearly put if you were the last one, all
14 eleven jurors had signed before you and you felt death was
15 appropriate, would you sign your name to that document?

16 **A** If I felt that way.

17 **Q** If you felt that death was appropriate?

18 **A** Yes.

19 **Q** That is all I have.

20 **MR. BARNETT:** May it please the Court, Your
21 Honor.

22 **THE COURT:** Yes, sir.

23 **EXAMINATION**

24 **BY MR. BARNETT:**

25 **Q** My name is Barry Barnett. Mr. Willingham and

1 Mr. Gowdy will be prosecuting the case. I noticed when you
2 have been answering the Judge's questions and Mr. Bartosh
3 questions, it seemed like you were kind of emotional a
4 little bit. Does this affect you or are you just thinking
5 real long about it?

6 A I'm just thinking about it.

7 Q Now you realize that death, it is not
8 automatically death if we get to the sentencing phase.
9 That is not automatic sentence. Life without parole is
10 always an option.

11 A Uh-huh (affirmative).

12 Q You understand that?

13 A Yes.

14 Q Knowing that, and I noticed in your questions to
15 the Judge, you were hesitant about the death penalty. You
16 just did not know about it?

17 A Right.

18 Q You know life without parole is an option. He
19 would never get out if he gets life without parole. With
20 death being an option to you, would you ever give death in
21 a case?

22 A Most of the time I feel it is a better punishment
23 to be in prison for life. I believe that death is not as
24 big of a punishment as going to prison for life and having
25 to stay in prison for the rest of your life.

1 Q You feel life without parole would be a better
2 sentence?

3 A Yes, for something that is -- I believe that is
4 worse than the death penalty.

5 Q So that would be the better option to you between
6 the two?

7 A Yeah.

8 Q Would that be the option you would give the most
9 cases or all cases?

10 A I am not positive. I don't know for sure.

11 Q You don't know what you would do?

12 A Right, exactly.

13 Q Your belief is that life without parole is a more
14 serious punishment than the death penalty?

15 A Yes.

16 Q That would be the option you would choose?

17 A Not necessarily but most likely.

18 Q Most likely you would do that?

19 A Yes.

20 Q So substantially that will be your view
21 concerning the case no matter what the facts would be, that
22 would be your view?

23 A Yes.

24 Q I notice you were also hesitate in talking about
25 the burden of proof. You said you believed so. Then you

1 were hesitant to the Judge's questions. Is that something
2 you would look at, the burden of proof? I just want to
3 explore that.

4 A What do you mean?

5 Q When he was talking to you about the burden of
6 prove and so forth, you were a little hesitant about that.
7 I did not know if that was from your personal views or if
8 that was just not understanding the judge's questions at
9 first?

10 A Probably did not understand.

11 Q Okay. I notice you have been arrested by the
12 Inman Police Department and the Sheriff's Department, is
13 that correct?

14 A Uh-huh (affirmative).

15 Q Is that the Spartanburg County Sheriff's
16 Department?

17 A Spartanburg County.

18 Q What were you arrested for, sir?

19 A Possession one time. And also I was arrested for
20 driving with my license suspended.

21 Q You were arrested here in Spartanburg County for
22 that?

23 A Yes.

24 Q Would knowing that the Spartanburg County
25 Sheriff's Department were involved in this case, would

1 that affect your views on this case?

2 A No, sir.

3 Q I noticed in your questionnaire you did not list
4 a religion or affiliation or anything?

5 A I don't really have a religion.

6 Q What were you raised in? Were you raised in a
7 religion?

8 A Yes, I was raised as a Baptist. I was going with
9 my mother's church until I was 18. I really just don't have
10 a belief.

11 Q I'm sorry about these questions. We're just
12 trying to get -- usually when we ask this question --

13 A I understand that.

14 Q And I notice you did have a prior record. You
15 listed that on here for driving under the influence or DWI.
16 Does that affect your ability having been incarcerated
17 before?

18 A No, sir.

19 MR. BARNETT: One moment, Your Honor.

20 Your Honor, I don't have any other questions.

21 MR. BARTOSH: May I have one quick follow up?

22 THE COURT: Any objection?

23 I'm going to allow it. Go ahead.

24 EXAMINATION

25 BY MR. BARTOSH:

1 a.m.)

2 **MR. BARNETT:** Your Honor, the problem with his
3 answer was based on -- I asked him a question.
4 Obviously, he feels life without parole is a more
5 serious punishment for this. He would not look at the
6 facts of the case. He would go off his personal
7 belief of life without parole. And he would choose
8 that over death based on his personal belief not
9 looking at the facts of the case. I think he should
10 be disqualified based on that.

11 **MR. BARTOSH:** Your Honor, the question I asked
12 him was did he consider life without parole to be a
13 worse punishment than death. And he said yes. I said
14 if you felt that death was appropriate, could you give
15 it. And he said yes.

16 **THE COURT:** Well, doesn't that raise a right
17 interesting question? Isn't it just -- isn't it true
18 that under South Carolina law, the death penalty is
19 reserved for the most serious and egregious murders.
20 And the death penalty is clearly a more severe
21 punishment than a life sentence under South Carolina
22 law?

23 **MR. BARTOSH:** Your Honor, I would respectfully
24 disagree with that. I think that you could find many
25 people who would believe that the death penalty is a

1 blessing in comparing --

2 **THE COURT:** But I very, very carefully, perhaps
3 inartfully but vigorously tried to phrase my question
4 as being a question about the law of the State of
5 South Carolina and not the content of the mind of some
6 person out there on the street. Isn't it true that
7 the law of the State of South Carolina is that the
8 death penalty is reserved for the most egregious
9 murders and is a more severe penalty than the life
10 sentence?

11 **MR. BARTOSH:** I don't -- I agree that it is
12 reserved for the most egregious. But I don't know
13 that it goes so far to say that it is the worse.

14 **THE COURT:** Here we've got a guy that says that
15 he's going to, that under his view of the difference
16 between the life sentence and the death penalty, he's
17 going to impose the death penalty for the less severe
18 murders and impose the life sentence for the more
19 severe murders. Isn't that turning the whole
20 sentencing scheme that is set up on South Carolina law
21 on its head?

22 Based on what he said, is he not going to sit in
23 there and say I find the mitigating factors outweigh
24 the aggravating factors. So that's why I'm going to
25 impose the death penalty because it's not as a bad as

1 the murder that I think the guy --

2 **MR. BARTOSH:** Or he can say I find the
3 aggravating factors worse than the mitigating factors
4 so I'm going to impose death because I think it is a
5 worse punishment.

6 **THE COURT:** That is not what he said. He thinks
7 life is worse.

8 **MR. BARTOSH:** That's what I mean. And I am
9 going to go with the aggravating because I think death
10 -- now I'm all confused. I think life is a worse
11 punishment than death.

12 **THE COURT:** So we are putting the jury, if he
13 is on a jury in a situation of let's say the State
14 comes in here and proves to everybody's satisfaction
15 hypothetically that this is the worst murder that ever
16 occurred in the State of South Carolina, this the
17 PeeWee Gaskins of the 22nd century or first century or
18 whatever century we are in. And then under these
19 jurors' views, because they all agree it is the worst
20 murder that have occurred, you've got eleven people
21 standing firm for the death penalty and one person
22 standing firm for the life sentence based on his
23 views.

24 **MR. BARTOSH:** That happens all the time.

25 **THE COURT:** I know.

1 **MR. BARTOSH:** They can impose whatever they do
2 for no reason at all.

3 **MR. BARNETT:** If I can be heard, I asked him
4 twice, two different times. My first time on my first
5 question and my second question I asked him the same
6 question. If he had a choice between life and he said
7 he would look at the facts. He wouldn't even look at
8 the facts. It's based on his personal belief.
9 Obviously, that puts him in the juror of a life juror.
10 He is not the third class juror. There's no question
11 about it.

12 He gave inconsistent answers. The reason I
13 follow up is because he was very hesitate about the
14 life sentence. If I remember he was hesitate about the
15 burden of proof. He was hesitate about the death
16 penalty. He said he didn't know. Then Mr. Bartosh
17 got up and tried to talk to him and tried to
18 rehabilitate him. I asked him a question and he
19 plainly said that life without parole is a better
20 option. He went beyond that and said he wouldn't
21 even listen to the facts. He would look at that.

22 His inconsistent answers are based on State
23 versus Tyler. It would be a situation where it's
24 definitely inconsistent answers between the questions
25 that has been asked. I think he would be

1 disqualified based on that. He's not a qualified
2 juror. He is not a third class juror.

3 **THE COURT:** I have got two concerns about Mr.
4 Krisher. First of all, and I'm not sure exactly how
5 this plays out. But in my view, the way that the
6 whole sentencing scheme is set up is that the death
7 penalty is the worst penalty for a murder under South
8 Carolina Law. That is just obvious.

9 Under the law, if we get into the penalty phase,
10 there has to be a unanimous verdict for death. It
11 does not necessarily have to be unanimous for life.
12 To get a verdict of a life, it has to be unanimous.
13 But if there's a mistrial, a failure to reach a
14 verdict in the penalty phase, it is a life sentence.
15 We don't go at it again, right?

16 **MR. BARTOSH:** Correct.

17 **THE COURT:** The one thing that Mr. Krisher was
18 very clear about was his belief that a life sentence
19 was worse than the death penalty because it would put
20 a person in prison for life so they can sit around and
21 think about what they did and have to live with what
22 they did. I am concerned that that is an opinion that
23 is contrary to South Carolina law and that it is an
24 opinion that would substantially impair his ability to
25 follow my instructions in fairly and objectively

1 deliberating as to what the sentence ought to be.

2 That is one thing.

3 The other thing is that the very first question I
4 asked him, could you impose the death penalty, he took
5 a very a deep breath and exhaled and said something
6 and I thought I -- I didn't write down exactly what it
7 was. But it was something like I don't know if I
8 could do that. And then when Mr. Barnett came back
9 to begin asking him the questions, he did the exact
10 same thing.

11 Something like would you ever give the death
12 penalty. He took a very big deep and exhaled as if
13 he were very uncertain as to whether or not he could
14 do that. And then he said Yes, but most of time I
15 feel life would be appropriate.

16 So from watching him and watching his response to
17 all of the questions and also from listening to his
18 responses which in my view as Mr. Barnett pointed out
19 fairly inconsistent, I am convinced that this is a
20 juror that -- whose views about the death penalty
21 particularly his views that the death penalty is not
22 as severe a punishment as the life sentence that those
23 would substantially impair his ability to follow the
24 law as I instructed.

25 And that he would be unable -- it would

1 substantially impair the performance of his duties as
2 a juror in deliberating over what the penalties should
3 be. And so I'm going to find him disqualified.

4 Bring him in.

5 (WHEREUPON, Mr. Krisher enters at approximately 10:22
6 a.m.)

7 **THE COURT:** Mr. Krisher, I have thought
8 carefully over your answers. And I am finding that
9 you're not qualified as a juror in this case. We're
10 not going to need your services anymore. So you are
11 free to go.

12 **MR. KRISHER:** Thank you, sir.

13 **THE COURT:** Bring us a juror.

14 (WHEREUPON, Angela Haley, Juror number 115, enters at
15 approximately 10:23 a.m.)

16 **ANGELA HALEY**

17 having previously been sworn, testified as follows:

18 **EXAMINATION**

19 **BY THE COURT:**

20 **Q** Good morning, Ms. Haley.

21 **A** Good morning.

22 **Q** How are you?

23 **A** Fine.

24 **Q** You remember yesterday that we put you under oath
25 and you are still under oath this morning?

1 **A** Yes.

2 **Q** Since you left us yesterday, has anybody talk to
3 you about this case or have you talked to anybody about the
4 case?

5 **A** No, sir.

6 **Q** Have you learned anything about the case from the
7 press or TV or newspaper reports?

8 **A** No, sir. But I do have the Spartanburg Herald
9 Journal in my car. And when I am dismissed or after this
10 trial is over, I intend to read about it after that.

11 **Q** All right. But you have not read about it?

12 **A** I've not read anything.

13 **Q** You are not going do anything until --

14 **A** I'm not going to do anything.

15 **Q** All right. I'm going to -- you are very eager to
16 answer my questions. And I'm sure you're very eager to
17 answer them candidly. But I'm going to ask you to make
18 sure I'm finished with my question before you begin to
19 answer. We do have some questions. We're not going to try
20 to invade your privacy but we have to get answers to these
21 questions. There are not any right or wrong answers. We
22 just want you to be open and honest with us and tell us how
23 you think and tell us how you feel. Does that suit you?

24 **A** Certainly.

25 **Q** We're going to talk about the penalty phase but

1 the fact that we're talking about the penalty phase does
2 not mean anything about the defendant. It just means that
3 because we might get to the penalty phase, we need to know
4 how you think and how you feel about the issues that will
5 come up.

6 If you are a juror in a criminal case, could you
7 accept and apply the law precisely as I state it to you and
8 render a verdict based solely on the testimony and the
9 evidence that you hear in the courtroom and in light of the
10 law as I have given it to you? Could you do that?

11 A In this case particularly or in any case?

12 Q Well, let's -- since you -- in any case to start
13 with. In any case, can you listen to the law as I give it
14 to you and render a verdict based solely on the testimony
15 and evidence that you hear in the courtroom?

16 A Yes.

17 Q All right. Now, you understand that the State
18 has the burden of proof?

19 A Yes.

20 Q The State has to prove the Defendant's guilt
21 beyond a reasonable doubt?

22 A Yes.

23 Q That means that the Defendant is presumed
24 innocent. You understand what that means?

25 A Yes, I do.

1 **Q** Now, you have raised a question about this
2 particular case. You have mentioned perhaps a difference
3 between this particular case. So let me take a moment to
4 explain to you what your responsibilities are as a juror.

5 Your responsibilities are to come in here and if you
6 know anything about this case or if you have heard anything
7 about this case, your responsibility is to set that aside
8 and to listen to the testimony and the evidence that is
9 presented here and to render a verdict based solely on the
10 testimony and evidence that you hear right here in this
11 courtroom in light of the law as I give it to you. Could
12 you do that in this case?

13 **A** Probably not in this case, no.

14 **Q** Tell me why that is.

15 **A** First of all, I don't know anything about this
16 case. I don't where I've been, but I am one of the few
17 people apparently who doesn't know anything. However,
18 just from what was brought up yesterday that you asked us,
19 apparently there was domestic abuse. I feel very strongly
20 about that.

21 I also as a public school teacher feel that if the
22 Spartanburg County Investigators feel that this man is
23 guilty of something, though I know this sounds very harsh
24 but this is just the way I feel, then that is probably good
25 enough for me. And if the Solicitor's Office is also

1 planning on wanting to pursue the death penalty, that means
2 they must have a very strong case and have very strong
3 feelings. And I don't know than I could set that aside. I
4 think I would prejudice the jury in that way.

5 I would try of course. I have been on several other
6 juries. And I have always gone exactly by what the Judge
7 has put forth as the law. But in this case, I think that I
8 would be prejudiced against that.

9 Q You mentioned that the case involves domestic
10 violence.

11 A I think. I don't know.

12 Q Well, it does. It involves allegations of
13 domestic violence. We can talk more about that if we need
14 to. But you also mentioned two things that concern me.
15 I want to make sure that I straighten you out. We may not
16 get any farther than this but I want to make sure you
17 understand something. The defendant is presumed innocent.
18 The opinion of a sheriff's deputy, the opinion of a police
19 officer is irrelevant. The opinion of the solicitor is
20 irrelevant.

21 If you are a school teacher, then you probably have
22 studied enough to realize that we operate under a
23 government of laws here. And we do not just make our own
24 laws. The law of this country is that the verdict in a
25 criminal case is based on facts, testimony and evidence

1 that is presented in a courtroom. The solicitor's
2 opinion, law enforcement opinion is not a fact.

3 Now, as a member of the jury, you would be obligated
4 to follow that law, to not consider opinions of law
5 enforcement, not consider the opinions of the Solicitor.
6 Could you do that?

7 **A** No. And if I may say something, it is paramount
8 that this man, this man has rights under the constitution.
9 It is paramount that the presumption of innocence is there.
10 I'm saying that because of my background that I personally,
11 as harsh as it sounds, I am presuming that because these
12 people that I have trusted and voted for are doing what
13 they feel is right. Naturally, as harsh as it may sound, I
14 don't feel that I need to say that again. I think that
15 naturally it should go towards the prosecution.

16 **Q** Okay. Well, why don't you step in the hall for
17 just a second. And we will get right back to you.

18 (WHEREUPON, Ms. Haley, exits at approximately
19 10:39 a.m.)

20 **THE COURT:** I'm assuming that there's no objection
21 to disqualifying this juror? Is there any objection
22 to me giving her a civics lesson and requiring her to
23 sit and watch the entire rest of the proceedings of
24 this case?

25 **MR. GOWDY:** As long as you don't tell her

1 again the Solicitor's opinion is irrelevant.

2 **THE COURT:** I believe, my opinion is that somebody
3 had explained to her how to get out of jury service.
4 And so I am going to give her a civics lesson. She's
5 going to sit and watch the rest of this case.

6 **THE CLERK:** Your Honor, her questionnaire says
7 that she watches COURT TV.

8 **THE COURT:** Bring her in.

9 (WHEREUPON, Ms. Haley enters at approximately
10 10:30 a.m.)

11 **THE COURT:** Ms. Haley, because of your views that
12 you have candidly shared with us, you are not
13 qualified to serve as a juror. Because I think you
14 would enjoy staying with us and watching how things
15 proceed and perhaps that you would learn a little bit
16 from it, I'm going to ask that you stay with us until
17 this case is concluded. You can have a seat right out
18 there in the audience. I'm going to instruct you
19 though, ma'am, do not discuss this case with anybody
20 period.

21 **MS. HALEY:** Okay.

22 **THE COURT:** Don't discuss it especially with a
23 juror and don't discuss it with anybody that might be
24 involved in this case.

25 **MS. HALEY:** You want me to take this off?

1 **THE COURT:** Yes, ma'am.

2 All right. Bring us another juror.

3 (WHEREUPON, Ms. Haley takes a seat in the audience.)

4 **THE BAILIFF:** She had to go to the restroom,
5 Your Honor.

6 **THE COURT:** I want Mr. Darcy Thompson. Where is
7 she?

8 **THE BAILIFF:** She's in the restroom. She's the
9 last one on number 2.

10 **THE COURT:** Why don't we just take a break now.
11 And we will just have a seven person panel next time.
12 Does that suit y'all?

13 **MR. BARTOSH:** Yes, sir.

14 **THE COURT:** Seven minutes.

15 (WHEREUPON, a short recess was taken at approximately
16 10:31 a.m.)

17 (WHEREUPON, the Court resumed at approximately
18 10:40 a.m.)

19 **THE COURT:** Bring in the juror.

20 (WHEREUPON, Darcy Thompson, Juror number 274, enters
21 at approximately 10:40 a.m.)

22 **DARCY THOMPSON**

23 having previously been sworn, testified as follows:

24 **EXAMINATION**

25 **BY THE COURT:**

1 Q Good morning, Ms. Thompson.

2 A All right. How are you doing?

3 Q Just fine. How are you doing?

4 A All right.

5 Q You remember that you are still under oath from
6 yesterday?

7 A Yes.

8 Q Now, since yesterday when I dismissed you, have
9 you learned anything about this case or talked to anybody
10 about this case or had anybody talked to you about the
11 case?

12 A No, sir.

13 Q Now, we're going to ask you some questions. And,
14 uh, we don't mean to pry into your privacy but we do have
15 to ask these questions. So I hope you will bear with us.
16 There are not any right or wrong answers to these
17 questions. We just want you to be open and honest with us.
18 Tell us how you think and tell us how you feel. Okay?

19 A All right.

20 Q We are going to be talking about the penalty
21 phase. But the fact that we're talking about the penalty
22 phase doesn't mean anything about the defendant in this
23 case. It just means that because we might get there, we
24 need to know how you think and how you feel. If you were a
25 juror in a criminal case, could you accept and apply the

1 law precisely as I give it to you and render a verdict
2 based solely on the testimony and evidence that you hear in
3 this courtroom in this case?

4 A Yes.

5 Q You could?

6 A (No response).

7 Q I didn't understand you.

8 A Oh, yes.

9 Q You understand in a criminal case that the State
10 has the burden of proof and must prove the defendant guilty
11 beyond a reasonable doubt?

12 A Yes.

13 Q In a murder cases such as this, could you
14 depending on the facts and circumstances that are proven in
15 the case could you render a verdict of either guilty or not
16 guilty depending on whether or not you think the State has
17 met its burden of proof?

18 A Well, I would say guilty.

19 Q How do you know? Don't you have to listen to the
20 evidence first?

21 A Yeah. I would have to listen to the evidence.

22 Q You have to listen to the evidence. If you don't
23 think the State has proven somebody guilty, would you find
24 them guilty anyway?

25 A Well, no.

1 Q You would have to listen to the evidence?

2 A Yes.

3 Q That is all I want to know. If you sat as a
4 juror in a criminal case, in a murder case, would you be
5 able to listen to the evidence and in light of the law as I
6 give it to you find the defendant either guilty or not
7 guilty depending on whether or not you think the State has
8 met its burden of proof?

9 A Yes, I would have to listen to evidence.

10 Q If in a murder case such as this the jury found
11 the defendant guilty and you move into the penalty phase,
12 we're going to talk a little bit about that. Let me tell
13 you what aggravating circumstances and mitigating
14 circumstances are.

15 Aggravating circumstances are facts, incidents or
16 details of an occurrence that the State of South Carolina
17 has declared to make worse or to aggravate the crime of
18 murder. In other words, aggravating circumstances when
19 accompanying a murder increase the enormity of or add to
20 the injury of a murder.

21 Mitigating circumstances, on the other hand, are facts
22 or details or incidents of an occurrence, details of an
23 occurrence that the State has declared to reduce the
24 severity of a crime of murder. They may be considered as
25 extenuating or as reducing the degree of moral culpability

1 or responsibility.

2 If you were a juror in the sentencing phase of a death
3 penalty case such as this, could you, depending on the
4 particular facts and circumstances of the case including
5 the consideration of aggravating and mitigating
6 circumstances, in light of the law as I give it to you and
7 if you had the option of either a life sentence or the
8 death penalty, could you vote for a life sentence?

9 A Yes.

10 Q Could you vote to impose the death penalty?

11 A Yes.

12 Q If you were sequestered as a member of the jury
13 and not allowed to go home to your family for five or six
14 days and put up in a nice hotel and taken care of, would
15 that impose a terrible burden on you?

16 A No, sir.

17 Q Have you had a chance to go over the witness list
18 that I gave you?

19 A Yes.

20 Q Do you know anybody or are you related to anybody
21 on that list?

22 A I am not related to anybody on that list. And I
23 don't think I know too many people on there.

24 Q If you do know somebody, I need to know who it
25 is.

1 **A** I don't know anybody.

2 **Q** Have you had a chance to go over it in detail and
3 read each name on the list?

4 **A** Yes.

5 **Q** You don't know anybody?

6 **A** No.

7 **Q** Do you know of any reason why you can't give both
8 the State and the defendant fair and impartial trial?

9 **A** No.

10 **Q** Thank you, ma'am. I'm going to let the lawyers
11 ask you some questions then I may come back and ask you
12 some more questions myself.

13 **THE COURT:** Mr. Brennan.

14 **EXAMINATION**

15 **BY MR. BRENNAN:**

16 **Q** Ms. Thompson, my name is Doug Brennan. I'm an
17 attorney here in Spartanburg. I'm working with Mr.
18 Bartosh and Ms. Quimby of the Public Defender's Office to
19 defend Mr. Lindsey. Thank you for your time today.

20 Ma'am, let's suppose for just a moment that we get
21 into a sentencing phase in this case. That means that all
22 twelve jurors including the two alternates, as well as the
23 two alternates, listened to the evidence and you are
24 deliberating. And eleven people have voted or decided that
25 the death penalty is proper, but you believe otherwise.

1 You believe that a sentence of life is proper. If those
2 eleven people are saying death, can you stand your ground?
3 Can you stand your convictions and say no, life is proper?

4 A For right now, I would say I don't know because
5 the case hasn't started.

6 Q All right. If those eleven people tried to
7 convince you to vote the other way, could you stand your
8 ground and stay with your vote or your position of life in
9 prison?

10 A Yes.

11 Q Okay. All right. Based on your own experiences,
12 do you have an opinion as to the death penalty?

13 A In certain cases, if they, you know, you know, in
14 the jury room or punishment.

15 Q Let me -- there are certain people that in a
16 trial, a capital trial who will always vote for the death
17 penalty. And there are certain people who will always vote
18 for a life penalty. And then there are some that don't
19 know which way they will vote. Which one of those
20 categories do you fit into?

21 A I would say life.

22 Q You would say life. But if the facts supported
23 it, could you vote for death?

24 A Yes.

25 Q All right. Now, your opinions as to the death

1 penalty, are they based on your experiences in life? Are
2 they based on your religious views? What gave you or what
3 helped you create that opinion as to the death penalty?

4 A Well, I would say my religion.

5 Q Ma'am, do you know anything about this case?

6 A No, sir.

7 Q Have you ever seen Marion Lindsey before?

8 A No, I don't know him.

9 Q Okay. One second.

10 MR. BRENNAN: Nothing further. Thank you, Your
11 Honor.

12 Thank you, ma'am.

13 EXAMINATION

14 BY MR. WILLINGHAM:

15 Q Ms. Thompson, my name is Donnie Willingham.
16 This is Barry Barnett. We will be prosecuting this case
17 along with Solicitor Gowdy. I want you to understand there
18 are no right answers, no wrong answers.

19 A Right.

20 Q Only your answers. Okay? I think I understood
21 when you were talking to Mr. Brennan, when you are given a
22 choice between life or death, you told him you would go
23 with life?

24 A Yes.

25 Q You understand you will never be required to

1 impose the death penalty?

2 A No.

3 Q The judge will not tell you that you have to
4 impose the death penalty. You understand?

5 A Yes.

6 Q Other jurors can't tell you you've got to impose
7 the death penalty. There's always a choice between life
8 without parole and death. You understand?

9 A Yes.

10 Q As I understood you correctly, you told me that -
11 - you told me and you told Mr. Brennan and you told me
12 just now that given the choice between the two, you would
13 always go with life?

14 A Yes, that's what I told myself. It depends on
15 the case and the facts on whether the case is a life or
16 death penalty.

17 Q I understand. You come from a religion. I see
18 that you go to Metropolitan AME Zion Church. Is that where
19 you --

20 A Yes.

21 Q All right. And you think the life sentence is
22 probably more appropriate?

23 A Like I say, it depends on the case or the
24 punishment of the case.

25 Q I understand. I think I understand.

1 **A** It's about justice.

2 **Q** Yes, ma'am. That's what we're about here this
3 week.

4 **MR. WILLINGHAM:** Beg the Court's indulgence.

5 **BY MR. WILLINGHAM:**

6 **Q** I may be accused of beating a dead horse. And
7 you may want me to sit down. But I'm want to ask you one
8 more time. There are three types of jurors. There is one
9 type of juror that says when given a choice between life or
10 death, I'm always choosing life.

11 Another juror that says when given the choice between
12 life and death, I am always choosing death. And there is a
13 third type of juror that says between life and death, I'm
14 going to choose either one. If I understood you correctly,
15 you told Mr. Brennan and you told me that you fit in that
16 first category.

17 **A** Yes, I said it depends on the case, the killing
18 or depending on what is the punishment.

19 **Q** Ms. Thompson, could you ever see, and then again
20 there's no right or wrong answer. Is there ever a
21 situation where you could see yourself actually imposing
22 the death sentence?

23 **A** The death sentence? Well, like I said, it
24 depends on the case.

25 **Q** Ms. Thompson, I understand that and I'm not

1 asking if you could consider the death penalty. I'm asking
2 if you could take it a step further and actually impose it
3 as a juror?

4 A Yes.

5 Q There is a form that has to be signed by every
6 juror in order for a death verdict to be granted. With
7 your signature, a death sentence is going to be carried
8 out. You understand?

9 A Yes.

10 Q Could you put your name for all the whole world
11 to see on that death verdict?

12 A Like I said, it depends on, I haven't heard the
13 case.

14 Q And I understand that and I can't tell you at
15 this point about the case. But I'm just asking you in
16 general terms, can you ever really realistically see
17 yourself imposing the death penalty?

18 A For right now, no. I have to sit on the jury to
19 review and see the case.

20 Q Ms. Thompson, I understand that and I appreciate
21 it. And it's hard for us to ask questions in a vacuum.
22 It's hard for you to answer questions in a vacuum. But if
23 I wait until you hear all the evidence and then you decide
24 that there is never a time that I would impose the death
25 penalty, it's too late for me to ask you about that.

1 **A** I know.

2 **Q** If you can't, that's fine.

3 **A** Uh-huh (affirmative).

4 **Q** But if you can, I need to know about that. Do
5 you think you could impose a death penalty?

6 **A** Not right now.

7 **THE COURT:** Let me ask you a few questions, Ms.
8 Thompson. Now, we realize that you haven't heard the
9 case yet.

10 **MS. THOMPSON:** Yeah, that's true.

11 **THE COURT:** The lawyer's are not asking you would
12 you impose the death penalty in this case. That is
13 not a fair question cause you don't know anything
14 about it yet.

15 **MS. THOMPSON:** Sure don't.

16 **THE COURT:** We're not asking you what's going to
17 be your verdict in this case. We're just asking you
18 is there a case that you could sit on a jury and look
19 at it and say this is bad and this is bad enough for
20 the death penalty. Could you get to that point?
21 Could you imagine a case where you could impose the
22 death penalty?

23 **MS. THOMPSON:** Yes. Like you say, this case is
24 determined by the citizens that hear about the case.

25 **THE COURT:** Yeah.

1 **MS. THOMPSON:** Only the jury can hear about that.
2 Right now, I can't.

3 **THE COURT:** We're not asking you to do it right
4 now. But let me ask you another way. I think you
5 answered it. I'm satisfied with your answer. Let me
6 ask you a different way. A juror who is always going
7 to impose a life sentence is not qualified to serve as
8 a juror in this case. Are you the kind of juror who
9 is always going to look at a case and say, no, this is
10 bad but I'm not going to consider the death penalty.
11 I'm going to impose a life sentence. Are you that
12 kind of juror?

13 **MS. THOMPSON:** Well, like I said, for right now,
14 yes.

15 **THE COURT:** Ma'am?

16 **MS. THOMPSON:** Yes, for right now.

17 **THE COURT:** Now I'm not talking about this case.
18 When you think generally about the concept of the
19 death penalty, are you opposed to the death penalty?

20 **MS. THOMPSON:** No, sir.

21 **THE COURT:** Ma'am?

22 **MS. THOMPSON:** No.

23 **THE COURT:** Do you support it?

24 **MS. THOMPSON:** If it is a bad case, you know, if
25 it is needed for the death penalty.

1 **THE COURT:** All right.

2 **MS. THOMPSON:** I will consider it.

3 **THE COURT:** If you consider it and if you
4 decide that it was appropriate, if, if you did that,
5 if in this case or in any case you got to the point
6 where you had decided the death penalty was
7 appropriate, could you vote to impose the death
8 penalty?

9 **MS. THOMPSON:** Yes, in some cases.

10 **THE COURT:** Let me ask you to step out in the
11 hall for just a second and we will get back with you.

12 **MS. THOMPSON:** Thank you, sir.

13 (WHEREUPON, Ms. Thompson exits at approximately
14 10:57 a.m.)

15 **THE COURT:** Any objections?

16 **MR. BARTOSH:** No, sir. I think her responses
17 to your questions indicate that she is qualified.

18 **MR. WILLINGHAM:** Judge, I can't get over the fact
19 that she answered Mr. Brennan's questions and my
20 questions that she would always choose life over
21 death. I don't think she is qualified.

22 **THE COURT:** I don't think that is what her
23 answer was. My initial impression about this juror
24 is that she was open-minded and willing to consider
25 both the life sentence and the death penalty. It is

1 my very clear impression that when you all asked her
2 those questions, she was thinking that y'all were
3 asking her what was going to be her verdict in this
4 case. Her answer to you was, I have not heard the
5 case yet, so I am not going to impose the death
6 penalty because I have not heard the case.

7 I think she cleared that up when I asked her the
8 follow-up questions. I am not sure that maybe she is
9 not the sharpest juror in the pool. I hate to say
10 that, but I think it is important that I say that in
11 order to clarify my ruling. I don't think she
12 understood the two questions that she answered when
13 she said, No, I can't impose the death penalty. I
14 think she thought y'all were asking her what was going
15 to be her verdict in this case. So I think she is
16 qualified.

17 Bring her in.

18 (WHEREUPON, Ms. Thompson enters at approximately
19 10:58 a.m.)

20 **THE COURT:** Ms. Thompson, I find that you are
21 qualified to serve as a juror in this case. We are
22 going to let you go now but we will be back with you
23 in a couple of days. Starting at about midmorning to
24 late morning tomorrow, I want you to check the
25 telephone number that you were given. There will be

1 a recording on there. When we get close to needing
2 you, we will put on the recording when we think you
3 are going to need to come back in.

4 MS. THOMPSON: All right.

5 THE COURT: From now until then, do not read
6 the newspaper about this case. Don't watch any TV
7 news. Don't talk to anybody about this case. Don't
8 allow anybody to talk to you about this case.

9 MS. THOMPSON: All right.

10 THE COURT: Can you do that?

11 MS. THOMPSON: Yes, sir.

12 THE COURT: Okay. Now, ma'am, that is very
13 important. And I, of course, am saying that to every
14 juror.

15 MS. THOMPSON: Yeah. I understand.

16 THE COURT: And when you come back, I'm going to
17 ask you whether or not you have been able to do that.
18 I am going to expect that you are going to say yes, I
19 have not learned, I mean, no, I have not learned
20 anything about this case, I have not talked to anybody
21 about this case. Okay?

22 MS. THOMPSON: All right. Yes, sir.

23 THE COURT: We may sequester the juror. You
24 might think about getting some things together that
25 will last you for five or six days if that's what I

1 do. Okay.

2 MS. THOMPSON: All right. Thank you.

3 THE COURT: Thank you, Ms. Thompson. We will
4 see you in a few days.

5 MS. THOMPSON: All right. Bye.

6 (WHEREUPON, Tommy Brown, Juror number 35, enters at
7 approximately 10:40 a.m.)

8 TOMMY BROWN

9 having previously been sworn, testified as follows:

10 EXAMINATION

11 BY THE COURT:

12 Q Mr. Brown?

13 A Yes, sir.

14 Q Good morning.

15 A Good morning.

16 Q You remember that you're still under oath from
17 yesterday?

18 A Yes, sir.

19 Q Now, Mr. Brown, since you left us yesterday has
20 anyone talked to you about this case or have you talked to
21 anybody about the case?

22 A No, sir.

23 Q Have you learned anything about the case from the
24 news or TV or the newspaper?

25 A No, sir.

1 Q We're going to ask you some questions that we
2 don't intend to impose on your privacy. But we do need to
3 ask these questions. Now there are not any right or wrong
4 answers to these questions. But we just want you to be
5 open and honest with us and tell us how you feel and what
6 you think.

7 Some of these questions are going to relate to the
8 penalty phase or the possibility of the penalty phase.
9 That does not mean we're going to get there. That does
10 not mean anything about this defendant. That just means
11 that because we might get there, we need to know how you
12 think and how you feel. If you are a juror in a criminal
13 case, can you accept and apply the law as I give it to you
14 and render a verdict based solely on the testimony and the
15 evidence that you hear in this courtroom?

16 A Yes, sir.

17 Q Now you understand in a criminal case, the State
18 has the burden of proof?

19 A Yes, sir.

20 Q And must prove the defendant guilty beyond a
21 reasonable doubt?

22 A Yes, sir.

23 Q In a murder case such as this, depending on the
24 facts and circumstances that are proven in the courtroom
25 and in light of the law as I give it to you, could you find

1 a defendant either guilty or not guilty depending on
2 whether or not you think the State has met its burden of
3 proof?

4 A Yes, sir.

5 Q If the jury were to find the defendant guilty and
6 we were to move into the penalty phase, let me tell you a
7 few things and then I'm going to ask you some questions.
8 We going to talk about aggravating circumstances and
9 mitigating circumstances. Aggravating circumstances are
10 facts or incidents or details of an occurrence that the
11 State of South Carolina has deemed to make worse or to
12 aggravate the crime of murder. Aggravating circumstances
13 when accompanying a murder increase the enormity or add to
14 the injury of the crime of murder.

15 Mitigating circumstances, on the other hand, are facts
16 or incidents or details of an occurrence which the State of
17 South Carolina has declared to reduce the severity of the
18 crime of murder. Mitigating circumstances may be
19 considered as extenuating or as reducing the degree of
20 moral culpability or responsibility.

21 If you are a juror in the sentencing phase of a death
22 penalty trial such as this, could you, based on the facts
23 and circumstances that are proven and considering the
24 existence of aggravating or mitigating circumstances,
25 considering the law as I give it to you and if you had the

1 option of imposing a life sentence or the death penalty,
2 could you vote to impose a life sentence?

3 A Yes, sir.

4 Q Could you vote to impose the death penalty?

5 A Honestly, no, sir.

6 Q You could not?

7 A I don't believe in the death penalty.

8 Q You don't believe in death penalty?

9 A No, sir.

10 Q Let me ask you this question just to clarify and
11 follow up on what you said. We look at three types of
12 jurors. One juror is somebody who is going to come in and
13 in every case no matter what they are going to impose the
14 death penalty for the crime of murder. Another type of
15 juror, in every case no matter what, they're going to
16 impose the life sentence for the crime of murder.

17 The third type of juror is one that will come and
18 listen to the case and listen to the facts and
19 circumstances and be open open-minded as to whether or not
20 that a life sentence or whether the death penalty should be
21 imposed. Are you in one of those three categories?

22 A Number three.

23 Q Number three?

24 A If the trial is over and I understand that what
25 happened should not have happened and there was another way

1 to do it, then yes, I could do it. If it was self-
2 defense, that is one thing.

3 Q Let me continue to kind of try to follow-up on
4 that. Self-defense is a defense.

5 A Yes, sir.

6 Q If self-defense is an issue, if -- let me back up
7 a little bit farther. If self-defense becomes an issue in
8 the case, then the State has the burden of disproving self-
9 defense. If the State fails to disprove self-defense,
10 then you would find the defendant not guilty. And you
11 would never get to the sentencing phase of the case. Does
12 that clear up a little bit?

13 A Yes, sir.

14 Q If you get to the sentencing phase of the case
15 that means that self-defense has been disproven by the
16 State beyond a reasonable doubt. So, now you are in the
17 sentencing phase of the case and I am asking you if you are
18 one of the three types of jurors. Are you the type juror
19 who will always impose the death penalty? Are you type
20 juror who would never impose the death penalty and always
21 impose a life sentence? Or are you the type juror that
22 will consider the facts and circumstances that are proven
23 and be open-minded as to what the sentence should be?

24 A I would be open-minded.

25 Q A minute ago you told me you don't believe in the

1 death penalty.

2 **A** I don't believe in it. But if I go down the
3 street and I kill you for no reason --

4 **Q** Well, you're going to get the death penalty.

5 **A** Or if it was -- that was one thing. If me and
6 you got into an argument and it was an accident, that's
7 something else. I would have to see what the evidence is.
8 I can't say that he should spend life in prison or he
9 should get the death penalty one way or the other until I
10 find out what exactly did happen.

11 **Q** All right. Let me ask you to step out in the
12 hall for just a second. We will get right back with you.

13 **A** Okay.

14 (WHEREUPON, Mr. Brown exits at approximately
15 11:07 a.m.)

16 **THE COURT:** All right. I am listening.

17 **MR. BARNETT:** The first thing he said is I don't
18 believe in the death penalty. Definitely, he's a
19 number two juror. He said he would give life under
20 any circumstances. The other thing that's got me
21 concerned is he just brings up out the blue self-
22 defense and all these other issues and we have not
23 gotten in the case yet. He has already started
24 talking about different things.

25 **THE COURT:** I guess the reason I took a break

1 was to see if there was a motion to disqualify him at
2 this point.

3 **MR. BARNETT:** There is.

4 **THE COURT:** Is there a response?

5 **MR. BRENNAN:** I believe he was confused by the
6 questions. I wrote down his quote I can't vote for
7 the death penalty. But when given an opportunity
8 explain, he said would listen to the facts and his
9 opinion towards the death penalty would then be based
10 on the facts of the case.

11 **THE COURT:** Okay. That is enough. I am going
12 to bring him back in and let the defense voir dire
13 them as they're entitled to do under the statute.
14 Then I will let the State respond. And if necessary,
15 I will follow-up and then I will rule.

16 Bring him in.

17 (WHEREUPON, Mr. Brown enters at approximately
18 11:08 a.m.)

19 **BY THE COURT:**

20 **Q** Mr. Brown, let me ask you a couple more questions
21 then I'm going to turn it over to the lawyers and let them
22 ask you some questions. If you were sequestered as a
23 member of the jury and required to stay with us and not
24 allowed to go home to your family for four or five days,
25 would that impose a terrible burden on you?

1 **A** No, sir.

2 **Q** Have you had a chance to go over the witness list
3 that I gave you?

4 **A** Yes, sir.

5 **Q** Did you get to look at every name on it?

6 **A** Yes, sir.

7 **Q** Do you know anybody or are you related to anybody
8 on that list?

9 **A** The only name that stuck out was number one. I
10 don't know if that's the same person or not. But if it is,
11 I went to school with him about 20 years ago.

12 **Q** Jason Yown?

13 **A** Yown.

14 **Q** Yown. In the last 20 years, have you had much
15 interaction with -- that's Investigator Yown right there.

16 **A** I am not even sure to tell you the truth.

17 **Q** All right.

18 **A** If I could ask him one question.

19 **Q** No, you can not ask him any questions. When do
20 you think you went to school with him?

21 **A** In the mid-80's.

22 **Q** Where?

23 **A** Woodruff High School.

24 **THE COURT:** You went to school with him?

25 **INVESTIGATOR YOWN:** I did go with him, sir.

1 **THE COURT:** Did when did you finish?

2 **INVESTIGATOR YOWN:** '88.

3 **BY THE COURT:**

4 **Q** Is that about when you were there?

5 **A** Yes, sir.

6 **Q** All right. So let's assume that this is the same
7 Jason Yown that you went to school with. Have you had any
8 interaction with him over the last 16 years?

9 **A** This is actually the first time that I've seen
10 him.

11 **Q** Would the fact that he might be a witness in this
12 case interfere in any way with either your willingness or
13 your ability to be a fair and impartial juror?

14 **A** No, sir.

15 **Q** Okay. All right.

16 **THE COURT:** Mr. Bartosh.

17 Mr. Brennan. Excuse me.

18 **EXAMINATION**

19 **BY MR. BRENNAN:**

20 **Q** Mr. Brown, my name is Doug Brennan. I'm an
21 attorney here in Spartanburg. And I'm working with Mr.
22 Bartosh and Ms. Quimby. And we have the opportunity to
23 defend Marion Lindsey in this matter. I have your
24 questionnaire. Then I have some notes from the questions
25 that you answered or responded to yesterday.

1 On your questionnaire, you said that you had no
2 experience with crime. In other words, you have not
3 witnessed a crime or been a victim of a crime. But then
4 yesterday when asked if you or your family have ever been
5 arrested, charged, convicted or accused of CDV, pointing a
6 gun, assault and battery or assault and battery with a gun,
7 you stood up?

8 **A** Yes, sir.

9 **Q** Would you clarify that for me please?

10 **A** When I filled out that questionnaire, I wasn't
11 sure what kind of crimes you were talking about.

12 **Q** Okay. For clarification, was it you that was
13 arrested, charge, convicted?

14 **A** No, sir.

15 **Q** Who was it?

16 **A** My wife.

17 **Q** Was she convicted of a crime?

18 **A** She was charged. But the way it turned out the
19 judge give her an opportunity to go through pretrial or go
20 to a marriage counselor with anger management.

21 **Q** Was that criminal domestic violence?

22 **A** Yes, sir.

23 **Q** Were you the victim?

24 **A** Yes, sir.

25 **Q** The other question that was asked was if you or

1 any other family member been arrested by the Spartanburg
2 County Sheriff's Department or the Inman Police Department.
3 Was your wife -- was the answer to that question also the
4 same as your answer to the question about a crime?

5 A Yes.

6 Q Have you ever been arrested by the Spartanburg
7 County Sheriff's Department?

8 A No, sir.

9 Q Or the Inman Police Department?

10 A No.

11 Q Okay. And then the victim, you would have been
12 the victim to the CDV?

13 A Yes, sir.

14 Q So all of them would have been associated with
15 that one incident, that one criminal domestic violence?

16 A Yes.

17 Q Okay. If criminal domestic violence were to
18 become an issue in this case, would that have an affect on
19 your ultimate decision in guilt and in the penalty phase?

20 A No, sir.

21 Q You are able to set aside the fact that you are a
22 victim of criminal domestic violence and render a verdict
23 and a decision in the guilty phase solely on the evidence
24 presented from the witness stand?

25 A Yes, sir.

1 Q Okay. All right. The judge has already asked
2 you the question about the three types of jurors. If you
3 were to sit on this jury -- and let's for a moment assume
4 we are in the sentencing phase and the guilt has already
5 been determined. If there were eleven jurors in the jury
6 room that had made a decision and those eleven people
7 believed that the death sentence was the proper sentence
8 but you number twelve thought that life was the proper
9 sentence. Could you stand your ground and maintain that
10 decision for life in opposition to those other eleven
11 jurors or would you be swayed by those eleven jurors?

12 A I would not be swayed.

13 Q You said that you were opposed to the death
14 sentence?

15 A Yes, sir.

16 Q But then upon some further questioning by the
17 Judge, you kind of backed off of that. Are you able to
18 listen to the facts in this case and render a decision if
19 we should get to the sentencing phase as to life in prison
20 or death?

21 A According to what the evidence is.

22 Q Are you capable if the evidence convinces you to
23 issue a sentence of death?

24 A Yes.

25 MR. BRENNAN: I have nothing further, Your

1 Honor.

2 MR. BARNETT: May it please the Court, Your

3 Honor.

4 THE COURT: Yes, sir.

5 EXAMINATION

6 BY MR. BARNETT:

7 Q Mr. Brown, my name is Barry Barnett. Along with
8 Donnie Willingham and Trey Gowdy, we will be prosecuting
9 this case.

10 A Yes, sir.

11 Q You, what makes the basis of your belief that you
12 don't favor the death penalty? What is your basis for
13 that?

14 A If somebody takes somebody's life, to me, that is
15 a sin. What gives us -- if it was you and you were laying
16 on the table and I am the executioner which nobody who
17 knows who that is and I am the one who pulls the switch.
18 Me killing you, what difference is that from you killing
19 somebody else? It is still murder any way it goes.

20 Q So is it a religious belief?

21 A Yes.

22 Q What church do you go to, sir?

23 A I don't currently attend one.

24 Q Where you were a child, where did you go?

25 A I was raised a Baptist.

1 Q You believe that the executioner taking the life
2 of any individual, that is also a sin?

3 A I believe that is something that, it is a job
4 they have to do and something they would have to live with.
5 I would not personally want the job.

6 Q Under what situation do you feel that the death
7 penalty is appropriate?

8 A Something like 9/11. Innocent people died. And
9 the ones who are responsible for it, they deserve the same
10 thing.

11 Q But just one on one, you understand in any
12 situation, these cases, death is not automatic if you are
13 found guilty of murder. Life without parole is always a
14 possibility.

15 A Yes.

16 Q You understand that? In this case, that would
17 always be a possibility or any type case like this.

18 A (Nods head affirmatively.)

19 Q And you realize if you had that option that he
20 could serve life without parole for the rest of his life,
21 could you ever give a death sentence?

22 A Yes, sir, if what the evidence in the case says,
23 then I can do it.

24 Q The only evidence you compare it to is the 9/11
25 situation?

1 **A** On what trials I heard of in the past, which I
2 never been on a jury so I'm not sure exactly how all of it
3 works.

4 **Q** You realize that from Mr. Brennan's questions and
5 so forth, criminal domestic violence is going to be
6 discussed in this trial?

7 **A** Yes, sir.

8 **Q** I know you had some family history. Would that
9 affect you one way or another?

10 **A** No, sir, because I know how mine turned out.

11 **Q** You understand that other cases don't always turn
12 out the way your case had?

13 **A** Exactly.

14 **Q** Is your belief against the death penalty so
15 strong that you know that life without parole being an
16 option that you could ever vote for death?

17 **A** I could.

18 **Q** And I noticed in the answering the Judge's
19 questions, you talked about self-defense or whatever.

20 **A** Yes, sir.

21 **Q** What made you bring that up from the situation?

22 **A** If I am standing on a street and somebody drives
23 by and shoots me, that is one thing. If I am in a fight
24 with somebody and I accidentally get stabbed and killed or
25 accidentally get shot, that would be a different story.

1 But if is just that I pull out a gun and shoot you, that is
2 one thing.

3 Q By one thing, what do you mean, sir?

4 A That would be murder.

5 Q What do you think an appropriate sentence would
6 be for murder?

7 A That kind of murder, death.

8 Q So you believe that if you were on a jury you
9 would consider the facts of the case and give the
10 appropriate sentence?

11 A Exactly. I would have to know what the facts
12 are and consider the evidence.

13 MR. BARNETT: One moment, Your Honor, please.

14 BY MR. BARNETT:

15 Q You realize when you are on a jury and they
16 decide to sentence him, you have to sign the sentencing
17 form. And if eleven people sign the form for death and
18 you are the last person that would sign that form, knowing
19 what you beliefs are and everything, could you sign that
20 form?

21 A If the evidence says, if I see the evidence and I
22 see what the prosecution has to say and I believe that you
23 have proved your case, yes, I could.

24 Q Do you believe that if you knew your signature
25 was the last one to sign that form and that is the last

1 thing that stood between the execution of putting him on
2 the table and so forth, would you sign it?

3 **A** After I saw the evidence, I would have to go with
4 what my heart says and what not what rest of the jury says.

5 **Q** Let me ask you this question, do you think it
6 would be sin if you was the last person to sign that form
7 knowing it will be on your conscious to sign that form?

8 **MR. BRENNAN:** I object to that, Your Honor. I
9 don't believe that was a proper question.

10 **THE COURT:** Mr. Brown, let me get you to step
11 out in the hall for just one second please.

12 **MR. BROWN:** Yes, sir.

13 (WHEREUPON, Mr. Brown exits at approximately
14 11:19 a.m.)

15 **THE COURT:** Let me tell you how I see where we
16 are. And then you tell me what you say in response to
17 that. He is the one who brought up, the witness,
18 the juror is the one who brought up whether or not it
19 was a sin. He said if the man is laying there on the
20 executioner table and it is time to pull the switch
21 that it is a sin for the executioner to pull the
22 switch. He then said but that is his job. That's
23 what he's got to do.

24 What Mr. Barnett is trying to illustrate, I
25 believe, and to get this witness, this juror to

1 acknowledge is that if he is the last person to pull
2 the switch, I mean, to sign the form, he has to sign
3 the form. So it would actually be him who is
4 requiring the executioner to pull the switch. And so
5 he is the one who is making the decision to terminate
6 the life of the defendant. And so I think that it's,
7 I mean, how can he not ask that?

8 **MR. BARTOSH:** I understood him to say is that
9 he's saying if he were to sign that form it would be a
10 sin for you.

11 **THE COURT:** That is what he said. Hold on a
12 second. Your objection is based on the question being
13 about his religious beliefs.

14 **MR. BARTOSH:** Yes, sir. I mean in theological
15 terms. Here he is qualified on the jury and they're
16 saying if you sign this form would you consider that
17 you are committing a sin by signing the form.

18 **THE COURT:** Here is my ruling. I am going to
19 let the question go. It is clear that it might, I
20 might look at differently if Mr. Barnett was the one
21 who brought up the religious issue. But the juror is
22 the one who brought it up. And Mr. Barnett I believe
23 is -- just because the juror says I have strong
24 religious beliefs and they would affect my view on
25 executing somebody who committed a murder.

1 Mr. Barnett is not then prohibited simply because
2 the subject brought up by the juror is religion from
3 trying to explore that. That is all he is trying to
4 do right now is explore that. I think that it would
5 be improper. On the other hand, you know, let's
6 imagine a juror who said my religious views are that
7 it is a sin to not execute someone who committed a
8 murder. Would I be prohibited from allowing you to
9 explore how that affects his ability to follow the
10 law? No. Overruled.

11 Bring in the jury.

12 If you have some authority you want me to give
13 me, let me have it now.

14 **MR. BARTOSH:** Your Honor, I've been handed this.
15 It says a capital defendant --

16 **THE COURT:** Wait. Hold on just a second.

17 Where is my book?

18 Page what?

19 **MR. BARTOSH:** 6.

20 **THE COURT:** 6.

21 **THE COURT:** 14. Hold on. Which paragraph?

22 **MR. BARTOSH:** Second.

23 **THE COURT:** That is not a religious question.

24 That is a hypothetical question. Overruled.

25 **MR. BARNETT:** Thank you, Your Honor.

1 (WHEREUPON, Mr. Brown enters at approximately
2 11:22 a.m.)

3 **BY MR. BARNETT:**

4 **Q** Mr. Brown, do you remember the question or do
5 you need me to repeat the question?

6 **A** Would you repeat it.

7 **Q** Based on your beliefs and everything, if you came
8 down and there was eleven jurors that signed for death and
9 you would be the last person to sign the sentencing sheet,
10 based on what you said about the executioner, do you feel
11 that it would be a sin if you signed as the 12th juror
12 knowing that the juror determines sentencing not the Judge?

13 **A** I would not have any problem with it after I saw
14 all the evidence.

15 **Q** You understand that the jurors, when we are going
16 through the juror selection, can you be 100 percent sure
17 that you would give the State as well as the defendant a
18 fair trial based off your beliefs that you would you
19 consider death as well as life? Are you 100 percent sure
20 that you can do that based off your beliefs?

21 **A** Yes, sir. I believe that church and state
22 should be separate. What happens here, happens here and
23 stays inside this room. My beliefs have to be left at the
24 door. I have to look at the facts.

25 **Q** And you would listen to the Judge?

1 **A** 100 percent.

2 **Q** You would not base your beliefs in any way?

3 **A** I would leave them at the front door. I would
4 have to come in here with an open mind.

5 **MR. BARNETT:** One moment, Your Honor, please.

6 **BY MR. BARNETT:**

7 **Q** What is the difference of you as the 12th juror
8 and the executioner?

9 **A** He's following -- he is doing his job. He is
10 not the one that has to decide whether the person is
11 innocent or guilty. He just knows what he has to do.

12 **Q** Wouldn't the 12th juror's decision be more
13 important than executioner's decision?

14 **A** It would be more important because that one
15 person has to decide life or death. The executioner knows
16 his job. That is what he is paid to do.

17 **Q** Could you override your belief if you were the
18 12th juror?

19 **A** Yes, I could.

20 **Q** Thank you, Mr. Brown.

21 **MR. BRENNAN:** Your Honor, can I ask one follow-
22 up question?

23 **EXAMINATION**

24 **BY MR. BRENNAN:**

25 **Q** Mr. Brown, based upon one of Mr. Barnett's

1 questions, you said if somebody drove up and shot somebody,
2 that is murder and the death penalty's okay in that
3 situation?

4 **A** Yes, sir.

5 **Q** My question is, is the death penalty appropriate
6 for any intentional killing?

7 **A** According to what the circumstances are. Every
8 trial has to be different.

9 **Q** Okay. If someone drives up and shoots somebody
10 and you are on that jury, is the death penalty the only
11 sentence that you would consider?

12 **A** No, sir.

13 **MR. BRENNAN:** Nothing further. Thank you.

14 **THE COURT:** Mr. Brown, let me ask you to step
15 back out in the hall for a minute please.

16 (WHEREUPON, Mr. Brown exits at approximately
17 11:26 a.m.)

18 **THE COURT:** Mr. Brennan.

19 **MR. BRENNAN:** I think he is qualified, Your
20 Honor.

21 **MR. BARNETT:** I would argue he is not qualified.
22 I originally argued based on his beliefs. The first
23 thing he said was he did not believe the death
24 penalty. I know we went through several questions.
25 He went through his religious beliefs.

1 He went through saying he could separate the two
2 or whatever. I still don't think he knows what his
3 position is on the death penalty from the standpoint
4 after we kept talking with him. I think that his
5 answers are inconsistent with his other answers. I
6 feel like he is not qualified under our scenario.

7 **THE COURT:** I can remember going back over the
8 last several weeks and having a great deal of fun
9 reading all of the cases that could get my hands on
10 where appellate courts have published decisions about
11 the trial judge's ruling to either qualify or to
12 disqualify a juror based on that juror's views on the
13 death penalty. I saw recounted in those opinions
14 some right confusing accounts of what the jurors views
15 were.

16 And I sort of looked forward to this case and
17 thought well, I'm sure I'm going to see some confusing
18 accounts of what the jurors opinions are too. I
19 never imagined I could have something this confusing.
20 The man starts off and just adamantly, I mean, his
21 first answer was adamant that he was opposed to the
22 death penalty. I really started to be quiet right
23 then. And I probably should have. I probably should
24 have just hushed and let y'all ask whatever questions
25 you wanted to.

1 He remained adamant. He went even so far as to
2 say that it would be a sin for the executioner to
3 perform the ministerial duty of flipping the switch.
4 To say those two things and then to turn around in
5 response to a question that one of you asked about
6 some sort of drive-by shooting to without any
7 hesitation, no details given about the case, oh, I
8 wrote it down. That kind of murder, death. He said
9 it like that. He was positive the death penalty.

10 There was no real description. How do you deal
11 with a juror like that? That is that kind of juror
12 that I think the Fourth Circuit struggled with in the
13 US versus Tippin case where frankly I'm a little bit
14 surprised that both of you are not asking me to have
15 him disqualified. I think it was close to it. You
16 almost asked me to have him disqualified. But, uh, --

17 **MR. BRENNAN:** Your Honor, may I change my
18 position and state that -- and join in the State's
19 disqualification motion?

20 **THE COURT:** Bring him in.

21 I was just about to rule that. I am convinced
22 that he is not qualified and appreciate you --

23 (WHEREUPON, Mr. Brown enters at approximately
24 11:30 a.m.)

25 **THE COURT:** Mr. Brown, we appreciate you

1 coming in here and giving us such candid responses to
2 our questions. We are not going to need you anymore
3 in this case. So you are free to go.

4 **MR. BROWN:** Okay. Thank you.

5 (WHEREUPON, Mr. Brown exits at approximately
6 11:31 a.m.)

7 (WHEREUPON, James Gedroic, Juror number 100, enters at
8 approximately 11:31 a.m.)

9 **JAMES GEDROIC**

10 having previously been sworn, testified as follows:

11 **EXAMINATION**

12 **BY THE COURT:**

13 **Q** I am going to first make sure I am pronouncing
14 your name correctly. So if I'm even slightly off, please
15 correct me. Is it Gedroic?

16 **A** Yes, that is correct.

17 **Q** All right. Gedroic. So the "O" just kind of
18 disappears into the "I".

19 **A** Disappears.

20 **Q** Okay. Well, Mr. Gedroic, good morning.

21 **A** Good morning.

22 **Q** And you recall from yesterday that you are under
23 oath?

24 **A** Yes, sir.

25 **Q** Since yesterday have you talked to anybody about

1 this case or learned anything about this case from the TV
2 or the news or anything else?

3 A No, sir.

4 Q We're going to ask you some questions about the
5 case. We don't intend to invade your privacy. These are
6 questions that we have to ask. We know that there are no
7 right answers or no wrong answers. We just want you to be
8 open and honest with us and tell us how you are think and
9 how you feel.

10 We going to talk about the penalty phase. The fact
11 that we're talking about the penalty phase does not mean
12 anything about this case. It is just that because we
13 might get there, we need to know how you think and how you
14 feel. If you were a juror in a criminal case, could you
15 accept and apply the law as I gave it to you and render a
16 verdict based solely on the testimony and evidence that you
17 hear in this courtroom in light of the law as I give it to
18 you?

19 A Yes, sir.

20 Q You understand that in a criminal case, the State
21 has the burden of proof?

22 A Yes.

23 Q And they must prove the defendant guilty beyond a
24 reasonable doubt?

25 A Yes.

1 Q Could you, in a murder case such as this,
2 depending on the facts and circumstances that are proven
3 and in light of the law as I would give it to you, could
4 you find the defendant either guilty or not guilty
5 depending on your view of whether or not the State has
6 proven him guilty?

7 A Yes, sir.

8 Q Now, we're going to talk a little bit about
9 sentencing. I'm going to tell you what aggravating
10 circumstances and mitigating circumstances are.
11 Aggravating circumstances are facts or incidents or details
12 of an occurrence which the State has decided make worse or
13 aggravate the crime of murder. Aggravating circumstances
14 when accompanying a murder increase the enormity of the
15 crime or add to the injury of the crime of murder.

16 Mitigating circumstances, on the other hand, are facts
17 or incidents or details of an occurrence which the State
18 has deemed to reduce the severity of the crime of murder.
19 And they may be considered to extenuate or reduce the
20 decree of culpability or responsibility.

21 If you were a juror in the sentencing phase of a death
22 penalty case, could you based on the particular facts and
23 circumstances that are proven including the consideration
24 of aggravating and mitigating circumstances in light of the
25 law as I will give it to you and if you had an option

1 between a life sentence and the death penalty, could you
2 vote to impose a life sentence?

3 A Yes.

4 Q Could you vote to impose the death penalty?

5 A Yes.

6 Q If you was sequestered as a member of the jury
7 and if you were required to stay in a hotel with us and not
8 allowed to go home for five or six days, would that impose
9 a terrible burden on you?

10 A That question which you mentioned yesterday, I
11 thought over. It possibly would impose a burden on my
12 business. Not on me personally, but on my business which
13 is me personally.

14 Q What is your business?

15 A I am a builder.

16 Q Really the sequestration is only going to affect
17 where you are at night. If you are on the jury, you're
18 going to be here during the day any way. You're not going
19 to be going out building houses at night?

20 A If I can still correspond at night to the people
21 that work for me, that's fine. If I'm sequestered to
22 where I can't talk to anybody --

23 Q It's not that you cannot talk to anybody. If
24 you have a particular issue such as needing to correspond
25 with your employees, we can work that out. As long as you

1 are not talking about this case. If we sequester the
2 jury, there will be somebody there listening to make sure
3 you are not talking about this case.

4 A Right. I understand.

5 Q We would not be able to let you talk for two or
6 three hours or anything like that. But if you need to
7 check in with them, give some direction about where to go,
8 you can do that. So you can handle being sequestered?

9 A Yes.

10 Q Have you had a chance to go over that witness
11 list that I gave you?

12 A Yes, I did.

13 Q Did you get a chance to look at every name on the
14 list?

15 A Every name, yes.

16 Q Do you know anybody or are you related to anybody
17 on that list?

18 A No, sir.

19 Q Do you know of any reason why you can not be a
20 fair and impartial juror to both the State and the
21 defendant in this case?

22 A No.

23 Q I'm going to let the lawyers ask you some
24 questions now. I may come back and ask you some questions
25 in a minute.

EXAMINATION

1
2 **BY MR. BARTOSH:**

3 **Q** Mr. Gedroic, I'm Mike Bartosh. Mr. Brennan,
4 Ms. Quimby and me are representing Mr. Lindsey in --
5 sorry. Just a few questions I would like to ask you.
6 First, on the questionnaire form that you filled out and
7 also on some things that you said.

8 **A** Yes, sir.

9 **Q** Now yesterday you said that you knew someone in
10 our office?

11 **A** Yes.

12 **Q** Who is that?

13 **A** Mr. Brennan.

14 **Q** How long have you known Doug?

15 **A** Going back probably several years.

16 **Q** Do you have close working relation with him?

17 **A** No. Friendship relationship. His father had a
18 business and I knew him then.

19 **Q** Would the fact that you know him would that
20 influence your ability to favor him?

21 **A** No.

22 **Q** Or our side over the other side?

23 **A** No, sir.

24 **Q** Also you indicated that you had heard about the
25 case that you are here on?

1 **A** The question was asked yesterday. I read the
2 Spartanburg Herald previously. And vaguely I recall this
3 case. Vaguely the name. This was recent. Probably a
4 week or so ago.

5 **Q** Okay. So the last time you heard anything about
6 this case was about a week ago.

7 **A** Yes, sir.

8 **Q** Do you recall what it was that you read?

9 **A** Just that a trial was up and coming. And that
10 was it really. I didn't really go into a whole lot of
11 detail.

12 **Q** Nothing about the facts of the case itself?

13 **A** No, sir.

14 **Q** Is it fair to say you don't know anything about
15 the facts?

16 **A** That's fair to say.

17 **Q** Other than Mr. Lindsey is charged with murder?

18 **A** Yes, sir.

19 **Q** Okay. Now, Mr. Gedroic, the judge has already
20 gone in to explain what we are here about. I'm going to try
21 to reiterate it. But in these kind of cases, the trial is
22 in two parts. The first part, of course, is we, it would
23 be like a regular trial. The jury would sit in that box.
24 And the State would bring the evidence against Mr.
25 Lindsey.

1 If, at the end of the case, if all twelve members of
2 the jury believe that the State had proven its case against
3 Mr. Lindsey to each and every one of the jurors beyond a
4 reasonable doubt, then he would be found guilty. We would
5 move on to the second phase. If they had not done it,
6 then we would be, we would all go home.

7 Now, in the second phase, if we go to the second
8 phase. That is just saying if we go to the second phase.
9 At that time, what the State is going to do is they're
10 going to present some aggravating circumstances. They are
11 relying on an aggravating circumstance which they feel or
12 they allege makes this murder worse. What they are going
13 to be doing is they are going to be introducing before the
14 jury other aggravators, other facts about Mr. Lindsey
15 which they hope to convince twelve folks that he deserves
16 the death penalty. They are asking them to give Mr.
17 Lindsey the death penalty.

18 Of course, what we are going to be doing is we are
19 going to be trying to find, to bring to the jury mitigating
20 circumstances, things about Mr. Lindsey and about Mr.
21 Lindsey's life that we feel tend to mitigate the severity
22 of what he is charged with. Now, do you believe that
23 during that period of time that you will be able to keep an
24 open mind and listen to both sides and their presentation
25 should we reach the sentencing phase? Would you be able

1 to be fair to both sides and to listen to both sides?

2 A Yes, sir.

3 Q All right. Would you have a bias towards the
4 death penalty as opposed to life in prison because as I'm
5 sure as the solicitor is going to tell you, you do not have
6 to give that. Life is always an option. Okay?

7 A Okay.

8 Q And of course life now means life without parole.
9 If the jury finds life, Mr. Lindsey will never get out of
10 jail. Would you be able to listen to both side and decide
11 the appropriate sentence based upon what you hear in this
12 courtroom and not upon any bias and not upon any extraneous
13 facts that you may or may not know?

14 A Yes, sir.

15 Q Okay. And if after hearing all of the evidence,
16 you believe that life is the appropriate sentence and the
17 other jurors, the other eleven jurors believe that death
18 was the appropriate sentence, you understand it has to be
19 unanimous?

20 A Yes.

21 Q Whatever it is, it has to be unanimous. Would
22 you be able to sustain your position on life against the
23 other eleven people?

24 A I believe I would consider enough to consider all
25 the evidence and make my decision fairly.

1 Q If you believe that, you will be able to
2 withstand the pressure from the other eleven?

3 A That's a very hard question.

4 Q It would be tough.

5 A It will be a hard question for me. It is hard
6 for me to change my mind once I make up my mind to be
7 honest with you.

8 Q And on the other hand, if you believe that death
9 was the appropriate punishment and there is a form that
10 every juror has to sign, the sentencing sheet. If you
11 were the 12th person to sign that, would you have a problem
12 with doing that?

13 A It would be a tough decision but I would not have
14 a tough problem doing that.

15 Q But if you believe that death was appropriate,
16 you would be able to sign --

17 A Yes, sir.

18 Q -- knowing that that was condemning Mr. Lindsey
19 to death?

20 A Yes, sir.

21 MR. BARTOSH: That's all I have.

22 MR. BARNETT: May it please the Court.

23 EXAMINATION

24 BY MR. BARNETT:

25 Q Good morning.

1 **A** Good morning.

2 **Q** My name is Barry Barnett. Along with me is
3 Donnie Willingham and Trey Gowdy who will be prosecuting
4 the case. I just want to ask you a couple questions. I
5 know Mr. Bartosh asked you about Mr. Brennan. Did you know
6 Mr. Brennan or did you know his father?

7 **A** Yes, sir. .

8 **Q** Or do you know both of them?

9 **A** Yes, I know both of them.

10 **Q** Is that through your business or personal
11 contact?

12 **A** Just personal contact.

13 **Q** I see you live in Landrum. Is that right?

14 **A** Yes.

15 **Q** And you realize Mr. Brennan will be working on
16 this case with the defense table?

17 **A** Yes.

18 **Q** Would that influence any decision you would make
19 in any way?

20 **A** No, sir.

21 **Q** Would you base it off the facts that you saw in
22 this case?

23 **A** By the facts, yes, sir.

24 **Q** And if you determine based on the facts -- life
25 without parole like Mr. Bartosh says is always an option.

1 Could you fairly listen to both sides and give a sentence
2 it would be appropriate for the crime?

3 **A** Yes, sir. I believe I can with no problem.

4 **Q** And like Mr. Bartosh was asking you on the
5 sentencing sheet, the jury determines the sentence not the
6 judge. If you felt like death was appropriate, is that
7 the way you would vote?

8 **A** Yes, sir.

9 **Q** Would you be able to put your signature on the
10 sentencing sheet?

11 **A** Yes, sir.

12 **MR. BARNETT:** One moment, Your Honor. No further
13 questions.

14 **THE COURT:** Mr. Gedroic, let me get you to
15 stand into the hall for just a second please.

16 (WHEREUPON, Mr. Gedroic exits at approximately
17 11:46 a.m.)

18 **THE COURT:** Any objection

19 **MR. BARTOSH:** No, sir.

20 **MR. BARNETT:** No, sir.

21 **THE COURT:** All right. Bring him back.

22 (WHEREUPON, Mr. Gedroic enters at approximately
23 11:46 a.m.)

24 **THE COURT:** Mr. Gedroic, I find that you are
25 qualified to serve as a juror in this case. I'm

1 going to let you go now for a day or so. Start
2 checking with us by calling that 800 number some time
3 about midday tomorrow to find out what our schedule
4 is. You may call and there's nothing on there. But
5 when we get close, we're going to put a message on
6 there to tell you when you need to start thinking
7 about being here.

8 I may sequester the jury. So bring your, or be
9 ready to bring your clothes and enough of whatever you
10 need to be away for four or five maybe six days.
11 Remember my instructions not to discuss the case with
12 anyone or to allow anyone to discuss it with you.
13 Don't read anything about this case. Don't watch any
14 news reports about this case. Don't read anything
15 about this case. We look forward to seeing you in a
16 couple of days.

17 **MR. GEDROIC:** Thank you.

18 **THE COURT:** Thank you.

19 (WHEREUPON, Mr. Gedroic exits at approximately
20 11:46 a.m.)

21 **THE COURT:** Are y'all already?

22 **MR. BARTOSH:** Yes, sir.

23 **MR. GOWDY:** Yes, sir.

24 **THE COURT:** Let's take a short break. This
25 is going to be short break.

1 (WHEREUPON, a short recess was taken at approximately
2 11:47 a.m.)

3 (WHEREUPON, the Court resumed at approximately
4 12:00 p.m.)

5 (WHEREUPON, Joann Netherton enters at approximately
6 12:05 p.m.)

7 **JOANN NETHERTON**

8 having previously been sworn, testified as follows:

9 **EXAMINATION**

10 **BY THE COURT:**

11 **Q** Good noon, Mrs. Netherton. How are you?

12 **A** I'm fine. Thank you.

13 **Q** You remember that you are still under oath from
14 yesterday?

15 **A** Yes.

16 **Q** Since yesterday when you left, have you talked to
17 anybody about this case or has anybody talked to you about
18 this case?

19 **A** (Shakes head negatively.)

20 **Q** And you will need to answer out loud.

21 **A** No, sir.

22 **Q** Have you learned anything about the case either
23 by reading the paper or watching TV or listening to anybody
24 or anything?

25 **A** I did not.

1 Q We are going to ask you some questions now. We
2 don't mean to pry. But we do have to ask you these
3 questions. There aren't any right or wrong answers. We
4 just want you to be open and honest with us and tell us how
5 you feel and how you think.

6 We're going to talk about the sentencing phase. And
7 the fact that we're talking about the sentencing phase
8 doesn't mean anything except that we might get to the
9 sentencing phase. We need to know how you feel about some
10 of the things that might come up. If you were a juror in a
11 criminal case, could you accept and apply the law as I give
12 it to you and render a verdict based entirely and solely on
13 the testimony and evidence that you hear in the courtroom
14 in light of the law as I give it to you?

15 A Yes, I could.

16 Q You realize that the State has the burden of
17 proof in a criminal case. And they must meet that burden
18 of proof beyond a reasonable doubt.

19 A That's correct.

20 Q In a murder case as this is, could you, depending
21 on the facts and circumstances that are proven and in light
22 of the law as I give it to you, could you find the
23 defendant either guilty or not guilty depending on whether
24 or not you think the State has proven the defendant guilty?

25 A (No response.)

1 Q Could you find the defendant either guilty or not
2 guilty depending on whether or not you think that the State
3 proved him guilty or not guilty?

4 A Yes, I could.

5 Q If you were a -- we're going to talk a little bit
6 about sentencing phase. Let me tell you something about
7 aggravating circumstances and mitigating circumstances.
8 Aggravating circumstances are facts, incidents or details
9 of an occurrence that the State has declared to to
10 aggravate the crime of murder. Aggravating circumstances
11 which accompany a murder increase the enormity or add to
12 the injury of the crime of murder.

13 Mitigating circumstances, on the other hand, are facts
14 incidents or details of an occurrence in which the General
15 Assembly of the State of South Carolina has declared to
16 reduce the severity of the crime of murder and may be
17 considered as extenuating or as reducing the degree of
18 moral culpability or responsibility.

19 If you are a juror in a sentencing phase of a death
20 penalty case, could you, depending on the particular facts
21 and circumstances of the case, including the consideration
22 of aggravating and mitigating circumstances in light of the
23 law as I give it to you and realizing that you have the
24 option of either a life sentence or the death penalty for
25 the defendant, could you impose a life sentence?

1 **A** Yes, I could.

2 **Q** Could you impose death?

3 **A** Depending on the circumstances, yes, I could.

4 **Q** Now, Ms. Netherton, if I were to sequester the
5 jury and require you to be away from your home and your
6 family for four or five days and put up in a nice hotel
7 downtown here, would that be a terrible burden on you?

8 **A** Honestly, at this time, yes, it would.

9 **Q** And tell me why that is.

10 **A** I have a daughter that is graduating. My heart
11 would not be in it. And I do have something else to say
12 too.

13 **Q** Tell me.

14 **A** When you said yesterday, and I promise you I read
15 about this a long time ago. I live in Inman. And I live
16 right down the door -- three houses down from the chief of
17 police. And if this is the same story, I don't know
18 because I have not looked at the paper. I have not listened
19 to the news.

20 **Q** Let me stop you right there. Let me talk to you
21 about this. Okay? And we're going to come back to that.
22 I appreciate you being honest with us and open with us.
23 That's what we want you to continue to do. If you are put
24 on the jury in this case, your responsibility would be to
25 forget about anything that you might have heard or read

1 about in the past.

2 A Okay.

3 Q Your responsibility would be to make a decision,
4 to render a verdict based solely on the testimony and the
5 evidence that would be presented to you here in this
6 courtroom under my supervision.

7 A Okay.

8 Q And you would be required to do that in light of
9 the law as I would give it to you.

10 A Okay.

11 Q Now, for some people, that is not possible. They
12 becomes so intertwined in a situation. They have read so
13 much about it. They might have already formed an opinion
14 that they can not let go of. And for those people; we want
15 to know about that because they are not qualified to serve.
16 From your standpoint, would you be able to set aside
17 anything that you might have heard about or read about
18 concerning this case and render a verdict based solely on
19 the testimony and evidence that you hear in this courtroom?

20 A Yes, I could.

21 Q All right. Now, let's get back to talking about
22 graduation. Okay. We've got a graduation ceremony Tuesday
23 at 6:00.

24 A That is correct.

25 Q So we need a couple of hours to attend that,

1 right?

2 A That's right.

3 Q If I were to, if you get on the jury and I were
4 to tell you I'm going to make sure you make it to that
5 graduation, would that solve the problem?

6 A It would.

7 Q Or -- is it just the graduation or are there
8 other things going on that you are concerned about?

9 A No. There are not other things that I'm
10 concerned about. Just the graduation.

11 Q And if I were to make you that representation,
12 would that get your heart back in it?

13 A It would.

14 Q Would your heart --

15 A I would be able to focus on it.

16 Q You would be able to focus?

17 A (Nods head affirmatively.)

18 Q You are nodding yes.

19 A Yes, sir.

20 Q Okay. Have you been over the witness list that I
21 gave you?

22 A Uh-huh (affirmative).

23 Q Have you had a chance to look over each of the
24 names on that list?

25 A I did.

1 Q Do you know anybody or are you related to anybody
2 on that list?

3 A I'm not related to anybody on this list. But I
4 may know just by his face and because they patrol my area
5 so much because I do live right down the road from the
6 chief of police. There's Harvey. I may know Harvey
7 Godfrey. I may have talked to him. I just don't know his
8 name at this point. I may know his face but not
9 personally.

10 Q Would the fact that he might be a witness in this
11 case or that you might know him, would that interfere in
12 any way with either your willingness or your ability to
13 give both the State and the defendant a fair and impartial
14 trial?

15 A No.

16 Q Do you know of any reason why you could not give
17 both the State and the defendant a fair and impartial
18 trial?

19 A Now, I'm willing to look at evidence from both
20 sides. I can only say that I have at this point based on
21 what I read last year and what I heard say that I have
22 formed an opinion but I don't know all of the evidence that
23 is involved with it. So in my occupation and what I do for
24 a living, it is based on facts and background checks before
25 I make my decision. So I would have to look at both sides

1 to make sure before.

2 Q Okay. I'm going to let the lawyers ask you some
3 questions and then I may come back and ask you some after
4 that.

5 **EXAMINATION**

6 **BY MR. BARTOSH:**

7 Q Good afternoon, Mrs. Netherton. My name is Mike
8 Bartosh. I represent Marion Lindsey along with Doug
9 Brennan and Karen Quimby. And as the judge said, these are
10 questions that ordinarily you would never be asked.
11 Because of the situation we're in right now, it's important
12 to know certain things to determine whether or not you
13 qualify to sit on a death penalty jury.

14 A I understand.

15 Q Okay. Now you understand that this is a two-part
16 process, the first part being just like a regular trial.
17 What would happen would be if you were picked to sit on the
18 jury, you would sit in that jury box. You would listen to
19 the evidence that comes through the witness box there. You
20 would have to decide along with the other eleven jurors
21 whether or not the State has presented sufficient evidence
22 to convince each and every one of you beyond a reasonable
23 doubt of Mr. Lindsey's guilt. Okay?

24 A Uh-huh (affirmative).

25 Q If, at the end of that trial, the jury would

1 decide, all twelve would have to decide that all twelve do
2 not believe that the State has carried its burden, then we
3 would all go home. If, however, the jury decided that the
4 State had carried its burden, then we would move into the
5 second phase of the trial. That phase is called the
6 penalty phase or sentencing phase. In that phase, what the
7 State would attempt to do is gather all the bad things
8 together that Mr. Lindsey has done and present them to you
9 as aggravators to show that he deserves the death penalty.

10 And of course, what we would do would be to gather up
11 all the mitigating circumstances that happened in Mr.
12 Lindsey's life of things that happened to him as a child,
13 things that happened to him as an adult, traumas in his
14 life. And we would present them to you, to the jury. Then
15 the jury would have to make a decision based upon that
16 evidence. All right?

17 **A** (Nods head affirmatively.)

18 **Q** Do you believe that you can be fair both to Mr.
19 Lindsey and to the State and be able to listen both to the
20 aggravating circumstances and to the mitigating
21 circumstances and base your decision solely on those
22 factors? Not on some reason to punish somebody. Not on
23 some reason to, because you don't like a person but based
24 solely on the evidence that is presented to you in that
25 proceeding?

1 **A** That's what my decision would be based on, solely
2 based on the evidence.

3 **Q** Now, you told the judge that you formed an
4 opinion concerning this case. And he's explained to you
5 that you can't have an opinion.

6 **A** Okay.

7 **Q** All right?

8 **A** Uh-huh (affirmative).

9 **Q** You are going to have to put all of that aside.
10 The only thing you can use to determine what happened and
11 what your decision should be is based upon what you hear in
12 here today. Not on what somebody told you, not what you
13 read in the newspaper, not what you think is right but
14 things that you have heard from that witness box solely.
15 Nothing else.

16 **A** Right.

17 **Q** Okay. Now, what is your opinion?

18 **A** (No response.)

19 **Q** What opinion have you formed about this case?

20 **A** Do you want to know what I heard? This is what I
21 heard and this is what I am forming my opinion on. If it's
22 the same thing that happened in Inman, South Carolina, she
23 was going in to the sheriff's office or the police office.
24 And she never made it. He gunned her down.

25 **Q** Those are your terms "he gunned her down".

1 That's how you view it?

2 A That's based on what I read in the newspaper.
3 Solely what I read in the newspaper a year and a half ago
4 and that was it. I don't know anything else about it.

5 Q Okay. Uh, you formed an opinion?

6 A Based on what I read in the newspaper.

7 Q And the opinion is what?

8 A He gunned her down.

9 Q Well, what does that make Mr. Lindsey?

10 A He pulled the trigger. That makes him guilty.

11 Q You would find him guilty?

12 A Based on what I read in the newspaper.

13 Q Right now as you sit in this jury box, you
14 believe him to be guilty?

15 A No. I don't know all the circumstances around
16 it.

17 Q Well, you've got me confused because you said you
18 have an opinion.

19 A I do. It's not that I would go out and tell
20 anybody that I think he's guilty. I wouldn't say that. I
21 don't know the man. I don't know all the background
22 either. I only know what I read in the newspaper.

23 Q And that information led you to believe he was
24 guilty?

25 A Well, isn't it a law that you don't shoot

1 somebody?

2 Q I didn't ask you that.

3 A That's what I based my opinion on.

4 Q Your opinion was based on what you read and what
5 you were told.

6 A I wasn't told anything. Only what I read.

7 Q On what you read?

8 A That's right.

9 Q And you believe based upon what you read that Mr.
10 Lindsey is guilty?

11 A If he pulled the trigger, yes, sir.

12 Q Okay. And you understand that under our system
13 of laws that as he sits there right now, he is innocent?

14 A That's correct.

15 Q Okay. Can you accept that?

16 A I can because I don't know, I don't know the
17 background.

18 Q You don't know all about what happened, correct?

19 A What I read, that's what I know.

20 Q And based upon what you know about what happened,
21 you formed an opinion and that opinion was that he is
22 guilty.

23 A If he pulled the trigger.

24 Q If he's the one that pulled the trigger, he is
25 guilty. That's what you would find.

1 **A** That's what I would find at this point. Based on
2 the story that was in the newspaper.

3 **THE COURT:** Mr. Bartosh.

4 **MR. BARTOSH:** Sir?

5 **THE COURT:** With your permission, might I explain
6 to her a little bit more about what her role would be
7 as a juror?

8 **MR. BARTOSH:** Yes, sir.

9 **THE COURT:** All right. Mrs. Netherton, we are
10 not trying to trick you or box you in. I take
11 responsibility for anything, if anything has offended
12 you. But let me explain to you a little bit more in
13 detail how it would go if you were to get on the jury.
14 I would at the end of all the evidence and at the end
15 of the closing arguments give you detailed
16 instructions defining the crimes or the crime that the
17 defendant is charged with.

18 And there would be certain elements that the
19 State would have to prove to convict the defendant of
20 murder. And you don't know what those elements are.
21 You might have a general idea about what murder is.
22 But I would give you the specific legal definition of
23 murder. And I would tell you the specific elements
24 that the State has to prove each beyond a reasonable
25 doubt before you can find the defendant guilty of.

1 murder.

2 **MRS. NETHERTON:** Okay.

3 **THE COURT:** And in addition to that, there may be
4 defenses that could be asserted. I don't even know
5 right now as I sit here if there might be defenses.
6 If there are defenses, then the State has to disprove
7 those offenses and they would have to disprove them
8 beyond a reasonable doubt. There might even be what we
9 call lesser included offenses. I don't know. There
10 might be. There might be something less than murder
11 that the defendant could be guilty of.

12 What I want to know, and then I'm going to turn
13 it back over to Mr. Bartosh, is despite what you have
14 read and despite some conclusion that you may have
15 reached or some opinion that you may hold, could you
16 listen to me when I tell you the specific elements
17 that the State would have to prove in order to convict
18 Mr. Lindsey of murder and could you then decide
19 whether or not based solely on what you hear in this
20 courtroom and see in this courtroom, could you decide
21 whether or not the State has proven the defendant
22 guilty beyond a reasonable doubt in light of the legal
23 instructions that I may give to you setting aside
24 anything that you might have heard or read about
25 before? Could you do that?

1 Barnett and Mr. Gowdy. We are the prosecutors in this
2 case. Very briefly. On your questionnaire in response to
3 whether you or a family member had ever been arrested, you
4 stated yes for two white collar crimes. Was that here in
5 Spartanburg?

6 A Uh, I think one was in Spartanburg and the other
7 was transferred here from, I think, Greenville.

8 Q Do you know who the prosecutor was?

9 A Yeah. You mean the judge?

10 Q No. The prosecutor, the Solicitor.

11 A Oh, uh, no, sir.

12 Q If it had been someone in Cherokee or
13 Spartanburg, it would have been probably someone from our
14 office that were the prosecutor. I just want to make sure
15 that you wouldn't hold that against us.

16 A I don't. To be honest with us, I really don't
17 remember. I don't even know if I could remember his
18 lawyer's name.

19 Q Would it be fair to say as far as your views on
20 the death penalty that you are not opposed to the death
21 penalty?

22 A No, I'm not opposed.

23 Q You believe it is proper in certain
24 circumstances?

25 A I do.

1 **Q** Where do those views come from? Is it religious?
2 I noticed on your questionnaire that you indicated you have
3 a religious affiliation of being Catholic.

4 **A** Uh-huh (affirmative).

5 **Q** Does that factor into your opinion?

6 **A** I guess maybe just based on what I determine for
7 somebody based on the crime.

8 **Q** Okay. In order for someone to be sentenced to
9 death, it has to be unanimous. All twelve jurors have to
10 agree that that is the appropriate punishment. Then a form
11 has to be signed by all the jurors. If you were the last
12 one, if the jury believed that death was appropriate and
13 you believed it, without your signature, the death verdict
14 could not be rendered. Could you see yourself actually
15 imposing the death penalty and signing your name to that
16 verdict form?

17 **A** Only if I believed everything that was presented
18 to me. I have to believe what was presented was correct.

19 **Q** And that's our job. It is our job to present
20 evidence to the jury either by introducing exhibits or
21 testimony from that witness. But our burden is beyond a
22 reasonable doubt. You understand that?

23 **A** That's fine.

24 **Q** It's not beyond all doubt or beyond any shadow of
25 a doubt, it's beyond a reasonable doubt. I just want you

1 to know what standard the law requires.

2 A Okay.

3 Q You agree that you could follow it beyond a
4 reasonable doubt?

5 A Explain it again to me.

6 Q I can not prove something beyond all doubt or
7 beyond any doubt. I can't prove it based on prior
8 experience or pretty good indications. But I can't prove
9 it beyond any doubt. But I can prove it beyond a
10 reasonable doubt. Reasonable things could happen. There
11 are cases after cases of trying to find out exactly what a
12 reasonable doubt is.

13 The judge will tell you that reasonable doubt is the
14 kind of doubt that causes a reasonable person to hesitate
15 to act. I just want -- I don't want you to think it was
16 going to be a higher standard of beyond all possible doubt
17 or beyond any doubt. I don't want you to raise that bar up
18 any higher than it already is. It is already up there
19 pretty high. I don't want to make it any higher.

20 **THE COURT:** Let me stop you.

21 Ma'am, when I charge you on the law, I will
22 explain to you exactly what beyond a reasonable doubt
23 means and you don't need to worry about whether
24 somebody thinks that is a high standard or whether
25 somebody doesn't think that's a high standard. You've

1 been very good to answer our questions very candidly
2 and honestly. And you told me how you would respond
3 to my instructions about the elements of the crime of
4 murder.

5 Would you have any difficulty listening very
6 carefully to my definition of reasonable doubt and my
7 explanation that the State must prove their case
8 beyond a reasonable doubt and applying the standard of
9 reasonable doubt that I give you?

10 **MRS. NETHERTON:** No, sir. I wouldn't. If I had
11 any questions, I would ask you to clarify that.

12 **THE COURT:** Thank you very much, ma'am.

13 **BY MR. WILLINGHAM:**

14 **Q** Mrs. Netherton, I appreciate you answering
15 questions. One last question. You don't know a Jerry
16 Netherton?

17 **A** Jerry Netherton?

18 **Q** Yes, ma'am. If you don't, that's fine.

19 **A** I do not. I don't know all of my husband's
20 relatives.

21 **Q** Thank you.

22 **THE COURT:** Mrs. Netherton, let me ask you to
23 step in the hall for just a second please.

24 (WHEREUPON, Mrs. Netherton exits at approximately
25 12:30 p.m.)

1 **THE COURT:** Mr. Bartosh?

2 **MR. BARTOSH:** Your Honor, I believe she is
3 unqualified. I do not see how a person can form an
4 opinion as strongly held as she expressed it saying
5 that if he gunned her down, and those were her words,
6 if he gunned her down, then he is guilty. I just
7 don't know how you can unring that bell with any
8 instructions from the bench. I know what she said.
9 But I think it's very clear that she holds that
10 opinion very strongly. It would be very hard for her
11 especially the way she expressed that opinion, it
12 would be very hard for her to step aside that opinion
13 given the facts.

14 **THE COURT:** All right. I'm ready. I mean, I
15 don't want to cut you off. But I think that I
16 understand your argument on that point. Is there any
17 other point that you want to make?

18 **MR. BARTOSH:** No, sir.

19 **MR. BARNETT:** Your Honor, I think she is
20 qualified. I believe that she can impose life and she
21 can impose death.

22 **THE COURT:** Mr. Bartosh doesn't object to her
23 standing on the death penalty.

24 **MR. BARNETT:** Your Honor, based on State versus
25 Ricky Caldwell, 388 S.E. 2d. 816, I think she is

1 qualified. She stated she has an opinion. She has
2 prior knowledge. She can put that opinion out of her
3 mind and be fair and impartial to both sides. I think
4 she is qualified.

5 **THE COURT:** What was the cite?

6 **MR. BARNETT:** It's 388 S.E. 2d. 816, Your Honor.

7 **THE COURT:** All right.

8 (WHEREUPON, there was a pause.)

9 **THE COURT:** All right. Bring her back in please.

10 (WHEREUPON, Mrs. Netherton enters at approximately
11 12:32 p.m.)

12 **THE COURT:** Mrs. Netherton, let me ask you a few
13 more questions if you don't mind.

14 **MRS. NETHERTON:** Okay.

15 **THE COURT:** As I said to you before, you get on
16 the jury here, I'm going to define a lot for you. I'm
17 going to talk to you a lot about the law. I'm going
18 to tell you that the defendant is presumed innocent.
19 And you've told us that you can accept that, is that
20 correct?

21 **MRS. NETHERTON:** Uh-huh (affirmative). That's
22 correct.

23 **THE COURT:** You have any problem with presuming
24 the defendant innocent at this point?

25 **MRS. NETHERTON:** No.

1 **THE COURT:** And I'm also going to tell you that
2 the State has the burden of proof and I'm going to
3 define that burden of proof for you. I'm going to
4 tell you that if the State does not prove the
5 defendant guilty beyond a reasonable doubt, then you
6 must find him not guilty. I'm going to define for you
7 the elements of the crime of murder.

8 I'm also going to define for you any defenses
9 that might become applicable. At this point, I don't
10 know if there are no defenses. If we get into the
11 trial and there are no defenses, then I'm not going to
12 want you to be influenced by the fact that I mentioned
13 that there might be defenses.

14 **MRS. NETHERTON:** Okay.

15 **THE COURT:** But if you get into the trial of this
16 case as a juror -- and you have been very honest with
17 us. And I want you to continue to do this. Despite
18 the fact that you learned what you learned and you
19 read what you read and you came to the opinion based
20 on what you read and what you learned that the
21 defendant had gunned down his wife, if the State fails
22 in proving here in this courtroom to prove one of the
23 elements of the crime of murder despite the fact that
24 you had decided before that you thought the defendant
25 had gunned down his wife, could you find the defendant

1 not guilty?

2 **MRS. NETHERTON:** If they failed to met the
3 circumstances --

4 **THE COURT:** If they failed -- if the State fails
5 to meet its burden of proof on one of the elements of
6 murder, I will tell you that you must find the
7 defendant not guilty. Could you do that?

8 **MRS. NETHERTON:** Yes, I could.

9 **THE COURT:** All right. Now, in doing so, in
10 considering the evidence that you will hear in this
11 courtroom, do you believe that you will be able to
12 disregard anything that you might have heard before
13 now about how this happened, who did it, everything,
14 could you disregard what you heard?

15 **MRS. NETHERTON:** I could. And if I could say,
16 Your Honor, I -- honestly, it was a year and a half
17 ago. And that was the last time I read anything on
18 it.

19 **THE COURT:** Do you remember a whole lot of detail
20 about what you read?

21 **MRS. NETHERTON:** Huh-uh (negative.)

22 **THE COURT:** You do not?

23 **MRS. NETHERTON:** I don't. I have too much going
24 on in my life for me to keep that kind of detailed
25 information.

1 **THE COURT:** Would you be willing to follow my
2 instruction as a member of the jury and to listen to
3 all of the evidence and listen to the arguments of
4 both sides and listen to the instructions that I give
5 you on the law, to follow those instructions and
6 render a verdict based solely on the testimony and
7 evidence that you hear and to find the defendant
8 either guilty or not guilty based on whether or not
9 you think the State has proven the defendant guilty
10 beyond a reasonable doubt?

11 **MRS. NETHERTON:** I could.

12 **THE COURT:** Do you have any hesitation saying
13 that?

14 **MRS. NETHERTON:** No, sir.

15 **THE COURT:** All right. Step back in the hall for
16 just one second.

17 (WHEREUPON, Mrs. Netherton exits at approximately
18 12:39 p.m.)

19 **THE COURT:** All right. Mr. Bartosh and, well,
20 everybody, what I just did in my mind was to confirm
21 what I believed I had already heard and that was that
22 she could do the things that she just told me that she
23 could do. I was not trying to rehabilitate her
24 because I didn't think she needed rehabilitating.

25 I did feel that the one thing that I had not

1 asked her and that she had not addressed was whether
2 or not she could find the defendant not guilty if the
3 State failed to prove an element of the crime of
4 murder. Had I omitted anything? Is there anything
5 else that I need to talk to her about? Have I misled
6 her? Have I been overbearing in my questioning of
7 her?

8 **MR. BARTOSH:** No, sir.

9 **THE COURT:** You have any more argument you want to
10 make on whether or not she's qualified?

11 **MR. BARTOSH:** She's not qualified, Your Honor.

12 **THE COURT:** I believe she's qualified. I'm going
13 to qualify her. Mrs. Netherton was very candid with
14 us about the way that she came into the knowledge that
15 she has about the case. And I have paid close
16 attention to the way that she carried herself during
17 the testimony.

18 And I don't have any doubt that she's being
19 candid with us when she said that she can set all that
20 stuff aside and find the defendant either not guilty
21 or guilty. And then to address whether if guilty,
22 whether the appropriate sentence is life or death. I
23 don't have any doubt about Mrs. Netherton. She's
24 qualified.

25 Bring her in.

1 (WHEREUPON, Mrs. Netherton enters at approximately
2 12:42 p.m.)

3 **THE COURT:** All right. Mrs. Netherton, I find
4 that you are qualified. And we are going to let you
5 go for a day or so, maybe two days. I want you to
6 stay in touch with us on this telephone number that
7 you have been given. It's a 800 number that calls into
8 a recording.

9 That recording hopefully beginning about mid-day
10 tomorrow will give you some information about when we
11 need you to come back. So if you will start checking
12 that recording about mid-day tomorrow, you will know
13 everything you need to know. It's possible we could
14 need you back up here tomorrow afternoon. So keep
15 that in mind.

16 **MRS. NETHERTON:** Okay.

17 **THE COURT:** Now over the next several days, do not
18 read anything. Do not watch anything on TV about this
19 case. Do not discuss this case. Do not allow anyone
20 to discuss this case with you. You understand all
21 that?

22 **MRS. NETHERTON:** I have not.

23 **THE COURT:** And I want you to make sure you don't
24 do it from this point on. Okay?

25 **MRS. NETHERTON:** Okay.

1 **THE COURT:** And when you come back, I will ask you
2 just like I will ask everybody if you have been able
3 to keep yourself from having any conversations about
4 the case or from reading or watching anything about
5 the case. And I want you to be able to tell me that
6 you have been able to do that.

7 **MRS. NETHERTON:** Okay. When I get my
8 instructions, it will give me full details on when I
9 will be going?

10 **THE COURT:** Oh, yeah. We will give you detailed
11 instructions about what to do. You don't need to
12 worry about that. Keep in mind that we may sequester
13 the jury and that you may need to pack for several
14 days of lodging with us.

15 **MRS. NETHERTON:** That's what I need to know.

16 **THE COURT:** That's what you need to know. And you
17 also need to know exactly the arrangements for your
18 child's graduation so we can accommodate that. If you
19 are on the jury, we will accommodate you.

20 **MRS. NETHERTON:** Okay.

21 **THE COURT:** All right. Thank you.

22 (WHEREUPON, Mrs. Netherton exits at approximately
23 12:43 p.m.)

24 **THE COURT:** Close the door for a second.
25 One more thing about Mrs. Netherton that

1 impressed me, she's obviously a bright woman. And
2 after she told us about her child's graduation and she
3 at that point made clear that she really didn't want
4 to take any step that was going to interfere with her
5 ability to attend her child's graduation, I started
6 asking her about her previous views.

7 I was asking her about graduation. And she said
8 let me tell you one more thing. That is when she
9 first started telling us about what she had learned
10 and the opinion that she had reached. I believe that
11 she is smart enough to figure out that if she held an
12 opinion that she was not willing to give up that she
13 would have had an easy out to go and attend her
14 daughter's graduation.

15 That is just a small factor that influences me in
16 my conclusion that Ms. Netherton is being honest with
17 us when she answered the question about her
18 willingness to do the things that she said. I just
19 believe her. I believe I her when she says that. I
20 believe she will be able to do it. She will be a
21 good juror.

22 Bring the next juror in.

23 (WHEREUPON, Teresa Gilbert, Juror number 103, enters
24 at approximately 12:44 p.m.)

25 **TERESA GILBERT**

1 if we do get there, we need to know how you feel and how
2 you think.

3 If you are a juror in a criminal case such as this,
4 could you accept and apply the law that I give to you and
5 render a verdict in that case based solely on the testimony
6 and evidence that you hear in this courtroom in light of
7 the law as I give it to you?

8 A No, sir.

9 Q Ma'am?

10 A No, sir.

11 Q You could not do that?

12 A (Shakes head negatively.)

13 Q Let me make sure I make my question clear. If I
14 explain the law to you, you are a juror in my case and I
15 explain the law to you, could you take that law and apply
16 the facts that are proven in the courtroom to that law or
17 apply the law to the facts, whichever way you look at it,
18 and render a verdict based solely on the testimony and the
19 evidence that you hear in light of the law as I give it to
20 you?

21 A Maybe I'm not understanding. But in my mind, I
22 already have my mind made up.

23 Q About this case?

24 A Yes.

25 Q Tell me why that is.

1 **A** I just --

2 **Q** Do you know something about this case?

3 **A** No, sir. Only what -- only what I've seen on TV.

4 **Q** What is that?

5 **A** When I filled out my questionnaire, I put that I
6 did not know anything about the case because the names did
7 not ring a bell with me. But Friday night on the news, I
8 saw a little clip. And it reminded me when it first was
9 on TV that my husband and I talked about it. I just feel
10 like, I have strong feelings about you should not kill
11 somebody. And at that point, my mind was made up back in
12 the year that it happened.

13 **Q** All right. Your mind was made up that what?

14 **A** That he was guilty.

15 **Q** That he was guilty. All right. Well, let me
16 point out a couple of things to you. And then I will ask
17 you a couple of questions.

18 **A** Okay.

19 **Q** If you were a juror in this case or any other
20 case, what I will tell you, what any judge would tell you
21 is that your responsibility as a juror is to set aside in
22 your mind anything that you might have learned about the
23 case before the trial began and to start with a clean slate
24 in your mind and to render a verdict in the case based
25 solely on what you hear and what you see in the courtroom.

1 What you heard on TV might be true. It might not be true.
2 The evidence that you will be required to use in rendering
3 your verdict will be only what comes to you in this
4 courtroom under my supervision.

5 Some people have become so intertwined with a case,
6 they've learned so much about a case, they arrived at
7 conclusions about a case to the point where they can not do
8 that. Could you do that in this case? Could you set
9 aside what you have learned about the case and the
10 conclusions that you reached about the case? Could you
11 set that aside and render your verdict based solely on what
12 you hear in the courtroom?

13 **A** I don't feel that I could.

14 **Q** All right. Thank you, ma'am. Let me get you to
15 step out in the hallway. And I will be right back with
16 you.

17 (WHEREUPON, Mrs. Gilbert exits at approximately
18 12:49 p.m.)

19 **THE COURT:** Mr. Bartosh, you want to voir dire
20 this juror.

21 **MR. BARTOSH:** No, sir. I don't believe she is
22 qualified.

23 **THE COURT:** Does the State want to voir dire
24 her?

25 **MR. GOWDY:** No, sir.

1 **THE COURT:** All right. She is not qualified.
2 Bring her in.

3 (WHEREUPON, Mrs. Gilbert enters at approximately
4 12:49 p.m.)

5 **THE COURT:** Ms. Gilbert, you are not qualified
6 to serve as a juror in this case so I'm going to
7 excuse you. You are free to go.

8 **MRS. GILBERT:** Thank you.

9 **THE COURT:** Bring us another juror.

10 (WHEREUPON, Emma Ellis, Juror number 81, enters at
11 approximately 12:50 p.m.)

12 **EMMA ELLIS**

13 having previously been sworn, testified as follows:

14 **EXAMINATION**

15 **BY THE COURT:**

16 **Q** Good afternoon, Mrs. Ellis.

17 **A** Hello.

18 **Q** How are you?

19 **A** Fine, and you?

20 **Q** I'm doing fine. You remember that you are still
21 under oath from yesterday?

22 **A** Yes, sir.

23 **Q** Since you left us yesterday, have you learned
24 anything about this case?

25 **A** No, sir. I haven't.

1 Q Has anybody talked to you about the case?

2 A No, sir.

3 Q And you haven't talked to anybody about it?

4 A No, sir. I haven't.

5 Q You seen any press reports or TV stories or
6 newspaper articles about this case?

7 A No, sir.

8 Q I'm going to ask you some questions. And then
9 lawyers are probably going to ask you some questions in a
10 few minutes. We are not trying to pry into your privacy
11 or into your personal life but we need to ask you some
12 questions. There are not any right or wrong answers to
13 these questions. We just want you to be open and honest
14 with us. Tell us how you think and how you feel.

15 We are going to talk about the penalty phase. And the
16 fact that we're talking about the penalty phase does not
17 mean anything in terms of this defendant or this case. It
18 just means that because we might get there, we need to know
19 how you think and how you feel about those issues.

20 A Okay.

21 Q If you are a juror in this case, could you accept
22 and apply the law as I give it to you and render a verdict
23 based solely on the testimony and the evidence that you
24 hear in this courtroom?

25 A Yes, sir. I could.

1 Q If you, understanding of course that this, now
2 you understand that the State has the burden of proving the
3 defendant guilty beyond a reasonable doubt?

4 A Yes, sir.

5 Q This is a murder case. Could you depending on
6 the facts and circumstances that are proven find the
7 defendant either guilty or not guilty depending on whether
8 or not you think the State has met that burden of proof?

9 A Yes, sir.

10 Q If the jury finds the defendant guilty, then
11 we're going to move into a sentencing phase. I'm going to
12 talk to you a little bit about that now. In the
13 sentencing phase, you will consider aggravating
14 circumstances and mitigating circumstances. Aggravating
15 circumstances are facts, incidents or details of an
16 occurrence that the State has declared to make worse or to
17 aggravate the crime of murder. In other words,
18 aggravating circumstances to a murder increase the enormity
19 of the murder or add to the injury caused by the murder.

20 Mitigating circumstances, on the other hand, are facts
21 or incidents or details of an occurrence which the State
22 has declared to lessen or reduce the severity of the crime
23 of murder. They may be considered to extenuate or to
24 reduce the degree of moral culpability or responsibility.

25 In the sentencing phase of a murder case such as this,

1 a death penalty case -- I've got something in my mouth. I
2 think I've got it now. You would have two options as far
3 as the sentence, a life sentence or the death penalty. If
4 you were a juror in the sentencing phase, could you,
5 depending on the circumstances and the facts that are
6 proven including the consideration of any aggravating or
7 mitigating circumstances and after considering the law as I
8 give it to you could you return a sentence of life in
9 prison?

10 A Yes, sir.

11 Q Could you return a sentence of the death penalty?

12 A Yes, sir.

13 Q Now if I were to sequester you as a jury and put
14 you up in hotel for five or six days away from your family
15 and your home, would that impose a terrible burden on you?

16 A No, sir. It would not.

17 Q Have you had a chance to go over the witness list
18 that I gave you?

19 A Yes, sir.

20 Q Have you read every name on that list?

21 A Yes, sir.

22 Q Do you know anybody or are you related to anybody
23 on that list?

24 A No, sir.

25 Q Is there any reason that you know of why you can

1 not give the State and the defendant a fair and impartial
2 trial?

3 A No, sir.

4 Q I'm going to let the lawyers ask you some
5 questions now. Then I may come back and ask you some more
6 in a few minutes.

7 A Okay.

8 MR. BRENNAN: Please the Court, Your Honor.

9 THE COURT: Yes, sir.

10 EXAMINATION

11 BY MR. BRENNAN:

12 Q Mrs. Ellis, my name is Doug Brennan. I am an
13 attorney from here in Spartanburg. Myself and Mr. Bartosh
14 and Ms. Quimby have the opportunity to defend Mr. Lindsey
15 in this matter. From your questionnaire, I was able to
16 find that you are currently taking classes at Greenville
17 Tech. Is that correct?

18 A I was but I'm not now. I work third shift.

19 Q So you are out for the summer or are you just not
20 going to school?

21 A I'm not going to school.

22 Q So you are no longer pursuing that educational
23 avenue, is that correct?

24 A Yes, sir.

25 Q You work at BMW?

1 **A** Yes, sir.

2 **Q** You mentioned yesterday or actually you stood up
3 at some point yesterday when you were asked if you knew
4 anybody that was sitting at our table?

5 **A** Yes, sir.

6 **Q** That would have been myself, Ms. Quimby, Mr.
7 Lindsey or Mr. Bartosh. Could you identify who it was
8 that you knew?

9 **A** Mr. Bartosh.

10 **Q** How do you know Mr. Bartosh?

11 **A** At one time, he was going to represent my uncle.

12 **Q** He was going to represent your uncle?

13 **A** Uh-huh (affirmative).

14 **Q** Did you ever have a detailed personal
15 conversation with Mr. Bartosh?

16 **A** No, sir. When he was going to represent my
17 uncle, he was telling us the stuff that could go wrong.
18 But he got somebody else to represent him.

19 **Q** Would the fact that you had a conversation with
20 Mr. Bartosh or at one point Mr. Bartosh may have
21 represented your uncle, would that affect your ability to
22 be impartial in this matter?

23 **A** No, sir.

24 **Q** It would not make you lean more toward our side
25 or more toward the State? You can be right in the middle?

1 **A** Yes, sir.

2 **Q** You mentioned on the questionnaire that you had a
3 cousin that was robbed?

4 **A** No, he robbed somebody. Did I write that wrong?

5 **Q** Maybe I wrote it wrong. I don't know. But you
6 had a cousin who -- did that cousin go to prison?

7 **A** Yes, sir. He is in jail now.

8 **Q** Based on your relationship with your cousin and
9 his criminal activities, would that sway your opinion as to
10 guilt or innocence or to a sentence in this matter?

11 **A** No, sir.

12 **Q** Are you real familiar with the details of your
13 cousin's crime?

14 **A** No, sir.

15 **Q** Okay. All right. You also stood when asked if
16 you or a family member ever been arrested by the
17 Spartanburg County Sheriff's Department or the Inman Police
18 Department.

19 **A** Uh-huh (affirmative).

20 **Q** Was that you or was that your cousin?

21 **A** My cousin.

22 **Q** Your cousin?

23 **A** Uh-huh (affirmative).

24 **Q** All right. I understand. Now there was another
25 question. That was that you or a family member had been

1 arrested for assault, CDV, pointing a weapon or assault
2 with a weapon?

3 A Uh-huh (affirmative).

4 Q Who were you identifying or were you identifying
5 the person that made you stand?

6 A My brother for CDV.

7 Q Your brother for CDV. Now if the facts or the
8 circumstances of this matter brought into play criminal
9 domestic violence, would that have an impact on your
10 decision as to guilt or as to a sentence?

11 A No, sir.

12 Q Do you think about the issue of criminal domestic
13 violence?

14 A Towards myself, you mean?

15 Q Yes.

16 A Yes.

17 Q Does that weigh heavily on your mind?

18 A No, sir.

19 Q Okay. You also stood for a family member having
20 been a victim of an assault or something?

21 A Yes, sir.

22 Q Who was that?

23 A I have two aunts.

24 Q You have two aunts that have been assaulted?

25 A Yes, sir.

1 Q Were those considered criminal domestic violence
2 or were those considered assault and battery? Let me
3 clarify. Were they assaulted by a family member of theirs
4 or were they assaulted by a stranger?

5 A Husbands.

6 Q So those would have been criminal domestic
7 violence incidences, is that correct?

8 A Yeah. But they didn't go to court about it or
9 anything.

10 Q Okay. So your brother has committed criminal
11 domestic violence.

12 A Uh-huh (affirmative).

13 Q And you have two aunts that were victims of
14 criminal domestic violence.

15 A Yes, sir.

16 Q Considering all of that, you could still leave
17 that aside in this and render a true and fair verdict?

18 A Yes, sir. Because you have to listen to the
19 evidence that someone is giving out.

20 Q In a capital case, it is said that there are
21 three kinds of jurors. There are those jurors that if the
22 defendant is found guilty then he has got to be put to
23 death. There are those that decide, that have the mind set
24 that even though the defendant has been found guilty, he
25 should serve life in prison. And then there are those that

1 don't know. They listen to the facts and they make their
2 decision based on the facts. Which one of those categories
3 would you fall into?

4 A Listen to the facts and then make a decision.

5 Q All right. Do you understand that although the
6 State of South Carolina provides for the death penalty to
7 be imposed, it is never mandatory?

8 A Okay.

9 Q There is no one thing that if you hear it, you
10 automatically have to impose a death penalty. Do you
11 understand that?

12 A Okay.

13 Q Now, understanding that if you are on the jury
14 and there are eleven jurors who have all made the decision
15 that the death penalty is proper but you on the other hand
16 has said I think life in prison is proper, can you stand
17 your ground and say, No, my vote is life and I'm going to
18 stay there? Can you stand your ground?

19 A Yes, sir. I could.

20 Q You would not be swayed by those eleven jurors?

21 A No, sir.

22 Q And if those eleven people have signed that
23 verdict form and you are the 12th and you are the one they
24 are waiting on to sign that verdict form, if your decision
25 was life, you can say no I'm not going to sign it?

1 **A** Yes, sir.

2 **MR. BRENNAN:** Beg the Court's indulgence.

3 Nothing further. Thank you.

4 **MR. GOWDY:** May it please the Court.

5 **THE COURT:** Yes, sir.

6 **EXAMINATION**

7 **BY MR. GOWDY:**

8 **Q** Good afternoon, Mrs. Ellis.

9 **A** Good afternoon.

10 **Q** My name is Trey Gowdy. I'm with the Solicitor's
11 Office. That is Donnie Willingham to your left and Barry
12 Barnett in the middle. Together, the three of us are going
13 to be representing the State of South Carolina in this
14 case. I want to start off by thanking you for filling out
15 that questionnaire. I know we asked some personal
16 questions. Yesterday was long and here you are again today
17 answering questions. So on behalf of all of us, we
18 appreciate that.

19 **A** Okay.

20 **Q** I got a few more then we're going to let you go.
21 Can you tell me what your general views on capital
22 punishment are?

23 **A** Well, as far as capital punishment, I would have
24 to be fair and honest. I can't go by personal
25 relationships or my personal feelings. I would not do that

1 because I wouldn't want anybody to do that to me.

2 Q Is it fair to say that you're not automatically
3 opposed to the death penalty?

4 A No, sir.

5 Q Is the death penalty something you thought about
6 a lot? Did you discuss it? And you are a lot younger than
7 I am. But when you were in school, was it something you
8 discussed in school? Have you talked about it recently
9 with family and friends?

10 A No, sir.

11 Q Prior to today or yesterday, have you ever given
12 any serious thought to your position on capital punishment?

13 A No, sir.

14 Q What makes you so certain today given the fact
15 that you have not thought about it in the past that you
16 could in fact vote for death on somebody if you thought
17 that was the right thing to do?

18 A You listen to the evidence. Somebody has to
19 represent something to you and make it fairly and clearly
20 before you can do that. I don't think it's right to go
21 through life thinking about the death penalty and wishing
22 to do something about the death penalty. I think
23 something would have to be presented to you.

24 Q I know that His Honor explained this very, very
25 clearly but I'm going to ask you one more time just because

1 I may not have understood it right. In South Carolina,
2 you always have the option of life. The judge would never
3 tell you have to vote for death. I can not stand up here
4 in front of you and say you have to vote for death.

5 You always have the option of life. That is, life
6 without parole. That means they ain't never getting out of
7 prison. Accepting the fact that that is the law in South
8 Carolina, that life without parole is always an option, do
9 you still think there are circumstances where you could
10 vote to sentence somebody to death?

11 A Yes.

12 Q There are?

13 A Uh-huh (affirmative).

14 Q These questions I'm fixing to ask you are
15 questions I would never ask you if I just met you. But
16 I've got to ask you for this case. You mentioned your
17 uncle.

18 A Uh-huh (affirmative).

19 Q What is your uncle's name?

20 A Jimmy Drummond.

21 Q Jimmy Drummond?

22 A Yes.

23 Q Again, I'm not trying to pry into your life.

24 The three of us are prosecutors and for all I know one of
25 us may have prosecuted your uncle. I don't know. I don't

1 know when it happened. When was he being represented by
2 Mr. Bartosh?

3 A I think earlier this year, either late last year
4 or earlier this year.

5 Q Do you recall what the charge was?

6 A I want to say that it murder on a child. But he
7 took a polygraph test twice and he passed it.

8 Q So is it the situation in Greer?

9 A Yes, sir.

10 Q The fact that my office is prosecuting that case,
11 does that have any impact on you? Is that something that
12 you would factor into this trial, the fact that the same
13 three guys that are sitting over here at this jury table
14 may or may not prosecute your uncle?

15 A No, sir, because I did not know that your company
16 was representing the case. But he does not have to go to
17 trial anymore.

18 Q Okay. So you could put that out of your mind the
19 fact that one of the three of us may at some point have
20 been involved in your uncle's case?

21 A Uh-huh (affirmative).

22 Q How about the fact that Mr. Bartosh who
23 represented your uncle is going to be standing in front of
24 you asking you to spare that man's life? Could you put the
25 fact that you know Mr. Bartosh or talked to him, could you

1 put that out of the equation and be fair to us?

2 A Yes, because I didn't have a long conversation
3 with him. I just met him. We were out together in the
4 hallway. I just recognized his face.

5 Q Believe me, I appreciate you, I had your name
6 written under several questions. I think you stood up
7 several times.

8 A Uh-huh (affirmative).

9 Q And all of us appreciate you doing it because we
10 have no way of knowing if you hadn't done it. I think you
11 stood up on whether or not you knew anybody at the defense
12 table. I think you stood up on this issue of
13 representation. I'm assuming that that was the same, you
14 stood twice on the same thing with Mr. Bartosh.

15 A Uh-huh (affirmative).

16 Q I think you stood up because maybe a family
17 member or somebody may have been the victim of a crime?

18 A CDV.

19 Q A CDV.

20 A Uh-huh (affirmative).

21 Q Not you?

22 A No, sir.

23 Q And I think you were candid enough to tell us
24 that maybe another family member had been charged with
25 something?

1 **A** Uh-huh (affirmative).

2 **Q** Do you know how that case turned out, your other
3 family member that was charged?

4 **A** No, sir, because he is still in Spartanburg
5 County.

6 **Q** I have to ask you to same question again. That
7 is what the three of us do for a living. Our job is to
8 prosecute cases that happen in this county. We would also
9 be the prosecutor on your relative's case that is at the
10 detention center right now. If you are picked for this
11 jury and you come in here the day after today and sit 10
12 feet from the prosecutor's table, is that something that is
13 going to weigh on you that those are the same guys that are
14 prosecuting my cousin, my uncle or somebody else?

15 **A** Uh-huh (affirmative).

16 **Q** Is that something that is going to bother you?

17 **A** No, sir.

18 **Q** Are you sure?

19 **A** Yes, sir. I'm am not cold and anything but you
20 have to put your personal life to the side.

21 **Q** I respect that greatly. I know you can
22 appreciate both sides want juries that are going to be fair
23 and make their decision based only on what happens in this
24 courtroom and not on anything else that may be going on.

25 **A** Uh-huh (affirmative).

1 Q And if I hear you right, you are telling me that,
2 and I believe that, you could be fair?

3 A Yes, sir.

4 Q Okay. One more question then I am going to
5 leave this whole area. Your uncle in Greer with the
6 homicide by child abuse case, did you go to the bond
7 hearing when he originally sought bond in the case?

8 A What do you mean?

9 Q Bond is when you're trying to get out of jail.
10 You are in jail and you go before the Judge to ask for
11 bond.

12 A Oh, no, sir. Not in front of a Judge, no, sir.

13 Q Pardon me?

14 A Not in front of a judge, no, sir.

15 Q When you came and met Mr. Bartosh, it was not in
16 connection with a court appearance. It was at Mr.
17 Bartosh's office?

18 A It was out in the hallway.

19 Q But you do not remember going in front of a judge
20 for a bond hearing in that case?

21 A No, sir.

22 Q The only reason I ask you that is because Mr.
23 Barnett actually was involved in that a little bit. And I
24 didn't know whether you happened to be in the courtroom
25 when the bond hearing was going on.

1 **A** No, sir.

2 **Q** Thank you very much for answering the questions
3 for us.

4 **A** You're welcome.

5 **THE COURT:** Ms. Ellis, would you step in the
6 hallway for just a second please.

7 **MRS. ELLIS:** Uh-huh (affirmative).

8 (WHEREUPON, Mrs. Ellis exits at approximately
9 1:18 a.m.)

10 **MR. GOWDY:** Your Honor, can me and Mr.
11 Bartosh approach please?

12 **THE COURT:** Yes.

13 (WHEREFORE, a bench conference was held off the
14 record.)

15 **THE COURT:** Let's put the subject of this
16 discussion on the record.

17 **MR. GOWDY:** She's not outside?

18 **THE COURT:** It has been brought to my
19 attention that this potential juror has or that at
20 least the NCIC report for this potential juror has on
21 it two convictions for driving under suspension, one
22 conviction for fraudulent check.

23 **MR. GOWDY:** That's correct, Your Honor.

24 **THE COURT:** On her questionnaire, it says have
25 you, a family member or a person close to you ever

1 been convicted of a crime. She says yes. And then
2 when it says explain, she just says cousin comma
3 robbery. She also said that that same cousin was the
4 victim of a robbery in a couple of questions before.

5 It is very likely that there is some confusion
6 about it. The lawyers did not know exactly how to
7 handle it. So they have asked for my guidance. And
8 what I suggest is that I tell her, don't identify
9 either side, but just tell her that at my direction or
10 that I came across the knowledge that this was on her
11 report. And I want her to clear it up for me, see
12 what she says. And we will take it from there.

13 **MR. GOWDY:** I appreciate Your Honor handling
14 it that way. Obviously, we have no objection to it.
15 I would bring to the Court's attention, in addition,
16 on her juror information form which is a separate
17 document, when it asked have you ever been convicted
18 of a crime other than a minor traffic offense, she
19 again said no. Is DUS a minor traffic offense? I
20 don't know. Fraudulent check is a tougher argument
21 to make.

22 **MR. BRENNAN:** What are the dates on those
23 convictions?

24 **MR. GOWDY:** One is fairly recent.

25 **THE COURT:** Bring her in, please.

1 **MR. BRENNAN:** Your Honor, can we have just one
2 second?

3 **MR. GOWDY:** She had a '91 DUS, '91 DUS, '02
4 fraudulent check.

5 **THE COURT:** Just put it on the record.

6 **MR. BRENNAN:** Your Honor, my concern is if this
7 is not going to exclude her as a juror, we are
8 potentially qualifying a juror who was going to be mad
9 at somebody in this courtroom for asking her about
10 these criminal offenses. I would like to think that
11 it would not be this table but it could be.

12 My question to the Court is is the Court inclined
13 to exclude her as a juror. If so, then we don't need
14 to ask her the questions, just exclude her. If the
15 Court is not inclined to exclude her, then I think
16 asking the questions causes problems. We all know
17 about it and then we could us that to strike her if we
18 choose to do so. I am concerned that --

19 **THE COURT:** I have the impression that Ms.
20 Ellis has been open with us and straightforward with
21 us. I'm not inclined to strike her or to find her
22 disqualified unless in the course of questioning her
23 about it I conclude that she deliberately lied about
24 it. So if somebody wants me to question her, then I
25 will. If neither side wants me to question her, I

1 won't.

2 What's the State's position?

3 **MR. GOWDY:** I would like you to question her.

4 **THE COURT:** Bring her in.

5 You have any opposition that, Mr. Brennan?

6 **MR. BARTOSH:** No, Your Honor.

7 (WHEREUPON, Mrs. Ellis enters at approximately
8 1:19 p.m.)

9 **THE COURT:** Mrs. Ellis, let me ask you some
10 questions about one subject. I certainly don't mean to
11 embarrass you about anything. As part of what we do
12 to get ready, as part of what I do to get ready for
13 this, we run background checks on each individual
14 juror. And your background check came up to show
15 that you have a couple of incidents of driving under
16 suspension.

17 **MRS. ELLIS:** Yes, sir.

18 **THE COURT:** And a fraudulent check.

19 **MRS. ELLIS:** Yes, sir.

20 **THE COURT:** You did not list those on your
21 juror questionnaire. And you did not mention on your
22 juror card that you ever been convicted of a crime.
23 Do you -- is there any reason why you did not list
24 those?

25 **MRS. ELLIS:** Because I thought like that was

1 misdemeanor and I thought crime was like being
2 sentenced to prison.

3 **THE COURT:** Okay. It is not a clear question.
4 And that is a sufficient explanation. I appreciate
5 it. Again, I'm not trying to embarrass you.

6 **MRS. ELLIS:** No problem.

7 **THE COURT:** I appreciate your explanation for
8 that. Let me get you to step back out in the hall.
9 I will be right back with you.

10 **MRS. ELLIS:** Okay.

11 (WHEREUPON, Mrs. Ellis exits at approximately
12 1:20 p.m.)

13 **THE COURT:** Any further questioning that
14 either side want you wants to do or that you want me
15 to do for this juror?

16 **MR. GOWDY:** Not from the State.

17 **MR. BRENNAN:** Nothing.

18 **THE COURT:** Any opposition to her
19 qualifications?

20 **MR. GOWDY:** She is qualified.

21 **MR. BRENNAN:** She's qualified, Your Honor.

22 **THE COURT:** Bring her in.

23 (WHEREUPON, Mrs. Ellis enters at approximately
24 1:20 p.m.)

25 **THE COURT:** All right, Mrs. Ellis, you are

1 qualified. I find that you are qualified. It is going
2 to be several days, maybe tomorrow afternoon before we
3 get to you. Stay in touch with us by checking the 800
4 number that we, that was given to you yesterday. Some
5 time about midday tomorrow, we might start putting
6 something on there about when we will need you back.
7 When we do, I may sequester you. So be ready to
8 spend four or five days with us, maybe six days. I
9 don't know exactly how long it will take.

10 And over the next few days until you get back,
11 don't discuss this case with anybody. Don't allow
12 anybody to discuss the case with you. Do not read
13 the newspaper about this case. Do not watch any TV
14 news about the case. You understand?

15 **MRS. ELLIS:** Yes, sir.

16 **THE COURT:** When you come back, I'm going to
17 ask you just like I am going to ask all of the jurors
18 whether or not you talked to anybody about the case or
19 learned anything about the case through the press.
20 I'm going to expect that you'll be able to tell me no,
21 that you have not done that.

22 **MRS. ELLIS:** Yes, sir.

23 **THE COURT:** All right. You are free to go.

24 **MRS. ELLIS:** Thank you.

25 (WHEREUPON, Mrs. Ellis exits at approximately

1 1:22 p.m.)

2 **MR. BRENNAN:** Your Honor, could we have five
3 minutes?

4 **THE COURT:** No, we're going to do one more
5 juror. Then we are going to take a lunch break.

6 Bring him in.

7 (WHEREUPON, Shirley McDowell, Juror number 185 enters
8 at approximately 1:22 p.m.)

9 **SHIRLEY McDOWELL**

10 having previously been sworn, testified as follows:

11 **EXAMINATION**

12 **BY THE COURT:**

13 **Q** How are you, Ms. McDowell?

14 **A** I'm fine. How are you?

15 **Q** I'm doing fine. Ms. McDowell, you remember that
16 you -- we put you under oath yesterday.

17 **A** Yes.

18 **Q** You are still under oath today.

19 **A** I know.

20 **Q** Since you left us yesterday, has anybody talked
21 to you about this case or have you learned anything about
22 this case from anybody other than, well, anybody?

23 **A** No. But yesterday when I said I hadn't heard
24 anything about it, I have -- remembered seeing a little
25 something on TV. But I did not really remember what was

1 about. I was working so I really didn't --

2 Q But now you recall that you had seen something
3 about it?

4 A Something about it.

5 Q All right. Let --

6 A But I don't remember the details.

7 Q We'll talk to you about that in a few minutes.

8 So since yesterday, you have not talked to anybody or
9 learned anything about this case?

10 A No, sir.

11 Q We have some questions that we're going to ask
12 you. And we don't mean to be prying into your private
13 life, but we do have to ask you these questions. There
14 are not any right or wrong answers to the questions. We
15 just want you to be open and honest with us and tell us
16 what you think and what you feel.

17 A Okay.

18 Q We may get -- we're going to talk about penalty
19 phase. The fact that we're going to talk about a possible
20 penalty phase does not mean anything about this defendant
21 or about this case. It just means that since we might get
22 to the penalty phase, we want to know what you think and
23 what you feel about some of the issues that will come up.

24 A Okay.

25 Q If you were a juror in this case, would you be

1 able to listen to the law and apply the law as I give it to
2 you and render a verdict in this case based solely on the
3 testimony and evidence that you hear in this courtroom?
4 Would you?

5 **A** Yes, but --

6 **Q** Is there a but?

7 **A** There is a but.

8 **Q** Well, you want to go ahead and tell me with what
9 the but is?

10 **A** Uh, I would have a hard time struggling with
11 making a decision.

12 **Q** Making a decision?

13 **A** About someone else's fate, yes.

14 **Q** All right. Let's -- let me just move on and we
15 will get to that question in just a minute. Okay?

16 **A** Okay.

17 **Q** You understand that the State has the burden of
18 proof and they must prove the defendant guilty beyond a
19 reasonable doubt. You understand that?

20 **A** I do.

21 **Q** This is a murder case. Could you, in this case
22 or in any murder case, depending on the facts and
23 circumstances that are proven and in light of the law that
24 I tell you, could you find the defendant either guilty or
25 not guilty depending on whether you think the State has met

1 its burden of proof?

2 A (No response).

3 Q Could you find the defendant guilty or not guilty
4 depending on whether or not you think he was proven guilty?

5 A If I had to, but it will be a problem for me to
6 make that decision.

7 Q It would be a problem for you to make the
8 decision as to whether -- as to find someone either guilty
9 or not guilty?

10 A All depending on if he was guilty or not, you
11 know.

12 Q All right. Well, what I would tell you then is I
13 would define for you the crime of murder.

14 A Uh-huh (affirmative).

15 Q And I would tell you what the elements are to
16 prove the crime of murder and tell you exactly what the
17 State would have to prove. I would tell you the standard
18 of proof or the burden of proof as being beyond a
19 reasonable doubt.

20 A Uh-huh (affirmative).

21 Q If I tell you all of that and then you listen to
22 the evidence or you have already listened to the evidence,
23 could you decide whether or not the defendant should be
24 found guilty or not guilty based on whether or not you
25 think the State has proven the defendant guilty?

1 **A** Yes, I could.

2 **Q** So if you found that the State has proven that
3 defendant guilty beyond a reasonable doubt, could you find
4 the defendant guilty?

5 **A** Yes, I could.

6 **Q** If you find the State has not proven the
7 defendant guilty beyond a reasonable doubt, could you find
8 that defendant not guilty?

9 **A** Yes.

10 **Q** If you were on the jury, uh, that got, that found
11 a defendant guilty in a case like this, a death penalty
12 case, you would move into the sentencing phase. . . Let me
13 talk to you a little bit about that. . . There are what we
14 call aggravating circumstances and mitigating
15 circumstances. . . Aggravating circumstances are facts or
16 incidents or details of an occurrence that the State has
17 declared to make worse or to aggravate the crime of murder.
18 In other words, aggravating circumstances when they are
19 present in a murder increase the enormity of the crime or
20 add to the injury that results from the crime.

21 Mitigating circumstances, on the other hand, are facts
22 or incidents or details of an occurrence in which the State
23 has declared to reduce the severity of the crime of murder.
24 They may be considered to extenuate or to reduce the degree
25 of moral culpability or responsibility.

1 Now if you are on the jury in a death penalty case
2 such as this in the sentencing phase, you would have two
3 options for sentence, either a life sentence or the death
4 penalty. Could you, depending on the particular facts and
5 circumstances that are proven including the consideration
6 of aggravating and mitigating circumstances, and of course
7 I would tell you all of the law that is applicable to this
8 case, could you impose a life sentence?

9 **A** Life, yes.

10 **Q** Could you impose the death penalty?

11 **A** I would have a problem with that.

12 **Q** Now tell me about that.

13 **A** Uh, --

14 **Q** Do you think you can do it?

15 **A** If I had to but I really would not want to be in
16 that position to do that.

17 **Q** You really wouldn't?

18 **A** I see good in everybody, I guess. I think
19 people should be punished for their crimes if they are
20 found guilty but I wouldn't want to be the one to make that
21 decision.

22 **Q** Let me stop right there. I'm going to let the
23 lawyers ask you any questions if they choose to. Then I
24 may come back and ask you a few more in a minute, okay?

25 **A** Okay.

1 **THE COURT:** Mr. Bartosh, you want to ask this
2 juror any questions?

3 **MR. BARTOSH:** No, sir.

4 **THE COURT:** Mr. Gowdy?

5 **MR. GOWDY:** No, sir.

6 **THE COURT:** Ma'am, why don't you step in the
7 hall for just a second. And I will be back in touch
8 with you in a little bit.

9 **MS. McDOWELL:** Okay.

10 **THE COURT:** And I will be back in touch with you
11 in just a second.

12 (WHEREUPON, Ms. McDowell exits at approximately
13 1:30 p.m.)

14 **THE COURT:** Mr. Bartosh.

15 **MR. BARTOSH:** She is not qualified, Your Honor.

16 **THE COURT:** All right. You agree with that,
17 Mr. Gowdy?

18 **MR. GOWDY:** I do, Your Honor.

19 **THE COURT:** All right. Bring her in.

20 (WHEREUPON, Ms. McDowell enters at approximately
21 1:30 p.m.)

22 **THE COURT:** Ms. McDowell, we certainly do
23 appreciate your being candid with us. We are not
24 going to need you as a juror in the case. So you are
25 free to go.

1 **Q** All right. Good job. We're going to ask you
2 some questions now that we hope will not too much invade
3 your privacy. But we have to ask these questions. These
4 questions don't have any right or wrong answers. We just
5 want you to be open and honest with us and tell us how you
6 feel and how you think.

7 We will talk about the penalty phase. And the fact
8 that we're going to talk about the penalty phase does not
9 mean anything in terms of this defendant or this case. It
10 just simply means that because we might get to the penalty
11 phase, we need to know how you feel and how you think about
12 some of the issues that will come up in that phase.

13 If you were selected as a juror in this case, could
14 you accept and apply the law as I will give it to you and
15 render a verdict in this case based solely on the testimony
16 and evidence that will be presented here in this courtroom?

17 **A** Yes, sir.

18 **Q** You realize in a criminal case, the State has the
19 burden of proving the defendant guilty beyond a reasonable
20 doubt?

21 **A** Yes.

22 **Q** Now, this is a murder case. And do you think --
23 could you, depending on the facts and circumstances that
24 are proven in this case, could you find the defendant
25 either guilty or not guilty depending on whether or not you

1 think the State has proven him guilty beyond a reasonable
2 doubt?

3 A Yes.

4 Q You could find him either guilty or not guilty?

5 A Yes.

6 Q Now, if the jury find the defendant guilty, we
7 will move into the sentencing phase of the trial. I'm
8 going to talk to you a little bit about some of the issues
9 that will come up during that trial, during that phase.
10 Aggravating circumstances are facts, incidents or details
11 of an occurrence that the State of South Carolina has
12 declared to make worse or to aggravate the crime of murder.
13 In other words, aggravating circumstances when accompanying
14 a murder increase the enormity of the crime or add to the
15 injury of the crime of murder.

16 Mitigating circumstances, on the other hand, are
17 facts, incidents or details of an occurrence that the State
18 of South Carolina has declared to reduce the severity of
19 the crime of murder. And they may be considered as
20 extenuating or as reducing the degree of moral culpability
21 or responsibility.

22 Now, in the penalty phase of a trial, you would have
23 two options as to sentence, either a life sentence or the
24 death penalty. Could you, depending on the particular
25 facts and circumstances proven in this case and including

1 the consideration of aggravating and mitigating
2 circumstances and the law as I will give it to you, could
3 you return a sentence of life in prison?

4 A Life in prison, yes.

5 Q Could you return a sentence of the death penalty?

6 A I would have issues with the death penalty. I
7 possibly could if I felt like a person had a background.
8 I'm not sure in a case that you could give all the
9 background of a person's life. But if I felt like a
10 person's background was such that he was brought up in a
11 way that he didn't have a care about you or anybody, didn't
12 care about morals, could easily kill somebody, another
13 person or another person, I could easily say yes to that.
14 But if a person has done something one time and it was out
15 of a situation that just happened to occur out of anger, I
16 would have to punish him for that.

17 Q All right. Let me ask if you if it would be
18 correct to sum up your answer to that last question by
19 saying that whether or not you could impose the death
20 penalty would depend on the facts and circumstances that
21 were proven to you during the course of the penalty phase
22 of a trial?

23 A That's true.

24 Q Now, you heard me say that we might sequester
25 this jury. And we would put you in a hotel for four or

1 five days as a group and not allow you to go home to your
2 family. Would impose a tremendous burden on you?

3 A No.

4 Q Have you had a chance to go over the witness list
5 that I gave you?

6 A I saw one name on there that I might would know.

7 Q Let me ask you this question. You did go over
8 the witness list?

9 A Yes, sir.

10 Q You did look at every name on that list?

11 A Yes, sir.

12 Q Do you know anybody or are you related to anybody
13 whose name is on that list?

14 A I saw one name, number 82. That is a person by
15 name that I went to church with possibly.

16 Q Number 82. That is Carol Wright.

17 A That's a common name so that might not be the
18 same person.

19 Q From Inman. Okay. Uh, --

20 A That's been 20 years.

21 **THE COURT:** Does anybody have on the tip of their
22 mind some more information about Carol Wright?

23 **MR. GOWDY:** Would it have been in Kingstree
24 or in Spartanburg, Your Honor? Ms. Wright has always
25 been in Spartanburg?

1 **THE WITNESS:** You're asking that because I'm from
2 Kingstree?

3 **BY THE COURT:**

4 **Q** Did you know her here in Spartanburg?

5 **A** No, I knew her in Greer.

6 **Q** In Greer?

7 **A** She went to the same church I was in in Greer.

8 **MR. GOWDY:** She's in here most of the time,
9 Your Honor. She's the victim's mother. She's an
10 African-American lady. Is that?

11 **THE WITNESS:** No, that's not the same.

12 **BY THE COURT:**

13 **Q** All right. So that's apparently not the same
14 person?

15 **A** No.

16 **Q** Do you know of any reason why you could not give
17 both the State and the defendant a fair and impartial trial
18 in this case?

19 **A** I am somewhat familiar with the case. I read
20 about it in the papers right after it occurred. I recall
21 that part of the events.

22 **Q** All right. Let me ask you this question then.
23 As a member of the jury, I would instruct you that your
24 responsibility is to set aside anything that you might have
25 known or learned about this case before the trial began and

1 to listen to the testimony and evidence that is presented
2 to you here in this courtroom under my supervision and to
3 render a verdict based solely on that testimony and
4 evidence that you hear in this courtroom and in light of
5 the law as I give it to you setting aside anything that you
6 may have heard or learned outside of the courtroom. Would
7 you be able to do that?

8 A Yes.

9 Q You have any hesitation in saying that?

10 A No.

11 Q All right, sir. Now, having answered that
12 question, do you know of any reason why you could not give
13 both the State and the defendant a fair and impartial
14 trial?

15 A No.

16 Q All right. Now, I see in your -- you wrote, in
17 response to the question, Have you formed an opinion so
18 that it would affect your ability to be fair and impartial
19 if selected as a juror, and I believe yesterday -- was it
20 yesterday? Yesterday. Gosh, it seems like we've been here
21 a month already. Yesterday, you wrote possibly so. That's
22 right?

23 A Based on my background of knowing what was in the
24 papers is why I said that.

25 Q Let me explain a few more things to you. As we

1 get into the trial -- and I've said this already. I will
2 say it again. The defendant is presumed innocent. And
3 just like I accept that presumption of innocence, you must
4 accept that presumption of innocence. I will tell you that
5 very clearly again if you are seated as a juror in this
6 case.

7 You will then listen to all the testimony and evidence
8 that you will hear or that either side puts up. I will
9 then explain to you the law that is applicable to the case.
10 I will explain to you the burden of proof, explain to you
11 the presumption of innocence, explain to you that the State
12 has to prove the defendant guilty beyond a reasonable
13 doubt.

14 I will explain to you the elements of the crime of
15 murder, tell you that the State has to prove every one of
16 those elements beyond a reasonable doubt. Anything else
17 that may become relevant to Mr. Lindsey's guilt, I will
18 explain that.

19 Now, then would you be able to take the facts and the
20 testimony and the evidence that is presented to you here in
21 the courtroom and go back in the jury room with the other
22 members of the jury and setting aside anything that you may
23 have learned, setting aside any conclusions that you may
24 have reached before you went to trial, would you be able to
25 render a fair and impartial verdict based on that testimony

1 and evidence that you heard in the courtroom and in light
2 of the law as I gave it to you?

3 A Yes.

4 Q And do you think that the fact that you possibly
5 reached a conclusion about the case, would that interfere
6 with your ability to do what I just said?

7 A I guess I can say I'm only human but I don't
8 think so.

9 Q All right.

10 A I think I can take the facts that you give.

11 Q I'm going to let the lawyers ask you some
12 questions now. Then I may come back and ask you a few more
13 in a minute.

14 **EXAMINATION**

15 **BY MS. QUIMBY:**

16 Q Hi, Mr. Creel.

17 A Hi.

18 Q My name is Karen Quimby. And I, along with Mike
19 Bartosh and Doug Brennan, are the attorneys representing
20 Marion Lindsey sitting at the counsel table. We appreciate
21 your being here and allowing us to put you in the hot seat
22 and ask you questions. Have you ever testified before or
23 been in a situation like this?

24 A No.

25 Q I don't want to make you feel uncomfortable.

1 **A** That's all right. I already am.

2 **Q** Okay. I will try to limit that. Uh, it is
3 important for you to feel comfortable. And it is important
4 for us to be able to find out your views on several
5 different things. Mainly, well, we need to make sure that
6 no matter what, Marion Lindsey gets a fair trial. And the
7 way that we do that is by making sure that we seat jurors
8 who will be able to put aside things that they may or may
9 not know about the case, put aside whatever personal
10 beliefs they may have and listen, have open eyes to every
11 bit of testimony and all the evidence and instructions from
12 the judge on the law and will go back to the jury room and
13 follow the law according to the facts as the jury finds it.

14 So, having said that, we need to know what your views
15 are. We're not trying to be nosy or anything like that.
16 And you are entitled to any view that you might have. We
17 just need to know what it is. Do you have any particular
18 view of -- about the death penalty? I know that you said
19 it would be a tough decision. Could you expand on that a
20 little bit?

21 **A** Okay.

22 **THE COURT:** Mr. Creel, would you mind taking that
23 microphone and pulling it a little bit closer to you?

24 **THE WITNESS:** Is that good?

25 **THE COURT:** That's better. Thank you.

1 **THE WITNESS:** Okay. I don't think I have or any
2 person has the right to choose abortion other than
3 God.

4 **BY MS. QUIMBY:**

5 **Q** So do you take that view, we are not here to talk
6 about abortions but does that have a basis for --

7 **A** That's my religious belief on that. God has the
8 authority to choose stuff like that.

9 **Q** So just as you applying that religious belief to
10 the abortion issue, you are applying it in the same way to
11 the issue about the death penalty?

12 **A** The death penalty is wishy-washy. For example,
13 do you remember the case Pee Wee Gaskins?

14 **Q** (No response.)

15 **A** I'm sure you remember that. To me, that guy --

16 **THE COURT:** She doesn't remember it but everybody
17 else in here have.

18 **THE WITNESS:** There was no choice about him in my
19 mind. Even after he got in prison, he still committed
20 murder. He was a person that I think really had no
21 feelings or obligations to people. I think that he
22 did not belong.

23 **BY MS. QUIMBY:**

24 **Q** Let me see if I can rephrase that. I don't want
25 to put words in your mouth. So if I understate it, please

1 let me know.

2 A Okay.

3 Q Did you come to that belief because of the
4 circumstances of what you believe that he did?

5 A I believe that he didn't value the life of other
6 people.

7 Q Okay. In this trial, we're only going to be
8 concerned with what the State just said that Marion Lindsey
9 has done. The indictment only -- there is only one victim
10 in this case. There's only one person. So it's not really
11 the same type factual situation as Pee Wee Gaskins.

12 A That's why I say I would get to the point where
13 it would be a difficult decision if the person has done
14 something one time and it was in a moment of anger as
15 opposed to if there was a history that led up to it. In my
16 mind, the person really had a chance to think about it and
17 make other alternative avenues as opposed to murder. If a
18 person does something out of anger, there's a possibility
19 in my mind that I would not be able to impose the death
20 penalty to that person. I would have to give them a life
21 sentence.

22 Q Okay. So again if I understand you correctly,
23 you hold your beliefs pretty strongly. Is your decision
24 based more on only the background of the defendant or do
25 you also consider along with that the facts and

1 circumstances of the specific incident?

2 A Uh, --

3 Q I don't know if that means since --

4 A When you say the background of the defendant, --

5 Q I don't want to define, I don't want to put
6 limits on your definition. I understood you to say that
7 you would have to look at his background or the background.

8 A If I knew the background of the person, if the
9 person had just -- you said it is only one case. If a
10 person had a background where he killed other people or was
11 a very threatening type person, then that would be a type
12 background that would lead towards a path that shows a
13 person really didn't care.

14 Q Let me change gears for just a second. Before
15 you could even get to thinking about death penalty or life
16 in prison, you would first have to be able to keep an open
17 mind and listen to the facts about the crime in the trial
18 part of it. So even with the possibility of the death
19 penalty being an option for sentencing, he's got to be
20 found guilty first.

21 You understand that in a trial like, this is separated
22 into two different parts or phases. And the first phase of
23 the trial is just like any other trial. Only if he is
24 convicted of murder would we then move to a sentencing
25 phase. So regarding the first phase, the trial, do you

1 have any reason that you know about that you would not be
2 able to objectively listen to all the testimony and
3 consider all the evidence and follow the law that the judge
4 give you during the trial phase?

5 **A** I don't know of any reason why I couldn't listen
6 to the facts and weigh the facts and figure out what's
7 right and find him guilty or not guilty.

8 **Q** Okay. And the fact that you have read anything
9 any time between then and now, does that have any affect on
10 how you are going to weigh anything that you hear?

11 **A** I guess my assumption of what I read in the paper
12 is probably going to be the same that is going to be
13 presented into court. What I would have to do is weigh
14 what you say to what --

15 **Q** I'm not going to go into the instructions on the
16 law. But I will say that the judge will tell you that
17 anything you read previously, you never read it. Anything
18 you hear in here, it's got to be like the first time you
19 ever read it. Are you able to do that?

20 **A** Yes.

21 **Q** Okay. So you did not form any opinion about
22 whether you think Mr. Lindsey is guilty or not guilty or
23 anything like that?

24 **A** I would say that based on what I read in the
25 paper, I would assume that he has been charged with

1 something. And my recollection from a year and a half ago
2 was he was seen at the police station and he was shot by a
3 policeman in the car. What the judge is telling me is I
4 can't weigh anything that I read before. I have to listen
5 in here. That's what I have to do.

6 Q That's correct.

7 A I think I can do that.

8 Q Okay. Set aside any preliminary decisions you
9 may have come to or assumptions. Okay. I also noticed
10 that you amended your questionnaire. We appreciate your
11 candor in letting us know anything that you thought of
12 since you first filled it out that might help us in this
13 process. You have a nephew that works for the Camden
14 Police Department?

15 A Yes.

16 Q How old is your nephew?

17 A 27, I'm guessing.

18 Q And are you close with him?

19 A I haven't seen him for about a year and a half.
20 He's my nephew-in-law.

21 Q Okay. Does the fact that your nephew-in-law
22 works for a police department, does that factor in any way
23 your thoughts about serving on a jury?

24 A No.

25 Q You also include the fact that your sister-in-law

1 is an administrative assistant in a law office in
2 Charlotte. What kind of law do they practice?

3 A They do tax.

4 Q Okay. Way above my head. I also notice that you
5 read the Herald Journal and get news from the Internet. Is
6 the Herald Journal where you remember reading about this
7 case?

8 A Yes.

9 Q On the section of the questionnaire discussing
10 prior experiences with crimes relating to yourself or to
11 anyone else, you included a couple of things. I believe it
12 was your brother that was robbed in his pharmacy?

13 A Yes.

14 Q Do you remember if anybody was ever arrested for
15 that or charged?

16 A The person served time.

17 Q Okay. Sorry to bring this up. You said a friend
18 of yours in high school, his father was murdered at some
19 point.

20 A His father was murdered. He worked at a
21 furniture store. And someone came and shot him and left
22 him for dead.

23 Q Do you still have contact with that friend?

24 A (Shakes head negatively.)

25 Q No?

1 **A** (Shakes head negatively.)

2 **Q** Okay. Did either of those incidents, have any of
3 those incidents even though they were a long time ago, have
4 either of those incidents or any other incident made you
5 feel a certain way or another? You may have had a
6 different view before.

7 **A** Probably with my friend in high school. This was
8 a family of three sisters. Their daughter died while they
9 were all still in high school. I think it was that side I
10 saw of her along with losing their father.

11 **Q** Okay. And yesterday when Judge Few was asking
12 the panel to stand up for different types of situations and
13 if you know certain people or if you had contact with law
14 enforcement or anything like that, you indicated that you
15 knew someone at the Solicitor's office. I just wanted to
16 check and see whether that is a family member?

17 **A** I don't think so.

18 **Q** Okay. So you don't know anyone that works in the
19 office of the prosecution?

20 **A** (Shakes head negatively.)

21 **Q** Okay. It said family member that is employed by
22 a law enforcement agency. Is that you or is there anybody
23 else?

24 **A** Some time ago, my cousin.

25 **Q** Okay. You understand that if we get to the point

1 of discussing the death penalty, you will never be required
2 to recommend the death penalty. It is always an option.
3 You can always choose life or you can always choose death.

4 **A** Explain that a little more.

5 **Q** Okay. The final decision about whether you vote
6 life or whether you vote for the death penalty, that is
7 your decision. You can only get to that by first finding
8 an aggravating circumstance. If you find him guilty of
9 murder, it takes us to the sentencing phase. In the
10 sentencing phase, you will be able to consider things that
11 make it worse according to the State and things that you
12 need to weigh along with the bad, things like his
13 background or anything.

14 **A** Okay.

15 **Q** You would have to find an aggravating
16 circumstance before any of the jurors could ever start
17 talking about the death penalty. Would you -- if we got to
18 that phase, it is said that there are three types of
19 jurors. There is the juror who will no matter what, if
20 they have found an aggravating circumstance, they are
21 always going to vote death. Then we have jurors who just
22 will not do death. They are always going to vote life.

23 Then you've got jurors who are going to consider both
24 the aggravating circumstances that they have already found
25 and any mitigating circumstances to see if they found any

1 of those. And then the final decision you've got to make
2 for yourself. Do you have any leaning one way or the other
3 or would you be able to consider both options in light of
4 whatever facts you find?

5 A That would be to listen to both sides and then
6 make a decision.

7 Q Okay. Thank you very much.

8 MR. GOWDY: May it please the Court?

9 THE COURT: Yes, sir.

10 EXAMINATION

11 BY MR. GOWDY:

12 Q Good afternoon, Mr. Creel. How are you?

13 A Good.

14 Q My name is Trey Gowdy. I'm with the Solicitor's
15 officer here in Spartanburg. This is Donnie Willingham to
16 your left and Barry Barnett in the middle. Together, we're
17 going to be prosecuting this case on behalf of the State.
18 You mentioned Pee Wee Gaskins. I think he was from
19 Johnsonville, wasn't here?

20 A Down around near Lake City.

21 Q Round Lake City.

22 A That's where my mom and dad are from. I don't
23 think either one of them are related. I don't think I'm
24 related to him.

25 Q You mentioned Pee Wee Gaskins cause he was one of

1 the most notorious criminals in the history of South
2 Carolina. He, of course, killed more than one person.

3 A Right.

4 Q As I understood you explain your answer later,
5 you don't have a rule that you have to kill more than one
6 person before you are death penalty eligible. Is that
7 fair?

8 A That's true.

9 Q Okay. You also were good enough or candid enough
10 with us to discuss your views relative to the sanctity of
11 law. And you voiced your views on the issue of abortion
12 and similarly on the issue of capital punishment. But
13 while the sanctity of life on the issue of abortion, you do
14 not foreclose death being an option on the other end of the
15 spectrum. Is that correct?

16 A (Nods head affirmatively.)

17 Q And if you had the choice between life and death,
18 you wouldn't always pick either one. Is that fair?

19 A Say it again.

20 Q If you had the choice between life and death, you
21 wouldn't always pick life and you wouldn't always pick
22 death?

23 A That's right.

24 Q It would depend upon what else you heard in that
25 case. Is that fair?

1 **A** Yes.

2 **Q** If you did decide that death was proper, would
3 you be able to sign your name to a document and hand it up
4 to the judge and say that's what you thought the proper
5 verdict was?

6 **A** If I made the decision, yes.

7 **Q** Mr. Creel, these are very serious issues. I
8 would be surprised if anybody was excited at the idea of
9 sentencing somebody to death. But these are very serious,
10 important issues. But nevertheless, it's also important
11 for the State to have a jury that is fair and that can not
12 only consider life and death but actually impose it if they
13 thought that it was proper.

14 All we've got to go on as the defense and the
15 prosecution are your candid answers to our questions. And
16 I think you can appreciate the importance of having jurors
17 in this box that we can rely on and be fair. So when you
18 tell me that if you think death is appropriate that you are
19 going to vote for that, I've got to be able to rely upon
20 that. Is that what you're telling me?

21 **A** That's true.

22 **Q** And that you don't have any special rule that it
23 has to be a serial killer before you will consider that.

24 **A** Right.

25 **Q** Okay. I think that's all I have, Mr. Creel.

1 Just give me one second. Okay.

2 **A** Okay.

3 **Q** Mr. Creel, thank you for answering these
4 questions.

5 **THE COURT:** Mr. Creel, would you step in the hall
6 for a second please.

7 (WHEREUPON, Mr. Creel exits at approximately
8 2:54 p.m.)

9 **THE COURT:** Any objections to this juror?

10 **MR. GOWDY:** No.

11 **MS. QUIMBY:** No, Your Honor. I don't have any
12 objections. I think he's qualified.

13 **THE COURT:** Objections from the State?

14 **MR. GOWDY:** No, sir. He's qualified.

15 **THE COURT:** Bring him in.

16 (WHEREUPON, Mr. Creel enters at approximately
17 2:54 p.m.)

18 **THE COURT:** Mr. Creel, I find that you are
19 qualified as a juror in this case. It is going to be
20 at least tomorrow afternoon, probably Thursday morning
21 before we need you. Sometime before lunch tomorrow,
22 start checking that 800 number that you were given
23 yesterday to see if there's any information on the
24 recorded message about when you need to come back.

25 You will need to think about the fact that you

EXAMINATION

BY THE COURT:

Q Mr. Martinez?

A Yes, sir.

Q How are you, sir?

A Fine. How are you?

Q I'm doing fine. You recall that we put you under oath yesterday. You are still under oath today.

A Okay.

Q Since you left us yesterday, has anybody talked to about this case?

A No, sir.

Q Have you talked to anybody about the case or have you learned anything either by reading the paper or looking at the news or listening or overhearing anybody?

A No, sir.

Q I and the lawyers are going to ask you some questions. We apologize if this seems like we are intruding into your privacy but we have to ask you these questions. There are not any right or wrong answers. We just want you to be open and honest with us and to tell us how you think and how you feel.

A I will do it.

Q We are going to talk about the penalty phase. And that is not because -- by talking about the penalty

1 phase, we are not saying anything about this defendant or
2 about this trial. We are simply acknowledging that
3 because we might get into the penalty phase, we need to
4 talk about some of the issues that could come up during
5 that phase of the trial.

6 A Okay.

7 Q If you are a juror in this case, will you be able
8 to listen to the law as I give it to you and accept that
9 law and render a verdict based solely on the testimony and
10 the evidence that you hear in this courtroom and in light
11 of the law as I give it to you?

12 A Yes, sir.

13 Q You understand that the State has the burden of
14 proof?

15 A I do.

16 Q And they must prove the defendant guilty beyond a
17 reasonable doubt?

18 A I do.

19 Q Now, this is a murder case. Could you, depending
20 on the facts and circumstances that are proven and in light
21 of the law as I give it to you, could you find the
22 defendant either guilty or not guilty depending on whether
23 or not you think the State has proven him guilty beyond a
24 reasonable doubt?

25 A Yes, sir.

1 **Q** Now, if we move from the guilt phase on a finding
2 of guilty into the penalty phase, some other issues are
3 going to come up. We're going to talk about those right
4 now.

5 **A** All right.

6 **Q** We have -- I'm going to talk to you about
7 aggravating circumstances and mitigating circumstances.
8 Aggravating circumstances are facts, incidents or details
9 of an occurrence which the State has declared to make worse
10 or to aggravate the crime of murder. Aggravating
11 circumstances when accompanying a murder increase the
12 enormity of or add to the injury of the crime of murder.

13 Mitigating circumstances, on the other hand, are
14 facts, incidents or details of an occurrence that the State
15 has declared to reduce the severity of the crime of murder.
16 Those may be considered as extenuating or reducing the
17 degree of moral culpability or responsibility.

18 Now, if you get into the penalty phase of a death
19 penalty trial like this, you, as a juror, would have two
20 options for a sentence, life sentence and the death
21 penalty. Could you, depending on the particular facts and
22 circumstances of the case including the consideration of
23 aggravating and mitigating circumstances and considering
24 the law as I will give it to you, could you impose a life
25 sentence?

1 **A** Yes, I could.

2 **Q** Could you impose the death penalty?

3 **A** Yes, I could.

4 **Q** Now, if you are chosen to be on the jury, I might
5 sequester the jury and put you up in a hotel for five or
6 six days to be away from your family and your job. Would
7 that impose a tremendous burden on you?

8 **A** No, sir.

9 **Q** Have you had a chance to go over the witness list
10 that I gave you?

11 **A** Yes, sir.

12 **Q** Did you read every name on that list?

13 **A** Yes, sir. I did.

14 **Q** Is there anybody on that list who you recognize?

15 **A** Yes, sir.

16 **Q** Did you know -- tell me who you know or who you
17 are related to from that list.

18 **A** Number 63, Rachel Martinez. She is my sister.

19 **Q** That's your sister. If your sister was called as
20 a witness in this case to testify, would that put you in an
21 uncomfortable position?

22 **A** No, sir.

23 **Q** The fact that your sister is a witness in the
24 case -- and she is a law enforcement officer, correct?

25 **A** Yes, sir.

1 **Q** If she testified on behalf of the State, would
2 you still be able to give both the State and the defendant
3 a fair and impartial trial in this case?

4 **A** I think I can. Yes, sir. I believe I can.

5 **Q** All right.

6 **A** I need some time to think about it. But I'm
7 pretty sure I could.

8 **Q** All right. Tell you what.

9 **A** All right.

10 **Q** Let me ask you step in the hall just one second.
11 And I'm going to find out a little something before we go
12 forward. All right?

13 **A** All right.

14 (WHEREUPON, Mr. Martinez exits at approximately
15 3:12 p.m.)

16 **THE COURT:** What's her involvement in the case?

17 **MR. GOWDY:** Your Honor, she is likely not
18 going to be called. I believe she took some pictures
19 in a prior domestic violence. We may not go into it
20 at all.

21 **THE COURT:** But even if she does testify, it's
22 just going to be to authenticate the pictures, won't
23 it?

24 **MR. GOWDY:** Yes, sir.

25 **THE COURT:** Her credibility is not going to become

1 an issue?

2 **MR. GOWDY:** Only if something about the
3 camera were at issue. I think the chances of her
4 being called to testify are 1 in 100 right now.

5 **THE COURT:** Do you mind if I tell him that? Or, I
6 can either tell him that now and see what he says or
7 we can just set that aside and address that during
8 voir dire after we qualify the jury if he gets
9 qualified?

10 **MR. BARTOSH:** There is one other issue.

11 **THE COURT:** Well, if I hadn't gotten to it yet,
12 you want to tell me what it is.

13 **MR. BARTOSH:** It involves the sister.

14 **THE COURT:** Okay. What is it?

15 **MR. BARTOSH:** May we approach? I'll leave it
16 up to you.

17 **THE COURT:** All right. You think we ought to put
18 it on the record?

19 **MR. BARTOSH:** Well, I'd rather talk to you
20 about it.

21 **THE COURT:** We will go off the record for a
22 minute.

23 (WHEREUPON, a bench conference was held off of the
24 record.)

25 **THE COURT:** All right. Bring him in.

1 (WHEREUPON, Mr. Martinez enters at approximately
2 3:16 p.m.)

3 **BY THE COURT:**

4 **Q** All right. Mr. Martinez, let me ask you a
5 couple of more questions about your sister. And then we
6 will move on.

7 **A** All right..

8 **Q** It is -- I have inquired a little bit more about
9 what your sister's involvement is.

10 **A** Okay.

11 **Q** And she is really not in the center piece of this
12 investigation. So we may come back to that in a few
13 minutes.

14 **A** Okay.

15 **Q** Are you familiar -- are you and your sister real
16 close?

17 **A** I think we are. But with her working shift --

18 **Q** Are you familiar with her work history?

19 **A** Yes.

20 **Q** Are you aware of the fact that she used to work
21 for the Public Defender's office?

22 **A** Yes, I do.

23 **Q** All right. Do you know about how her employment
24 went there?

25 **A** No. I just know that she wasn't happy. That's

1 all I remember.

2 Q Do you know why?

3 A I think it was from working in law enforcement.
4 She wasn't happy being on the other side.

5 Q Okay. How long ago has it been since she left
6 the Public Defender's office?

7 A I don't remember. Five or six years.

8 Q Okay. Are you aware -- and I don't know that I'm
9 not aware. I just want to know do you know under what
10 circumstances she left?

11 A It wasn't good, but I don't know the details.
12 She didn't elaborate. And I was too embarrassed for her to
13 ask.

14 Q Do you know if she quit or if she was fired?

15 A I think she was let go.

16 Q Do you know why?

17 A I'm not real sure, no. I don't think she ever
18 said. And I never pushed it.

19 Q Okay.

20 A She was just unhappy.

21 Q Okay. Now, obviously Mr. Bartosh and Ms.
22 Quimby work for the Public Defender's office.

23 A Right.

24 Q I told you that yesterday.

25 A Uh-huh (affirmative).

1 **Q** Would the fact that your sister worked there and
2 worked for Mr. Bartosh although at that time, he was not
3 the Public Defender. He was the deputy I believe.

4 **A** Yes, sir.

5 **Q** And that she left under unpleasant circumstances
6 whatever those are -- and I'm not telling you that. I'm
7 basing that on what you said cause I don't know. But based
8 on your impression, she left under unpleasant
9 circumstances. Would that interfere, any of that interfere
10 in any way with your willingness or your ability to give
11 the State and the defendant a fair and impartial trial?

12 **A** It wouldn't interfere. I didn't even know Mr.
13 Bartosh's name or who he was until this week.

14 **Q** And technically, Mr. Bartosh work for the same
15 person that your sister worked for.

16 **A** Okay.

17 **Q** Who was Charlie Sanders? He was the Public
18 Defender then, right?

19 **A** I didn't know that.

20 **Q** Okay. Do you see that that poses you any
21 problem?

22 **A** Not at all. That's just business.

23 **Q** Other than the things that we discussed and the
24 lawyers may follow up a little bit with you on that, do you
25 know of any reason why you could not be a fair and

1 impartial juror in this case?

2 A Other than being a human being, no, I do not.

3 MR. GOWDY: We will not be calling Deputy
4 Martinez, Your Honor.

5 THE COURT: All right.

6 BY THE COURT:

7 Q Your sister's involvement is limited. And she is
8 apparently not going to be called as a witness. It's
9 possible that she might but I don't think her credibility
10 is going to come into play in the case. So understanding
11 that, is -- does that put you in an uncomfortable position?

12 A I don't see how.

13 Q Does it interfere in any way with your ability to
14 give both sides to this case a fair and impartial trial?

15 A No.

16 Q Okay. Let me let the -- let me let the lawyers
17 ask you some questions. Then I may ask you some more.

18 MR. BARTOSH: Thank you, Your Honor.

19 EXAMINATION

20 BY MR. BARTOSH:

21 Q Mr. Martinez, does your sister know that you are
22 in this jury pool?

23 A I think I told her I was selected for a jury
24 trial.

25 Q Have you discussed it with her?

1 **A** No.

2 **Q** I mean, have you discussed that I'm in this pool?

3 **A** I didn't know who you were until Wednesday.

4 **Q** Not me. What I'm saying is have you told her
5 that you were in a pool that could possibly be selected for
6 a death penalty case?

7 **A** No, sir.

8 **Q** So she is not aware of that?

9 **A** As far as I know, no, sir.

10 **Q** Okay. And you don't foresee any problems with
11 when you tell her, should you be selected, that you are
12 sitting on a jury panel with a client who is represented by
13 the Public Defender's office?

14 **A** I don't have a problem with that. I don't think
15 she would have a problem with it. If she does, she will
16 let me know.

17 **Q** If she let's you know that she has a problem with
18 it, would that affect you?

19 **A** No, sir. I don't think so.

20 **Q** All right. Now, on your questionnaire, you first
21 put down that you were the victim of an armed robbery?

22 **A** No. Well, yes and no.

23 **Q** Okay.

24 **A** I have to explain it.

25 **Q** If you would.

1 **A** The fellow who came into where I was working said
2 he had a gun. He never showed it. I asked him whether it
3 was really true that he ever had one. And he said would
4 you like to see it. And I just took his word for it that
5 he had one.

6 **Q** So you assumed that he had one?

7 **A** Yes, sir. I did.

8 **Q** And so he took something of value from you?

9 **A** Yes, sir.

10 **Q** Is that the only armed robbery you ever been a
11 victim of?

12 **A** Yes, sir.

13 **Q** And also you had something on your sheet that I
14 wasn't really sure about. I need you to explain it to me.
15 My brother's brother-in-law had lost an uncle and a father
16 in a robbery.

17 **A** Yes, sir.

18 **Q** So your brother --

19 **A** My brother's --

20 **Q** That's what I'm unsure of.

21 **A** Okay. My brother is married to this lady. This
22 lady has got a sister. That sister has got a husband.
23 That husband's father was killed in an armed robbery and I
24 believe her uncle, that same person's uncle if you can
25 follow that path.

1 Q So you had two that was a double --

2 A That's my understanding, yes, sir.

3 Q It was a double murder?

4 A No, it was two separate incidences.

5 Q So two people have been killed in an armed
6 robbery?

7 A That's correct.

8 Q How long ago was that?

9 A The father, I don't -- I'm not good with time.
10 It's been a while. And the uncle was fairly recent. I
11 would say within the last two years.

12 Q Would that have any affect on you as far as
13 having the ability to sit and listen to facts and be
14 impartial and be fair and follow the judge?

15 A I will do what the judge tells me to do.

16 Q And you would be able to put all of that out of
17 your mind?

18 A It will be in my mind, sure. I'm just a human
19 being. But I'm not going to put another human being to
20 death just because of what happened to someone else. If
21 the evidence showed by the State that this fellow did do
22 it, if he did, then I would have to do what I have to do
23 following his instructions.

24 Q Okay. Well, let's ask about that. If the State
25 -- you understand that this is a two-part --

1 **A** Yes, sir.

2 **Q** -- operation. The first part is the State puts
3 up its evidence and has to prove to all twelve jurors
4 beyond a reasonable doubt that Mr. Lindsey is guilty of
5 murder. If the jury does not believe that, then we all go
6 home.

7 **A** That's right.

8 **Q** Okay. If on the other hand, and this is a
9 suppose, the jury is convinced beyond a reasonable doubt
10 that the State has carried its burden, then we go to the
11 penalty phase. In the penalty phase, what the State is
12 going to try to do is, they are going to try to take all
13 the evidence that they could find, aggravators, and make
14 Mr. Lindsey look as bad as possible.

15 **MR. GOWDY:** Your Honor, I object to that
16 characterization. That is an unfair, inaccurate
17 characterization.

18 **THE COURT:** I will tell you what, I really do
19 think that I gave an a sufficient explanation of
20 aggravating and mitigating circumstances to carry us
21 forward.

22 **MR. BARTOSH:** I apologize, Your Honor.

23 **BY MR. BARTOSH:**

24 **Q** In any event, in your consideration of those two
25 factors, both aggravating and mitigating, would you have

1 any problem being able to focus on those two items having
2 had these events happen in your life?

3 A If he's innocent, he's innocent. If he's not,
4 he's not. As far as the sentencing part, I have to just
5 see.

6 Q I'm talking right now about the sentencing.

7 A Right.

8 Q Okay. Should we get to the sentencing part,
9 would the fact that you had these experiences, would that
10 in any way prevent you from being fair in considering both
11 the aggravators and the mitigating facts?

12 A I believe I can be fair.

13 Q And you understand that life is always an option.

14 A Right.

15 Q You don't have to put somebody to death.

16 A Yes, I understand that.

17 Q And if it's life, it's life without parole. He
18 would never get out of jail. Of course, if it's death,
19 then death is death. And it's your decision, it's the
20 jury's decision as to whether the penalty should be life or
21 the penalty should be death. Could you make that decision
22 after weighing all the facts?

23 A I think I can, yes, sir.

24 Q Okay. Let me ask you this.

25 A Okay.

1 Q If it's death, I'm going to ask you two
2 questions. The first part, if eleven people on the jury
3 say we believe the proper punishment is death and you
4 believe it is life, would you be able to hold your ground?

5 A I'm pretty stubborn.

6 Q Okay.

7 A Once I make a decision, it's pretty hard to
8 shake.

9 Q And the second thing would be, if it was death,
10 would you be able to sign your name? Every juror has to
11 sign on the sentencing sheet for death.

12 A If it comes to that, yeah. If I believe that
13 that is what is required. I would do it. I would do what
14 needs to be done.

15 Q If you believed that death was appropriate, --

16 A Yes, sir.

17 Q -- you would sign?

18 A Yes, sir.

19 Q That's all I have.

20 **MR. GOWDY:** May it please the Court, Your
21 Honor.

22 **THE COURT:** Yes, sir.

23 **EXAMINATION**

24 **BY MR. GOWDY:**

25 Q Good afternoon, Mr. Martinez.

1 **A** Good afternoon.

2 **Q** My name is Trey Gowdy. That is Donnie Willingham
3 to your left and Barry Barnett in the middle. We work in
4 the Solicitor's office.

5 **A** Yes, sir.

6 **Q** In the interest of time, I'm going to kind of
7 shorten up the number of questions I normally ask. I'm
8 just going to ask you two.

9 **A** All right.

10 **Q** First of all, from a housekeeping standpoint, I
11 think that this is a coincidence. There is a gentleman
12 with your exact same name and your exact same birth date
13 who used to live in California and Florida. But I don't
14 believe you have ever lived outside of South Carolina.

15 **A** Yes, sir. I have. I've lived in Florida. I was
16 just a kid. I think I went there from the first or second,
17 well, that's really kind of scary.

18 **Q** Well, you know how computers are. Computers
19 ain't always right.

20 **A** Wait a minute now. I'm a computer guy.

21 **Q** Well, I take that back. Computers are always
22 right. My reading them is not always right.

23 **A** Okay. There you go.

24 **Q** Maybe I should say that.

25 **THE COURT:** Let's go back to computers aren't

1 always right.

2 **BY MR. GOWDY:**

3 **Q** I was mistaken about that. I think it is clearly
4 different.

5 **A** Yes.

6 **Q** If I understood you correctly, Mr. Martinez, you
7 would be a fair, open-minded juror?

8 **A** I believe I would, yes, sir.

9 **Q** And if you thought that life was appropriate
10 after listening to everything that was presented to you,
11 you would vote for life?

12 **A** Yes, sir.

13 **Q** And if you thought that death was appropriate
14 after listening to everything, that is what you would vote
15 for?

16 **A** Yes, sir.

17 **Q** You could do either one and it would just have to
18 be based on what the evidence was?

19 **A** Yes, sir.

20 **Q** Fair enough. Thank you for answering my
21 questions.

22 **A** You are welcome.

23 **THE COURT:** If you would step out in the hall for
24 just a second.

25 (WHEREUPON, Mr. Martinez exits at approximately