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STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable J. Derham Cole, Circuit Court Judge

ANDRES ANTONIO TORRES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000842

APPENDIX

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

The State,)
) TRANSCRIPT OF RECORD
-vs-) 2007-GS-42-2773-2778
) 2008-GS-42-0880;4677
Andres Antonio Torres,)
) June 15, 2007
Defendant.) Spartanburg, South Carolina

B E F O R E:

HONORABLE J. DERHAM COLE, JUDGE

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

BARRY BARNETTE, ESQUIRE
Attorney for the State

CLARY ALLEN, ESQUIRE
Attorney for the Defendant

Linda D. Moffitt
Circuit Court Reporter

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Motion -- page 2.

No sworn testimony; no exhibits entered into evidence.

THE COURT: All right. You are Andres Antonio Torres.

THE DEFENDANT: Yes, sir.

THE COURT: And Mr. Allen is your lawyer.

THE DEFENDANT: Yes, sir.

THE COURT: This is the state's motion --

MR. BARNETTE: Yes, sir, it is.

THE COURT: -- to collect evidence.

All right. Mr. Barnette.

MR. BARNETTE: Yes, sir. These cases have now been indicted. They're 07-GS-42-2777 and 2778. He's been indicted for murder on both of those counts, Your Honor. He's also been indicted for armed robbery and burglary first.

Your Honor, in the affidavit submitted by Reed Lindsey on the second page, basically this individual committed, allegedly committed, a double homicide in the Drayton community.

In that case, Your Honor, the affidavit talks about what was involved with it. There was a vehicle that was registered to Ray and Ann Emory.

Basically, that vehicle was wrecked on May 11th of 2007 around 7:00 o'clock in Union County near the Midway Barbecue in Union County. They saw an Hispanic male running from the vehicle wearing khaki pants and a yellow shirt.

He later got a ride from Michael Long that was getting off work and headed to the Li'L Cricket Convenience Store, Your Honor. He dropped him off there and told him he had to get to Spartanburg Regional Medical Center because his girlfriend was having a baby that morning, Your Honor. Later Mr. long identified him.

What happened was the Union County Sheriff's Department notified the Spartanburg County Sheriff's Department once they found out where the van was registered. And they went to the Emorys' house and found both of them had been beaten to death in their bedroom by a hammer. And through that, Your Honor, they found in the van several items that had been taken from the Emorys' house.

Several witnesses saw him. He went to Regional and so forth. They found on these items, they found a fingerprint and other types of evidence, Your Honor.

Also, blood was later found on clothing that was trying to be washed by, I believe, his aunt. There was possible D. N. A. evidence on that clothing.

Also, he had gasoline that he had poured through the house after he had murdered these two individuals, and left the oven on for, I guess, to have it explode, which it didn't, when the officers got there before it did.

Obviously, this blood evidence we think is the

victim's blood. We need, we also need, his D. N. A. because there's also possible blood that was found all through the house. And we need that standard just to compare to any evidence that was found at the scene, as well as in the van.

THE COURT: All right. Mr. Allen.

MR. ALLEN: Your Honor, may it please the Court, just briefly.

As I read the affidavit or as I've read the affidavit I do not see in it any facts alleging that there are any bodily fluids, hair or potential D. N. A. evidence of my client that would be found.

I mean, yes, I presume the state's theory is that the bodily fluids they did find, for example, throughout the house on the clothing, belonged to the victim, or at least that's what they're trying to test to determine.

But I think they need to show that getting samples from my client would likely lead to his D. N. A. on any of the state's evidence. And I believe the affidavit is deficient in that respect.

And I would request -- is deficient in that respect. And for that reason we ask the Court not to grant the motion.

THE COURT: All right. Mr. Barnette.

MR. BARNETTE: Your Honor, we have all kinds of blood,

all kind of bodily fluids. Obviously, you know, we don't know who is on there unless we test them.

We need a standard from the defendant or the suspect in this case to test to make sure that none of them is his.

Obviously, he went to the hospital. I don't know if he had injuries or so forth from there, or in there. Obviously, there was a struggle when he beat these two folks with a hammer in their bedrooms.

Possibly that blood could be from him, possibly saliva and possibly hair could be from him. There's no question he was in this bedroom from the evidence we gathered, or did this crime. We feel there is probable cause to get his samples from this.

THE COURT: Are y'all presenting anything other than this affidavit in support of the motion?

MR. BARNETTE: Not at this time, Your Honor.

THE COURT: Okay. I'll review the affidavit and issue an order.

END OF REQUESTED TRANSCRIPT OF RECORD

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 15th day of June 2007.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 4, 2008

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, PLAINTIFF, VS. ANDRES ANTONIO TORRES, DEFENDANT.	TRANSCRIPT OF RECORD 07-GS-42-2773 - 2778 08-GS-42-880 08-GS-42-4677

December 20th, 2007
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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

TREY GOWDY, BARRY BARNETTE, AND CINDY CRICK
Solicitor, Deputy Solicitor, and Assistant Solicitor
Attorneys for the State

CLAY ALLEN, KATHY HODGES, AND JOHN RECKENBEIL
Public Defender, Assistant Public Defender, and Esq.
Attorneys for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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P R O C E E D I N G S

THE COURT: Mr. Barnette, I believe you have a State's motion in this matter.

You may proceed.

SOLICITOR BARNETTE: Yes, sir.

This is The State versus Andres Antonio Torres, Your Honor. He has been charged with two counts of murder in this case. The Warrant Number is K261172, K261173, Your Honor. Also these have been indicted. 07-GS-42-2777 and 2778, Your Honor.

Your Honor, we've made a previous motion in front of Judge Cole. It was not ruled upon I believe because he found out that Your Honor was assigned the judge to preside over this death penalty trial, Your Honor.

THE COURT: Yes, sir.

SOLICITOR BARNETTE: So, we're going forward with this motion at this time. We have attached affidavits from the lead investigator in this case, William Reid Lindsey, from the Sheriff's Department, Your Honor. It consists of two pages.

I don't know.

Do you have a copy, Your Honor?

THE COURT: I'm looking now.

(Pause.)

THE COURT: Yes, I do, do have a copy of the motion. I don't have any attachments.

SOLICITOR BARNETTE: Okay. I do, I do have the copy of the affidavit. I'll be glad to pass it up to the Court, Your Honor.

THE COURT: Yes, sir.

SOLICITOR BARNETTE: Your Honor, I also have the, Investigator Lindsey here, Your Honor, in case you need to supplement that affidavit or ask any additional questions. There is a question I know of. Judge Few recently said that the officer needs to give testimony in the affidavit form handed up to the Court signed in front of the judge and the judge sign it. This was his position in that case. We're willing to do that off this affidavit also, Your Honor.

THE COURT: You want to pass it up so I can take a look at it?

SOLICITOR BARNETTE: Yes, sir.

May I approach the bench?

THE COURT: Does the defense have any preference as to how the testimony should be presented?

MR. ALLEN: Your Honor, if it please the Court.

We do or I believe that Section 17-13-140 of the South Carolina Code of Law requires that the search warrant, which essentially this is a search warrant type hearing, shall be issued only upon affidavit sworn to before the magistrate or

municipal, municipal or judicial officer or judge of the Court of record establishing the grounds for the warrant. The affidavit that's been presented, if it was a sworn affidavit, was only notarized by a, a notary public. Not a municipal judicial officer.

THE COURT: That's, that's what it appears from the face of it, yes, sir.

MR. ALLEN: And consequently---

THE COURT: Well, since the officer is here, I'll go ahead and take testimony from him, him on this, on the affidavit at this point in, in time.

MR. ALLEN: Very well.

THE COURT: You may call his, him as a witness, Mr. Barnette.

SOLICITOR BARNETTE: Yes, I'd like to call Investigator Lindsey to the stand, Your Honor.

THE COURT: Come forward and be sworn, sir.

REID LINDSEY, being first duly sworn, testified as follows:

THE COURT: Have a seat, sir. And once you're seated, move as close to the microphone as you can, and state your full name for the record.

WITNESS: William Reid Lindsey.

THE COURT: Mr. Barnette, I'll allow you to treat him as your witness. You may proceed.

SOLICITOR BARNETTE: Thank you, Your Honor.

DIRECT EXAMINATION

BY SOLICITOR BARNETTE:

Q Where do you work at, sir?

A Spartanburg County Sheriff's Office.

Q And how long have you worked there, sir?

A Approximately ten years.

Q And what is your present position there, sir?

A Currently assigned to the violent crime, homicide unit.

Q Okay. And back on May 11th, 2007, this, here in Spartanburg County, was you sent to a scene at [redacted] Montgomery here in Spartanburg County in the Drayton community?

A Yes, I was.

Q And when you arrived there, did you find that Charles Emery as well as Ann Emery had been killed?

A Yes, I did.

Q And was they killed inside their residence, sir?

A Yes, they were.

Q If you would, tell the judge what you-all found when you went to the scene.

A We -- the initial scene was discovered by Sergeant Jones and Lieutenant Valentine. They had responded to a check the welfare call after Union County had contacted us saying they had recovered a vehicle. This vehicle was a van and inside the vehicle there was a great deal of contents

that appeared to probably come out of like a house or an apartment or something like that, a residence. All of the items had blood on them. So, they became concerned about the possible owners. The tag was run. It came back to the address of [redacted] Montgomery Street. So, they went out there to do a check.

When the sergeant got there, he found the door open. They went inside, found the victims in the bedroom. That's when they contacted us.

When I arrived, I also went in the, through the same sliding glass door that they had gone in, and I found the victims in the bedroom as they had said. It was obvious they had been beaten together. We located a, a hammer inside the house. It had blood on it. Apparently that was the weapon. There's a very strong smell of what I would describe as gasoline, some petroleum product. It was very apparent that it had been poured in an effort to possibly start a fire.

Q Was the oven left on?

A The oven was left on. It was actually turned off by the officers that responded initially---

Q What kind of---

A ---as a fire concern.

Q What kind of oven was that?

Was that a gas oven?

A Just -- well, I don't remember if it was gas. Just, you know, standard oven you use, you have in your kitchen. I don't remember if it was gas or electric.
Q And you said that the -- well, a hammer were found there, is that correct?
A Yes, sir.
Q And was this a very bloody scene?
A Very bloody. There was blood throughout the house. There was transfer from the suspect, you know, some from the responding officers and personnel there as well. There was cast-off all over the bedroom. The hammer itself was bloody.
Q Charles Emery, where was his -- where was he found?
A In the bedroom on the, on his, on his bed.
Q Okay. And where was Ann Emery found?
A Ann was -- if you were looking into the room, when you walked through the door, Ann was on the floor lying on the floor to his left.
Q Okay. And what position was she in when y'all saw her?
Does it appear -- I mean -- let me rephrase that question.
Did it appear that she was in a position where she could of been sexually attacked?
A The first thing I notice when I saw her was her position was extremely strange. Her feet -- and she was --

her feet were in the air. They were rolled back. She was positioned in a way she would of been, her genitalia was exposed in a positioning which would be -- I had never seen it before.

Q Was a sexual rape kit done on her?

A Yes, it was.

Q And was those results from that kit sent to the SLED, the State Law Enforcement Division?

A Yes, it was.

Q And have they found that there, there was semen found there?

A Yes, I contacted Agent Sitts with serology down at SLED, and he advised me that they, that they had extracted semen and was able to make a profile---

Q Okay.

A ---that could be compared.

Q And obviously you need a sample from the defendant to see if that profile matches, is that correct?

A Yes, sir.

Q And that's the reason, one of the reasons for this hearing today?

A Yes, sir.

Q Later on did -- you said that the van and everything was found in Union County came back to the Emery residence?

A Yes, sir.

Q And was the items found inside the van also taken from the Emery residence, residence?
A Yes, we actually -- I compiled not all of the items, but some of the items that were taken out of the van and put them into a room and had two of the family members come by and identify some of the items that did, that did come out of the house.
Q Okay. And had some of that blood came back to match to the victims in this case, the Emery's?
A That's correct.
Q And the defendant, where was he -- how was the connection between him and the van and so forth?
A The defendant was identified by several witnesses as the person who got out of the van. He was also taken to Spartanburg by a Union County resident to the hospital.
Q Okay. And what happened after that, sir?
A At that point I -- we, we begin our, you know, wanting to know where he's at. I was contacted by his aunt telling me that he was at his grandmother's house and we went and picked him up.
Q Okay. And did he also know a family member of the Emery's?
A Yes, he lived next door to them, and I believe he was friends with Chuck, some of their, the Emery's son.
Q Okay. And so, he lived next door, is this, the

defendant did?
A That's correct.
Q Okay. And the connection between them, was there also other evidence found that connected him to this crime?
A Yes, there was.
Q And what evidence was that, sir?
A There was a fingerprint on one of the items out of the car---
Q Out of the van?
A ---which was identified -- out of the van, yes, and which was identified as one of the items that actually came off their dresser.
Q So, there's -- obviously he was in the van at some point with these items?
A Yes, sir.
Q And these items were taken from the house during the burglary/robbery/murder, whatever you like to call it?
A The, the -- Crystal, the daughter, identified the item that had the fingerprint on it as coming off of their dresser.
Q Okay. And did you go talk to the defendant afterwards?
A I did.
Q And what did he say to you, sir?
A He told me that he had left that night walking after he got in an argument with Chuck. When I confronted him with

the multitude of evidence, he told me to prove it and he invoked his rights.

Q Is there anything else that you know of that ties this individual to this crime at this point that the Court would need to know about?

A No, sir.

SOLICITOR BARNETTE: Okay. Your Honor, plus we also got the affidavit that he had, he signed that we hand up to the Court. And what we're gonna do is we're asking to resign the affidavit so Your Honor can sign it and certify it.

THE COURT: I'll ask you to have him do so.

SOLICITOR BARNETTE: Okay. And we'll make that a part of the showing also, Your Honor.

THE COURT: Do you have an affidavit for him to sign?

SOLICITOR BARNETTE: I can get one, Your Honor.

THE COURT: Or do you want him to sign that one?

SOLICITOR BARNETTE: We can have him sign that one and I can get you a new, the same, the same copy, Your Honor, and let him do it in the original. But either way you'd like to do it, Your Honor.

THE COURT: All right. I'll ask him to sign this one in front of me.

Please read it, review it. If it is your sworn statement, please sign it and date and your signature.

(Pause.)

WITNESS: Yes, sir, this is the affidavit.

THE COURT: And is that your sworn statement?

WITNESS: Yes, sir, it is.

THE COURT: You swear that that's true?

WITNESS: Yes, sir, I do.

THE COURT: All right. You may sign it. Please date it.

(Witness complies.)

THE COURT: All right. The record will reflect that Officer Lindsey has signed the affidavit as of today's date, and I have also made notation on the affidavit that it was sworn to before me on the 20th day of December, 2007, and I have signed it as a Circuit Court Judge. That will be made a part of the record of the hearing, Court's Exhibit.

You want to hand that down so she can mark that for me, Mr. Barnette?

SOLICITOR BARNETTE: Yes, sir, and I do have one small question if I can follow-up too, Your Honor.

THE COURT: Mr. Allen.

MR. ALLEN: Your Honor, please the Court.

I just noticed, while the Court's making its ruling, that the witness was talking to the assistant or to, to the solicitor. I'm not sure what transpired. But I'm---

SOLICITOR BARNETTE: I'm just asking for a picture,

Your Honor. That's what I asked.

THE COURT: Okay, sir.

SOLICITOR BARNETTE: I want to show it to Mr. Allen and make it a part of the record.

THE COURT: If you allow Mr., Mr. Allen to look at the photos.

(Whereupon, the notice of motion and affidavit was marked as Court's Exhibit No. 1 and received into evidence for purposes of this hearing only.)

SOLICITOR BARNETTE: Yes, sir.

THE COURT: All right. I'll allow you to ask additional questions.

SOLICITOR BARNETTE: Thank you, Your Honor.

This is just to help clarify what the testimony was. Your Honor, we would ask to mark this as Court Exhibit No. 2.

THE COURT: It would be. Well, let's get him to identify those first before I allow them to be an exhibit.

SOLICITOR BARNETTE: Yes, sir.

Q If you would, if you would, identify what we'll mark as Court Exhibit No. 2, sir.

A These are pictures taken of the crime scene actually showing Mrs. Emery and her positioning of her body.

SOLICITOR BARNETTE: Thank you, Your Honor.

We'd like to move this in for purpose of this hearing

just to clarify the position she was found when he was talking about it.

THE COURT: Okay. Are these photographs that he either participated in taking or took himself?

Q Does these---

A I was, I was there when the crime scene investigator took the photos.

THE COURT: And do they accurately reflect the client, the crime scene that you observed when you arrived?

WITNESS: Yes, sir, they do.

THE COURT: All right. I'll allow it as a Court's Exhibit for purposes of this hearing.

(Whereupon, the photographs were marked as Court's Exhibit No. 2 and received into evidence for purposes of this hearing only.)

SOLICITOR BARNETTE: May I approach, Your Honor?

THE COURT: Yes, you may.

All right. Anything further from this witness, Mr. Barnette?

SOLICITOR BARNETTE: No, sir, that would be the State's showing in this matter.

THE COURT: All right. You may step down, sir.

All right. It is the State's motion -- yes, sir.

MR. ALLEN: I was gonna ask permission to cross-examine the witness, Your Honor.

THE COURT: Well, this is just a probable cause hearing. I don't know that there would be any purpose in cross. He's verifying his affidavit before the, the magistrate. I would, won't allow cross-examination at this time.

MR. ALLEN: Yes, sir.

THE COURT: I will allow you, however, Mr. Barnette, to argue the motion.

SOLICITOR BARNETTE: Your Honor, I believe that we've shown probable cause that this defendant was involved in this crime, that obviously his sample is needed to, to compare to the DNA sample that was collected from Ann Emery in this case. I believe the statute allows us to do that through our motion, and we'd ask to be able to do that through a Buccal swab or the least intrusive means possible to collect that evidence.

THE COURT: Well, what, what -- how, how exactly do you propose to take the sample?

SOLICITOR BARNETTE: We can either take a Buccal swab or blood, Your Honor, or both. Whatever the Court would allow us to do. Obviously the blood is---

THE COURT: Well, one is more intrusive than the other. So, I can, need for you to let me know what you would like to do so I can make a determination as to what would be proper.

SOLICITOR BARNETTE: A, a Buccal swab would be fine, Your Honor.

THE COURT: All right.

SOLICITOR BARNETTE: That would be the least intrusive method.

THE COURT: Now I'll be happy to hear from the defense on the motion.

MR. ALLEN: Yes, Your Honor.

I think what -- so far I don't, I don't think the State has shown probable cause that my client was involved in the incident that, which led to the Emery's death. What they have shown was that he was identified in another county with the van which, which had some items in it. But there was no showing of anything on him or anything that belongs to him that was in the house of the Emery's prior to his arrest.

There's also not been any questions asked whether or not he had blood on him or that his clothes that were found in the washing machine had blood on them. Factors that I would have liked to have inquired into, for example, in the, in the examination I prepared.

But nonetheless, there's not been any real showing of probable cause that he was involved in the death of the Emery's or anything that happened at the Emery's. Only that he may of had some possession or some items that was traced back to them in another county. So, I don't know that they

have established probable cause to take any fluids or anything from my client on that basis.

Secondly -- and I think that it needs to be clear as to what they're going to, if the Court allows them to take a Buccal swab, to exactly what they're going to be comparing it to. For example, if they're gonna try to compare to any blood amounts that they talked about being in the van or in the house we would object to it.

Also, there's not been any testimony as to whether or not they have eliminated the husband, Mr. Emery, as a contributor to the semen that was found in the Buccal swabs from Mrs. Emery. And, and I believe that before they should be allowed to invade my client's privacy in any fashion to extract his DNA to compare that they need to eliminate what I would propose would be the most obvious source, which would be her husband. And I presume, that in their, in their taking of swabs and materials from him, that they would also have gotten material which they compare his DNA. There's not been any testimony as to whether or not he's been eliminated or whether or not that's even been attempted.

There's not been any showing, Your Honor, as to whether or not there's, there's anything that could potentially be extracted from my client or compared to my client in that regard, and I would respectfully object to the State's

motion at this time, and I would respectfully ask the Court not to grant the, their request to take a Buccal swab from my client for the purpose of comparing with the DNA from Mrs., from the swabs of Mrs. Emery or for any other purpose.

And if I may consult with Mr. Reckenbeil?

THE COURT: Yes, sir.

(Pause.)

MR. ALLEN: Furthermore, Your Honor---

THE COURT: Yes, sir.

MR. ALLEN: ---in looking at Section 17-13 I think 140 and also -- yeah.

THE COURT: Say, say that again.

17 what?

MR. ALLEN: 13-140 and that's the statute that requires -- it sets out search warrant requirements for the affidavit, and Mr. Reckenbeil's provided me with an additional copy and there's also an annotation attached to that is also the case of State versus Backus. I'm showing this to the solicitor, and pass it up to the Court.

THE COURT: Yes, sir.

MR. ALLEN: One of the requirements is that there needs to be, I'm looking at page, what's marked as Page 6 or 7, that, that there, the elements are that probable cause means that he's committed the crime, and a clear indication that relevant material will be found.

We have not heard from the SLED agent, Mr. Sitts, and there's no, nor is, is there an affidavit, or for that matter, a report from him provided other than through the testimony of Mr. Lindsey. We have not, for the Court's information, we have not been provided any reports from SLED other than I believe a toxicology report that has nothing to do with semen or anything from this particular swab. In short, we have not received any reports from Mr. Sitts nor has the Court heard from Mr. Sitts except through Mr. Lindsey's testimony.

We believe that in order for them to establish probable cause that or to establish that a clear indication that relevant material evidence will be found that they will need, at a minimum, to present an affidavit or testimony from the agent to whom Mr. Lindsey spoke, and we would object to the Court's issuing the order at this time on that basis as well.

Thank you, Your Honor.

THE COURT: Mr. Barnette.

SOLICITOR BARNETTE: Thank you, Your Honor.

First thing, Your Honor, I think hearsay is allowed in these type hearings. Obviously that was hearsay information that was done. But I think it's reliable and we presented that to the Court.

Your Honor, there is probable cause to believe the

suspect committed the crime based off his observation. There's also been an arrest warrant that's been issued as this -- well as an indictment been passed down by the Grand Jury for the probable cause finding along with -- obviously I know the Court has to find that also to help support that.

You had these items. He lived by the victim's house. He was seen from the van that they had stole. Obviously he had it in his possession at one time. Items inside the van that had blood on them that's been connected back to the victim. There's a fingerprint of his was found on those items that was found in the van.

I would submit there's plenty of probable cause in this case that the suspect could of committed this crime, and there's a clear indication that relevant evidence may be found.

Obviously here's a lady that was killed and the position that she was found shown as Court Exhibit No. 2 as well as the information supplied by Investigator Lindsey in the position she was found. And there is a DNA profile. I understand they may argue it may be the husband's. But obviously the DNA can eliminate him or include him one way or other.

But the defendant being the suspect of the defendant in this case, and that's the reason why we would ask for the sample in this situation, Your Honor.

THE COURT: Anything further from the defense?

MR. ALLEN: Just that I don't think the Grand Jury passing down an indictment suffices for---

THE COURT: That wouldn't be binding upon this Court. I---

MR. ALLEN: Yes, sir.

THE COURT: I understand that that has occurred. But again, that's -- their finding of probable cause is not binding by this Court in any fashion. I have to make an independent finding. I understand that.

MR. ALLEN: Yes, sir, that's all I have.

THE COURT: All right. All right. A review of the exhibits, the affidavit indicate to me that there does exist probable cause for the evidence to be collected by the Buccal swab and I will sign an order authorizing that to occur.

Thank you very much.

That concludes the hearing.

SOLICITOR BARNETTE: Thank you, Your Honor.

MR. ALLEN: Your Honor, may I also inquire that the only purpose of the, a Buccal swab will be taken is for the purpose of comparing it to the swab from Mrs. Emery and for no other purpose or is it?

THE COURT: Are there other purposes for it being taken?

SOLICITOR BARNETTE: Your Honor, there was blood that was found at the scene. We probably ask to compare that to the blood at the scene also.

THE COURT: I'll allow it to be compared to any blood found at the scene.

MR. ALLEN: I believe the Court---

THE COURT: I don't know what, I don't know exactly what bloods were found. But blood -- obviously, from the photographs I've seen that's in evidence, there was a great deal of blood at the scene.

MR. ALLEN: Yes, Your Honor.

THE COURT: And I'll allow it to be compared with that.

MR. ALLEN: Well, I don't -- I mean the Court's made its decision. I don't want to constantly argue the point.

THE COURT: Well, I'll allow, I'll allow you -- I'll allow you to put your argument on the record.

MR. ALLEN: Thank you, Your Honor.

It's just that there's not been any testimony from Mr. Lindsey or from any other information before the Court that my client was bleeding or had any, you know, essentially could be a contributor to the blood. So, it would just -- I don't think there's any probable cause established to test any DNA for the blood against my client because there was no testimony presented or no evidence that I know of indicating that he was injured or bleeding.

THE COURT: Well, now, correct me if I'm wrong, once a DNA profile is established, what else needs to be done other than look at the profiles to see if they match?

MR. ALLEN: I'm gonna have to consult with a DNA expert on that. I don't know what else they need -- I mean I know that they often times talk about wanting to run the test together and do a side-by-side comparison.

THE COURT: All right. What I'll do is I will allow you to do that. If you wish to file a motion for me to reconsider that part, that portion of that, you may do so, and I'll hear from the State on that if you decide to do that.

SOLICITOR BARNETTE: Your Honor, the way I've always heard it is basically this case is -- now, I understand defense attorneys want to compare to other cases until they're convicted obviously. I understand that argument.

THE COURT: Right.

SOLICITOR BARNETTE: But in this, in this case I feel like a DNA sample could be compared to anything that's relevant in this case.

THE COURT: Well, that's kind of -- the way I look at it, I'm not sure that there will be any more or less invasive test will occur. They will take a DNA sample -- my understanding of how that would work, take a DNA sample from him, run a DNA profile on that, and once they have that

profile, they're probably going to run the profile on other evidence gathered at the scene. And in this case, in particular, the semen that is in question. But the other evidence that's gathered, gathered from the scene, and I don't know anything that would occur other than comparing any of the profiles.

MR. ALLEN: One second, please.

(Pause.)

MR. ALLEN: I guess my only, my only, my main point is testing against any other evidence other than the semen is beyond the scope of the Fourth Amendment as applied to the States by the Fourth Amendment because that's all they're requesting. I mean so, in order to invade his privacy to get it, that they did, they---

THE COURT: They've shown probable cause through the existence of the semen, the position of the body.

MR. ALLEN: Yes, sir.

THE COURT: The, the things that I have observed from the affidavit and the evidence that's been placed in, they've established probable cause for us to the DNA test on him and, by order, and I'm allowing them to do that.

Now then what they do with that, I'm not sure if I'm a in position to limit it if that leads to other evidence.

MR. ALLEN: Well, that was my position is that it should be limited to only what they've shown the Court

concerning the---

THE COURT: Well, if you can show me some authority for that or if you can show me something that indicates that it, that creates a greater risk of intrusiveness to your client or somehow violates his Fourth Amendment right, I've told you you can file a motion for me to reconsider.

MR. ALLEN: Yes, sir.

THE COURT: I'll be happy to reconsider that.

MR. ALLEN: Yes, sir.

THE COURT: But at this point in time, the order simply allows for the gathering of his, a sample for the purpose of running a DNA test to compare it to the evidence which was located at the scene. Probable cause was established by the semen that was found at the scene along with the position of the bodies and the other things that I, that I indicated. So, I'm gonna allow the sample to be taken.

MR. ALLEN: Yes, sir.

THE COURT: However it will be used after that, you certainly can make a motion for me to amend my order and, and somehow amend what I have ordered at this point in time. But I don't intend to make that limitation at this point in time.

MR. ALLEN: Yes, sir.

THE COURT: You have to ask me to reconsider or file a motion for me to limit its use.

MR. ALLEN: Very well.

THE COURT: Okay. Thank you very much.

MR. ALLEN: Thank you.

SOLICITOR BARNETTE: Thank you, Your Honor.

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

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 20th day of December, 2007

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 3rd, 2008

Pamela E. Green

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, PLAINTIFF, vs. ANDRES ANTONIO TORRES, DEFENDANT.	TRANSCRIPT OF RECORD 07-GS-42-2773 - 2778 08-GS-42-880 08-GS-42-4677

August 18th, 2008
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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

TREY GOWDY, BARRY BARNETTE, AND CINDY CRICK
Solicitor, Deputy Solicitor, and Assistant Solicitor
Attorneys for the State

CLAY ALLEN, KATHY HODGES, AND JOHN RECKENBEIL
Public Defender, Assistant Public Defender, and Esq.
Attorneys for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

E X H I B I T S

NO.	DESCRIPTION	ID	EV
	Court's Exhibits		
C-1	Questionnaire		23
C-2	Questionnaire		23

P R O C E E D I N G S

THE COURT: All right. We're ready to begin the pretrial conference.

Mr. Gowdy, how are you this morning?

SOLICITOR GOWDY: I'm doing wonderful, Your Honor. Thank you.

THE COURT: And Mr. Allen, Mr. Reckenbeil, I trust everybody's doing well on this side?

MR. RECKENBEIL: Yes, sir.

MR. ALLEN: Yes, sir, Your Honor.

THE COURT: All right. Several things I would imagine that we need to cover.

First of all, I've noticed that the juror questionnaire has -- is this from the Solicitor's Office?

Is this from the defense?

SOLICITOR GOWDY: It would not be from the Solicitor's Office, Your Honor.

SOLICITOR BARNETTE: We got a copy coming though, Your Honor.

MR. ALLEN: Is it the one simply entitled jury questionnaire?

THE COURT: Yes, sir.

MR. ALLEN: That was proposed by the defense.

SOLICITOR GOWDY: All right. We, we do, if this Court

ever wanted to see them, we do have copies of the questionnaires that the judges send out in the previous six cases that I've been involved with or if the Court wants to craft its own.

THE COURT: I don't know if these comply.

Have you seen this?

SOLICITOR GOWDY: Your Honor, I, I think Mr. Allen was good enough to give it to me this morning. I had seen versions of that proposed by defense attorneys in every case that I have handled. And without being judgmental, I think I can imagine what is in that one also just by the---

THE COURT: I have not gone past the first page. So --.

SOLICITOR GOWDY: I, I have not read it. So, I should not comment on it. I have seen others proposed in the past.

THE COURT: All right. Well, have you got one coming?

SOLICITOR BARNETTE: Yes, sir, we got one from the Marion Lindsey trial we used in that.

THE COURT: All right. Why don't we discuss that when it gets here.

Maybe we can look and compare the two as we go through.

SOLICITOR GOWDY: Okay. Do you, do you have the one from Lindsey?

SOLICITOR BARNETTE: She's making copies so I can give one to Clay and I believe one to the judge.

THE COURT: Give copies -- let's wait a second so we can get that one and discuss it.

SOLICITOR GOWDY: Your Honor, Judge Miller, actually within the past couple of months, Judge Miller, who is presiding over a case in, in Clemson now, got my copy of Evans, which he used in Evans. I can get whatever copies the Court wants. I think the one that -- Judge Few presided over Lindsey and that, this is his questionnaire.

THE COURT: Give me a minute. I'll look through this one. Just one second.

(Pause.)

SOLICITOR BARNETTE: May I approach, Your Honor?

THE COURT: You may.

SOLICITOR BARNETTE: I'll give a copy to Mr. Allen here in a second.

THE COURT: All right.

(Pause.)

THE COURT: All right. I will allow, if you wish, to comment on the proposed questionnaire.

Have you had a chance to look at it?

SOLICITOR GOWDY: Yeah. Yes, sir, Your Honor.

With respect, Your Honor, its, it strikes me that the questions one through, certainly one through five, and it's hard for me to know how they're numbered because I see some lines that aren't numbered, as I understand the purpose of

the questionnaire, we're not suppose, our Supreme Court has told us we can't forage through the personal lives of the jurors. So, asking them what medications you're currently taking, I, I, it, it strains me to understand how that can help qualify a juror to ask somebody list me all the medication that you are currently taking.

The other overarching principle that I think our Courts have told us is that we are looking for Wayne, Whitt or Waynewrite qualified jurors. Can you be fair. So, I do think it's appropriate to say what are your general thoughts on the death penalty. To ask what your spouse's thoughts on the death penalty are, I can't imagine the scenario under which that would be relevant.

The other thing to keep in mind is unless the Court says we can't do it, we're gonna be asking questions of these potential jurors in this courtroom. If, if we go with this questionnaire, there's no reason to ask any questions.

It is much more comprehensive, more, more invasive than any questionnaire that I have seen a Court send out in a capital case. It, just initially, the first five questions strike me as being politely redundant. Whether or not the death penalty is, is used too often, too seldom, or about right, I don't know how that helps somebody, how it helps the litigants, the litigants to determine whether or not somebody can be a fair juror.

The purpose behind this and the individual voir dire is to determine fairness. Can you give life and can you give death and can you pay attention to mitigating circumstances. This, with respect, I think goes beyond that. This is more something you would use if you're gonna write a biography of someone. Not qualify them to serve in a capital case.

THE COURT: All right. I'll be happy to hear from here, you, Mr. Allen, or Mr. Reckenbeil. I don't know who's gonna take the lead over there.

MR. ALLEN: Your Honor, if it please the Court.

One of the ideas, one, one of the purposes we're having is trying to find out the juror's individual feelings about the death penalty, and we've tried to make this balance in a sense of not only asking questions about whether or not they can be fair and whether or not they can impose the death penalty, but also whether or not they can consider something other than the death penalty.

What I think we're trying to do is just trying to determine, while they are not being questioned in the presence of the courtroom, but, you know, basically in the privacy of their own home, explaining how they feel about certain issues that are certainly to arise and certainly is gonna be covered I believe---

THE COURT: But, but you I do -- I do intend for you to conduct voir dire---

MR. ALLEN: Yes, Your Honor.
THE COURT: ---before we seat the jury.
And isn't that normally when you go into the issues concerning their feelings on the death penalty?
MR. ALLEN: Yes, Your Honor. But I'm also believing that, and the only other case in which I've been involved in a death penalty, we've tried to stay on some form of a schedule on voir dire. I think that if we get certain information up front, that it can just basically lead us to where we need to go to ask those jurors further questions to follow-up and may even shorten the voir dire of the individual voir dire substantially.
THE COURT: For example, one of the questions, what, if anything, does the death penalty say about American culture.
MR. ALLEN: Yes, Your Honor. We actually had a debate over that, that.
THE COURT: You had a debate over that?
MR. ALLEN: Yes, sir.
THE COURT: Well, I'm having a debate over it too.
MR. ALLEN: Yes, sir.
THE COURT: That's the reason I brought that up.
MR. ALLEN: But I think what we're trying to do here, and the reason it's been suggested, is to kind of get into -- you know, the reason that, that -- instead of just having simple yes and no type answers, trying to get an idea

of how the juror really feels so they can essentially tell us, in a few short lines, how they really feel in an attempt to find any hidden biases, prejudices that they may have for or against the death penalty. They, they may very well indicate that they would impose the death penalty in almost any sort of the case whether it qualifies or not. And by the same token, they may very well indicate that it should never be imposed.

THE COURT: And then there's a whole series of questions about the criminal justice system generally. I'm not sure --.

MR. ALLEN: Again, it simply goes to their, their bias or prejudices that they may have for or against the State or for or against the defense as to whether or not they essentially trust the criminal justice system or whether or not they essentially believe that it is even too lenient, too harsh, or, or convicts the wrong people all the time. I mean---

THE COURT: All right. I'll take a look at your proposals. I'll make a decision as to what I think is, is appropriate. Of course, whatever I put in the questionnaire won't necessarily limit your ability to ask questions about that---

MR. ALLEN: Yes, sir.

THE COURT: ---if and during the normal voir dire

process.

MR. ALLEN: Yes, Your Honor.

THE COURT: All right. Anything further concerning the jury questionnaire?

SOLICITOR GOWDY: Not from the State, Your Honor.

MR. ALLEN: One thing that I, I notice that we had a similar question as well concerning, and the State does as well, concerning, they've got it numbered ten on their questionnaire, concerning the source for obtaining news. Since the Internet is quite prevalent for a lot of people now, instead of simply having other and expecting them to fill in the Internet, I would ask the Court to include the Internet along with other as a potential source.

THE COURT: I have no problem with that.

Do you have any problem with it?

SOLICITOR GOWDY: No, sir.

THE COURT: All right, sir.

MR. ALLEN: And that's the only other thing I'll raise at this time other than what we've already said.

THE COURT: All right. Any other matters the State wish to bring up at this time?

SOLICITOR GOWDY: Your Honor -- generally, Your Honor?

THE COURT: Generally, yes, sir.

SOLICITOR GOWDY: I would inquire of the defense whether or not there will be any mental defenses in the

guilt phase, guilty but mentally ill and alibi. Nothing would be worse than for that to come up later and us to have to ask this Court for a continuance so we could have mental testing done. I'm not trying to get to the, to the sentencing phase. I'm just asking for the guilt standpoint, insanity, guilty but mentally ill, or alibi.

THE COURT: Mr. Allen.

MR. ALLEN: Your Honor, at this time we're working on issues involving mental status. I don't really expect the issues of insanity or guilty but mentally ill to come up. We should be finding that out very soon, and, of course, well before the trial. And -- well, maybe I need to redefine that. I expect it to be coming up real soon. We should be finding that out before 30 days.

THE COURT: And we are anticipating the trial -- this is the second and third week of October, is that right?

SOLICITOR GOWDY: October 13 I, I believe, Your Honor.

MR. ALLEN: Yes, Your Honor. October 13. So, I expect it to be, us to be finding that out really soon. But I don't expect that to be coming up. I mean most of what we're gonna be looking at really is in mitigation.

THE COURT: All right.

MR. ALLEN: As far as alibi, we are now finding witnesses -- I mean maybe I need to find out exactly what period of time that, that we're talking about as far as

alibi. I mean these people, according to the discovery and according to the information I've got, I mean there was a lot of moving around from one location to another between the evening or the night of the 10th through the early morning hours of the 11th. I don't even know if the State has narrowed down the time at which they believe the alleged burglary and the alleged murder actually occurred.

So, it's kind of a, kind of hard for me to say alibi to anything. I mean individual witnesses and the client, from what I'm hearing, you know, were coming and going from [redacted] Montgomery Street, which is the incident location. But I'm not sure if they're gonna say two o'clock in the morning, three o'clock in the morning. We're gonna have to take a look at that. But I'm not sure if I'm being necessarily clear, but---

THE COURT: Well, I think what he's saying, Mr. Solicitor, is the, is -- does the State have a period of time in which it is, plans to present evidence of when this did, in fact, occur?

SOLICITOR GOWDY: Yes, sir, Your Honor. And it is necessarily difficult to prove that with precision in facts like this where, where two of the witnesses are dead and, and one doesn't have an obligation to talk no matter who, which defendant it is. I would ask him, with respect to the, to the witnesses that we provided him the names of, we

already know about them. I mean we know about the people that we gave him the discovery.

MR. ALLEN: Okay.

SOLICITOR GOWDY: Are there, are there witnesses from 12:00 midnight on, on the 10th until 7:00 a.m. on the 11th, that we haven't provided you, that are gonna come to Court and say he could not of committed the crime because he was with us. I'm not looking at the names we've already given him.

Are there new names?

MR. ALLEN: Not that I know of at this time.

SOLICITOR GOWDY: Okay.

MR. ALLEN: And if that should change, I'll let the State know.

THE COURT: You have the obligation to put him on notice.

MR. ALLEN: Right. We'll certainly do that.

THE COURT: You talking about the time frame of 12:00 midnight to 7:00 a.m.?

SOLICITOR GOWDY: Yes, sir. There is, there are SLED analysis that we are awaiting on the written report on. Mr. Barnette and Mrs. Crick and myself have all called SLED. We've tried to impress upon them the importance of not only giving us an oral report, but a written report. Mr. Allen and Mr. Reckenbeil know about the oral reports. We will get

them the written reports as soon as SLED -- I, I hope it will be this week.

But they are entitled to things that I am responsible for giving them. I just don't have it in hand yet. And when I do get it, I'll give it to him within the hours, hour.

MR. ALLEN: Your Honor, that raises an, an issue, and, of course, very late Friday I e-mailed to Mr. Gowdy a list of items that we had and he responded to me within 20 minutes if not less and invited me to meet with Mrs. House of his office to go over to make sure that we've got what they have in the file.

I'm not sure if one of the items he's talking about is the DNA report. I mean I, I have heard orally from Mr. Gowdy about that way back in January I believe it was. I've tried calling SLED myself and maybe I need to get an order from this Court to require them to give me information. They're refusing. I've spoken to Amy Stephens who's in the intake where they receive all the items of evidence to be tested, and Captain Lori Johnson, who is over her, and they refuse to even tell me what's been submitted, where, what departments are involved.

They tell me to get it from the solicitor in charge of the case. I gave them Mr. Gowdy's name. That was on Wednesday of last week, and then Captain Johnson indicated

she would contact the solicitor and let me know something, and I've not heard from Captain Johnson since.

THE COURT: Well---

MR. ALLEN: I guess my concern is---

THE COURT: ---just now -- yeah, I understood that whatever testing has been done -- you have, you do have an oral report?

SOLICITOR GOWDY: We -- Your Honor, there is, there is semen, which I think is what Mr. Allen is referencing from January---

THE COURT: I ordered, I ordered DNA testing done in the case earlier. I have no idea what the results of that was, but anyway---

SOLICITOR GOWDY: I think---

THE COURT: ---is that what we're talking about, the DNA testing that went on?

SOLICITOR GOWDY: Y'all correct me if I'm wrong, I think the semen analysis has come back.

SOLICITOR BARNETTE: Yes, what they told us earlier is that it is their client.

SOLICITOR GOWDY: Do we have a written report yet?

SOLICITOR BARNETTE: No, we do not.

SOLICITOR GOWDY: I can not stand before this Court and tell you why we received a written report months ago and SLED still has not given us a written report on blood, shoe

print impressions, or semen. We call with great frequency.

THE COURT: But you do have verbal reports?

MR. ALLEN: We have verbals on semen.

THE COURT: Has that been transmitted and are you aware of the verbal reports?

MR. ALLEN: I think I'm only aware of the DNA verbal report. I don't know if we've had discussions about the shoe prints or any thing other than that. I may have to check all my email or my other notes to determine that.

I guess my concern is what I did find out, from either Captain Johnson or Amy Stephens, is they submit the written report to the individual who brought the evidence down or submitted the evidence. They did tell me that only two people have submitted evidence, and one being Investigator Joseph Stewart of the Coroner's Office, and we have that written report of the, that toxicology of the blood taken by the pathologist.

And the other person who submitted items is Investigator Lindsey, which I presume is Reid Lindsey of the Sheriff's Office. If they've sent him a report, which I, which they won't tell me if they have or that haven't, but I presume that whatever written reports the solicitor wants is, was sent to Investigator Lindsey who is with the Sheriff's Office and I presume it's still with the Sheriff's Office.

SOLICITOR GOWDY: He brought a shoe print report Friday afternoon. What I would propose is that Mr. Allen and Mr. Reckenbeil, at their convenience, come upstairs with the three of us and Mrs. House and we will get to the bottom of it before the end of business today.

THE COURT: Okay. Can you stop by there today?

MR. ALLEN: I'll certainly do that. I just want---

THE COURT: Okay.

MR. ALLEN: ---on the record the only SLED report that we have been provided were the toxicology reports of the blood of Mrs. Emery and Mr. Emery, the victims. That was sent -- that was, that was addressed to Mr. Stewart or Investigator Stewart with the Coroner's Office. I don't have any other SLED reports.

THE COURT: Oh, I understand. But apparently you've gotten the verbal reports on the DNA?

I just heard it.

SOLICITOR GOWDY: Yes, sir, we don't have a written report and I can not give the Court a good explanation of why it takes that long to do it. I don't know.

THE COURT: I, I, I understand that. But I do want them to get the information as soon as they can so they can act on it if they need to do so. So, if you, if you would stop by this afternoon, perhaps that will---

MR. ALLEN: Yes, sir.

THE COURT: ---expedite things.

MR. ALLEN: I will do that.

SOLICITOR GOWDY: The other only other matter, Your Honor, and my interest is primarily from a standpoint of scheduling witnesses, particularly out of town witnesses, does the Court have a preference with respect to either sequestration and/or weekend time in terms of going Saturdays and Sundays?

I don't, I don't want to get into a situation where I have run out of witnesses before you have run out of a desire for me to call witnesses, and we, and we will work whatever days you tell us to work.

THE COURT: I'm not -- what I -- let me get an idea of, you've done these before, what length of time you think the case is gonna take to try in your best estimate.

Now, I know you can't give me a, a definite answer on that.

But do you expect it to take two, the full two weeks?

I have no problem with working over the weekend. I would prefer sequestration of the jury.

SOLICITOR GOWDY: My best estimate, Your Honor, is four days to get a jury in Spartanburg, three in Lexington, but four in Spartanburg because of a greater percentage of our citizens are just flatly opposed to it or flatly in favor of it. So, to get the jury, I would say four days. The guilt

phase, from our standpoint, would be three days. I don't know, from a guilt standpoint, but let's allot one day for the defense. Now we're up to eight working days. If there is a conviction---

THE COURT: Twenty-four hours.

SOLICITOR GOWDY: ---twenty-four hours, that's nine. Two days for sentencing. So, we're up to eleven and whatever they would have for sentencing. I'll give them two days. We're looking at 14 days, potentially work days.

THE COURT: Uh-huh. (Affirmative). Sounds like we're gonna work over the weekend---

SOLICITOR GOWDY: Okay.

THE COURT: ---and sequester.

Any comments?

MR. ALLEN: No, Your Honor. I mean we could very easily work 14 days or more.

THE COURT: If, if that's necessary. Let's see how it goes.

SOLICITOR GOWDY: The, the other only thing I would ask, and I know I've said that before. But this really is the, the last thing that popped in my head. Mr. Allen, if he doesn't want to know the answer to it, then I will withdraw my question. I would think that both litigants would be curious as to the Court's preference in terms of striking the jury. I have seen -- I've seen it done two

ways, but I'm aware of a third way.

We qualify 35, 40 jurors. We strike in the order that they're qualified, which I'll just state, from our standpoint, is easier to keep strikes in mind if you, if you do it that way. You qualify 35 or 40, you remix them back up to draw the names out. And the way that I've never done it before, although I will do it as the Court tells me to do, is to strike as we go. I think they're some judges that have done that in the past. Literally, if we qualify a juror Monday night, we have to say yes or no that night, and---

THE COURT: I wouldn't intend to do it that---

SOLICITOR GOWDY: Okay.

THE COURT: ---unless there's some objection from the defense. I prefer qualifying the group, remix them, and then strike them that way.

SOLICITOR GOWDY: Very well. Thank you.

THE COURT: Any objection from the defense to that method?

MR. ALLEN: One second please.

(Pause.)

MR. ALLEN: We don't really have an objection to that manner if we obviously get some time from the time of the remix so that we can go over it again.

THE COURT: Oh, yes, sir.

MR. ALLEN: Well, this---

THE COURT: Some time.

MR. ALLEN: I don't mean a good bit of time.

THE COURT: Cause I would assume, as you're going through there, you're, in some, somehow ranking them. I don't know how you would -- I'm not suggesting how you do it. But as you go through your voir dire, this one gets a five, this one gets a seven, I don't know how you rank them or what you're gonna do. But you should be in a position to, fairly quickly, once we completed the qualification, to strike it. I mean I understand that you might need some time to look at it.

MR. ALLEN: Yes, sir.

THE COURT: I would be thinking you'd be making those decisions as we go along or at least ranking them as we go along.

MR. ALLEN: I understand, Your Honor. But---

THE COURT: And given the length of time, the estimate of the case, I don't -- what I'm talking about is maybe an hour or so to look at it.

MR. ALLEN: Yes, sir, that's what I'm talking about.

THE COURT: But not more than that. I wouldn't, wouldn't adjourn on one morning and come back the next day. We're not gonna do that.

MR. ALLEN: Oh, no, no, I was talking about something

like the Court said.

THE COURT: I'll give you some time to look at it.

SOLICITOR GOWDY: Thank you.

MR. ALLEN: The other thing that I, while we're on the subject of the, the mechanics of striking the jury, would the Court's preference also be to do a, I think a dry, such as a dry strike?

In other words, that we run through striking, basically committing to peremptory challenges and/or challenges for cause to let the Court rule on those in open Court without the juror's present. And then, after that, going through the Lyle strike provided that we, of course, stay with our original decisions.

THE COURT: Any problem with that?

SOLICITOR GOWDY: No, sir, Your Honor. I think it, it, it's helpful, especially with Batson, that we not do it with the jury in the room.

THE COURT: Present.

SOLICITOR GOWDY: But as long as, and I, and I trust Mr. Allen and Mr. Reckenbeil, as long as we are bound to the strikes they tell you initially and don't change our mind.

MR. ALLEN: I mean I think we did that in the Morgan case without any incident.

SOLICITOR GOWDY: Right.

THE COURT: I have, I have no problem with that

process. That will be fine.

All right. Anything else that we need to cover at this point in time?

SOLICITOR GOWDY: No, sir, Your Honor.

THE COURT: All right. I'll look through the juror questionnaires, and I will let you know what we will submit so you'll have a copy of that.

MR. ALLEN: Yes, sir.

SOLICITOR GOWDY: Thank you, judge.

THE COURT: All right. Thank you very much.

(Whereupon, two questionnaires were marked as Court's Exhibit Nos. 1 and 2 and received into evidence for purposes of this hearing only.)

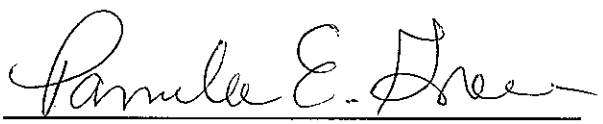
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 18th day of August, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 3rd, 2008



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, PLAINTIFF, vs. ANDRES ANTONIO TORRES, DEFENDANT.	TRANSCRIPT OF RECORD 07-GS-42-2773 - 2778 08-GS-42-880 08-GS-42-4677

September 24th, 2008
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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

TREY GOWDY, BARRY BARNETTE, AND CINDY CRICK
Solicitor, Deputy Solicitor, and Assistant Solicitor
Attorneys for the State

CLAY ALLEN, KATHY HODGES, AND JOHN RECKENBEIL
Public Defender, Assistant Public Defender, and Esq.
Attorneys for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

INDEX OF WITNESSES

(There were no exhibits marked or testimony taken during this hearing.)

PROCEEDINGS

THE COURT: I believe it's a defense motion this morning, is that correct?

MR. ALLEN: That is correct.

THE COURT: All right. Mr. Allen, I want to put on the record, my understanding is your client did not wish to be transported for this hearing, is that correct?

MR. ALLEN: That is correct. I spoke to him -- this is Wednesday. I spoke to him Monday afternoon and he indicated to me he did not desire to be here unless he had to. I told him he had every right to be here, that he could be here, but he wanted to know essentially what was gonna go on. I explained to him what we were doing, the purposes of this hearing, and he advised me that he did not wish to attend.

THE COURT: All right. And are you ready to go forward, Mr. Gowdy?

SOLICITOR GOWDY: Yes, sir, Your Honor.

THE COURT: All right. Defense motion.

MR. ALLEN: Thank you, Your Honor.

At the time that we served and filed the motion, Your Honor, we were still missing some underlying data. Essentially what I've been describing as the full case jacket specifically as to the DNA evidence or information that we had previously been provided or, in oral report and

we received a more detailed and written report earlier this month. I would say the first week of September.

THE COURT: Uh-huh. (Affirmative).

MR. ALLEN: But we were still missing the full case jacket or the underlying data. The Court may recall that when we had a status conference or a pretrial hearing, on or about August 17th or 18th, I made mention that we wanted the full case jacket and we were invited upstairs to review what the solicitors had at that point and which we did. We did that immediately after the hearing. They did not have, at that point, even the written report of the DNA and certainly they didn't have the full case jacket.

We received the, what I'm gonna call the full case jacket on the DNA, as far as we know, along with a number of other items, this past Friday, the 19th. The problem now is, as I've been advised in looking through some of these items including some of the items that were, that we received the first week of September, additional DNA test have been or are being conducted on some of the items that have been in the custody of the State since the arrest of my client back in May of 2007, and we're not saying the State -- I'm talking about the State at large, and I'm not trying to throw complete blame on the Solicitor's Office.

But, you know, the officers retrieved certain items. The condition of those items, with respect to blood and

other matter was noted on---

THE COURT: When you, when you indicate additional testing, are you -- you're not saying that there are certain items that have not been tested at all at this point in time or is that, does that mean that they have been tested, but there are further tests going on?

MR. ALLEN: No, Your Honor. I'm -- there have been a number of items that have not been tested, and to my knowledge, are not being tested. But the specific items I'm talking about, the, specifically shirt, pair of pants, and a pair of shoes, were not tested, from what I can tell, until early this month even though it's been in the custody of the state law enforcement since the arrest of my client.

And I understand those tests have been conducted. We have not received, and I understand the solicitor has not received, we have not received reports. Until I spoke with the solicitor this morning, I had not even gotten an indication of what the preliminary results were, and, of course, we don't have the underlying data on those items as well.

Your Honor, my concern about getting the underlying data and the DNA information so late, we're roughly two and a half weeks I believe before we're due to start drawing a jury, is, and it shouldn't come as a surprise to the State, that we've engaged someone to help us review and understand

these items. This gentleman, when I engaged him, was available for the weeks that we're talking about for the trial. But we need time and he needs time to review these items and explain to us, explain to me, explain to Mr. Reckenbeil, and Mrs. Hodges, what it means and to determine, first of all, if it's, to some degree, legitimate. More importantly, to understand what it means.

Now, let me give you an example. In the DNA report we've already received, there are some indications that it matches certain people. There are other indications that people can't, can or can not be excluded and we're trying to come to an understanding of what those various shades of definitions are and it requires actually apparently looking at this information and looking at the underlying data and the individual telling us what this all means.

We don't know what this next report is gonna actually say, and, again, the underlying data for that. We don't even know, at this point, and I don't know if the solicitor knows at this point, when we're gonna get it. And my concern is that getting it this closely prior to trial doesn't give us an adequate opportunity to review it and understand it and---

THE COURT: Well, let me find out what the solicitor has to say and what, what the -- I'm not sure specifically yet what we're talking about other than some items.

SOLICITOR GOWDY: Your Honor, initially Mr. Allen asked for the case jacket with the underlying data. The day we got his email request it was forwarded to SLED. In no case have I called SLED more -- actually if you combine every capital case I've done together, I've called SLED more in this case than I have all the others put together.

I can't tell you why they are slower than usual in getting information to us. I had to call the lab director twice to get the Fed Ex package that Mr. Allen referred to. He has that now. That's the underlying date that related to the blood on the shoes, the blood on the hammer. It was a very bloody scene and law enforcement collects scores of, of items for analysis.

Lots of those items have been analyzed. Mr. Allen has the results. He's had the results and he has the underlying data. Why the clothes that were found at a separate site that we believe belonged to Mr. Torres were not analyzed by SLED I can not tell you. I, I can't even give you a bad explanation for why they would not analyze the defendant's clothes for the presence of blood.

When we got the report back and realized they had not done it, then that's what he's referring to by retesting. We said you need to test the clothes of the defendant. They're in the process of doing that right now.

I, I called the SLED director yesterday and said you

need to have someone in Judge Couch's Court tomorrow morning because I'm not gonna explain to him why y'all are so slow. The, the call I got back yesterday was your choice is we can be in Judge Couch's courtroom or we can be finishing up the report. So, they're in Columbia finishing up the report.

I've told Mr. Allen preliminary it is both the victim's blood on the clothes found at the defendant's house, which should not come as a surprise. Their blood is everywhere. Both the victim's blood are on the clothes we believe this defendant was wearing.

I can't give him the written report because I don't have it. I can't give him the underlying data from that one specific test because I don't have it. I wish, I wish, as much as they wish, that I had it. But shy of calling everyday and saying I have a motion to compel, I may be put in jail tomorrow, you need to come up here, I don't know what else I can do.

I, I -- you know, in, in another case I'd say fine, I'm not gonna use the stuff. I can't do that in a, in a case like this. It, it is important.

You know, it -- I had a, a case similar to this with Judge Alford where Judge Alford finally had to order SLED to do it. You know, ordering me to do it, I, I couldn't -- I would not and could not call anymore if you ordered me to do it than I'm already doing it. It is almost a daily

conversation that we have. I am told it is in review.

I know that Ira Jeffcoat retired Friday. There's a new lab director. I've talked to her. It's in review, whatever that means, and, and I can tell you---

THE COURT: Well, I am concerned that the defense has sufficient time in which to receive the data and review it and have their, their expert look at it.

Where are we in that regard, Mr. Allen?

You indicated that he was available for the weeks of the trial.

MR. ALLEN: Yes, Your Honor. He is been reviewing -- I've overnighted the information to him.

THE COURT: I don't know how long it takes him, once he receives the documents, to be able to talk back with you and give you the information that you might need.

MR. ALLEN: Well, he's spoken with me a little bit last night, Your Honor, cause I specifically wanted to get some information that, you know, to sit down and actually go over it and to understand again these various shades of meaning. I can't give you a specific amount of time, and I guess the other concern that we've got is, is reviewing the additional information that is forthcoming at some point in time and understanding that as well.

And part of what the expert does is not only help us understand it, but also helps me to understand it so that I

can be able or let, somebody on the team can give effective cross-examination---

THE COURT: I understand.

MR. ALLEN: ---so the jury understands it, and---

THE COURT: I mean when I heard your argument, I earlier heard it in, in, not only that you're concerned about receiving it, but you're also concerned about being prepared and ready to go to trial.

MR. ALLEN: Yes, Your Honor.

THE COURT: And obviously we are somewhat into that process already, and I want to get some idea, if there is, you know, if the stuff, if the stuff, if the reports are produced this week, is that gonna be sufficient time for the gentleman to review it and you have the information that you need to be able to effectively handle that information at trial.

MR. ALLEN: If I get it this week I'm not sure. I mean I would simply ask, if we get it this week, I would ask for an additional two weeks. Not from today's date, but from the original time of start. That would give us sufficient time to be able to go over and review it.

THE COURT: All right. Two weeks from the time that it would be presented at trial or---

MR. ALLEN: No, two weeks from -- in other words, that we don't start the selection of the trial until the 27th.

THE COURT: Well, I would imagine we could go forward with the jury selection. I don't know that that information is gonna be -- is that essential for jury selection?

MR. ALLEN: Well, jury selection, I'm not -- we won't be available to discuss, you know, with our expert.

THE COURT: Oh, I understand that. But at some point in time in the trial I could take a break and let you go, sit down with your expert and go over that information is what I'm thinking. I've already -- I got 200 jurors summoned to be here on a certain day. I'm hoping to go forward on that day is what I'm saying.

MR. ALLEN: Well, I understand that, Your Honor. But that's -- I mean I'm concerned about having to start a trial, start jury selection, start voir dire without a full understanding of what this part of the case is about.

SOLICITOR GOWDY: I mean you don't have to tell me whether your expert is Strakowski. That's who I assume it, it is. He, he's, he's the DNA expert in every capital case. I, you know, I, I've -- he's testified hundreds and hundreds of times. The DNA that we're gonna put in would be the last witness that we call in the guilt phase. So, it would be closer to Monday, the following Monday, the 20th of October, than it would be to the 13th.

THE COURT: Well, that's what I'm thinking is there's gonna be some time before this, this evidence is gonna be

presented. I know you have other things to do. I understand that. I'm not, I'm not belittling the fact that we'll go through jury selection.

But if it comes down to it in that, in that process, Courts can take a recess and give you an opportunity to review that information at some point in time during the, during that process. Obviously we're gonna be sequestering the jury. There would be some issues there. We wouldn't want to take a very long period of time.

But at any rate, have you had an indication that this report is forthcoming this week?

SOLICITOR GOWDY: I, I did yesterday, at about lunchtime, and I said I want the DNA analyst who's responsible for this case to come this morning to this hearing.

THE COURT: I understand.

SOLICITOR GOWDY: I went to Columbia yesterday afternoon. And when I was on, in route to Columbia, the call I got from the lab director was if you have him in Spartanburg tomorrow morning, that's gonna be more delay before he can finish the report. So, I said I will take the bullets myself tomorrow morning. You finish the report.

I would love to be able to tell the lab director I have been ordered to produce it by a certain point. That might get her attention more than I have been able to get it so

far.

THE COURT: All right. The order is to have it produced by Friday.

SOLICITOR GOWDY: Yes, sir.

THE COURT: All the information.

I will tell you that once you've received it, Mr. Allen---

MR. ALLEN: Yes, sir.

THE COURT: ---I'm not going to be in the State next week. I'm on vacation next week. But I'll be back the following week holding Common Pleas here in Spartanburg.

MR. ALLEN: Yes, sir.

THE COURT: If motions need to be considered at that point in time concerning it's import, let me know now. If it's not produced by Friday, the case is in jeopardy of being continued.

SOLICITOR GOWDY: Yes, sir.

THE COURT: That's where we are.

SOLICITOR GOWDY: Yes, sir.

THE COURT: So, if you want to pass that along to them, and my order is that it be produced by Friday.

SOLICITOR GOWDY: Yes, sir.

MR. ALLEN: And when we say production, so there's no misunderstanding on at least my part---

THE COURT: That's the jacket, the underlying data, the

full jacket---

MR. ALLEN: Yes, sir.

THE COURT: ---needs to be in your hand by Friday.

MR. ALLEN: Thank you.

THE COURT: All right. Anything -- any other issues that you're aware of as far as discovery is concerned?

MR. ALLEN: I spoke again briefly with the solicitor. He's referred to certain Department of Corrections and DJJ and probation and parole documents that may be admitted into evidence. He referred to those in Items 2, 3, and 4 of his aggravating circumstances and I spoke to the solicitor.

With the exception of a couple of, or I'm not gonna say a couple, but a few orders concerning revocation of probation, we have not received, from the solicitor, any other items concerning Department of Corrections, DJJ, or probation reports. If they don't intend to use anything else, then that's fine. But if they do intend to, and I, to use a few other, other things, I would like those produced because we don't have them.

SOLICITOR GOWDY: We don't have them. We don't intend to use them. That is stock generic language that we always put, that we're gonna use your adult record, your juvenile record, probation. He does have some probation records in the jail file that we gave him. But we're not using anything that he doesn't have because I don't have it if he

doesn't have it.

THE COURT: Okay.

SOLICITOR GOWDY: With respect to the Department of Corrections, we asked for his DOC records because he did serve some time. We got a response back you need to send us a check before we make the copies. We have sent the check. We do not have his Department of Corrections records yet.

They have our money. They know what we're looking for. I don't know when Director Osment's department will get it to me. That is a sentencing matter that, if we get to sentencing, would be even later in October than the DNA. I'll, I'll get it to him as soon as I have it, and, and I would hope it would be soon.

THE COURT: Okay, sir.

MR. ALLEN: Okay. I acknowledge, of course, the receipt of the various jails records that were produced.

THE COURT: All right. Well, when he receives that, the solicitor should turn that over---

MR. ALLEN: Yes, sir.

THE COURT: ---as soon as he receives it.

MR. ALLEN: Thank you, Your Honor.

THE COURT: All right. Anything else?

SOLICITOR GOWDY: No, sir. Thank you.

THE COURT: All right. Gentlemen, now, again, I will be, I will be reachable by cell phone during the week that

I'm out. But again, I'll be back in Court on the following Monday here in Spartanburg, and if there's any other motions that need to be dealt with, contact my office so we can schedule those around my Court schedule that week.

SOLICITOR GOWDY: Yes, sir.

THE COURT: Okay.

MR. ALLEN: Yes, Your Honor.

THE COURT: Thank you very much.

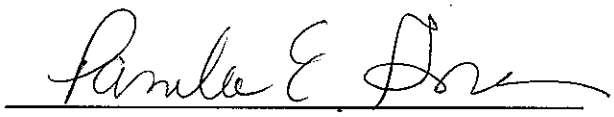
* * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 24th day of September, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 3rd, 2008



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	COURT OF GENERAL SESSIONS
STATE OF SOUTH CAROLINA, PLAINTIFF, vs. ANDRES ANTONIO TORRES, DEFENDANT.	TRANSCRIPT OF RECORD 07-GS-42-2773 - 2778 08-GS-42-880 08-GS-42-4677

October 8th, 2008
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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

TREY GOWDY, BARRY BARNETTE, AND CINDY CRICK
Solicitor, Deputy Solicitor, and Assistant Solicitor
Attorneys for the State

CLAY ALLEN, KATHY HODGES, AND JOHN RECKENBEIL
Public Defender, Assistant Public Defender, and Esq.
Attorneys for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

E X H I B I T S

NO.	DESCRIPTION	ID	EV
	Court's Exhibits		
C-1	Document		33

PROCEEDINGS

THE COURT: All right. We're on the record in the case of The State versus Torres.

My understanding is, is your client has chosen not to attend, is that correct?

MR. ALLEN: That is correct, Your Honor. I spoke with him Monday afternoon I believe it was and explained to him, again, this was a pretrial conference and he had every right to be here. His participation, you know, was not necessarily mandatory.

THE COURT: Right.

MR. ALLEN: That it was going to be mostly our discussing with you various legal aspects of the case, and he basically asked me if he didn't have to be here could he not be here. His main concern was that it not be used against him or anything of that nature, and I explained to him I saw no way that it could be used against him.

THE COURT: No, that's not -- it not, would not be used against him. I just want to be sure that he understands he has a right to be present if he chooses to, and if he voluntarily does not wish to be here, he has every right not to attend.

MR. ALLEN: Yes, Your Honor. I did advise him he had every right to be here, and he chose not to be here, asking

if he could be excused essentially and---

THE COURT: All right.

MR. ALLEN: I advised your office of, of the same.

THE COURT: All right.

MR. ALLEN: So, he has, as far as I can tell and will relate to the Court, voluntarily waived his right to be present at this pretrial conference.

THE COURT: All right. Thank you very much.

Ladies and gentleman, we're about a half a week away from getting started in the case, and so, there's matters that I did want to go over with you to be sure that we had some, some matters clear.

First of all, before I started what I'm interested in, is there anything I need to take up from the State's prospective?

SOLICITOR GOWDY: No, sir, Your Honor. I think the email that we received from Your Honor's clerk would address anything that I had on my mind.

THE COURT: All right. And anything from the defense before we start into my list that I need, you think I need to take up that I haven't mentioned?

MR. ALLEN: Okay. Your Honor, just a, a few issues.

And, and I, I apologize, Solicitor, for, when we discovered we had a little bit of difficulty, I did not contact him yesterday cause it was a pretty hectic day for

me in getting ready for not only---

THE COURT: I've had some hectic days the last few. I understand.

MR. ALLEN: ---for next week as well, Your Honor.

THE COURT: Yeah.

MR. ALLEN: So, I do apologize to the solicitor.

We went to the evidence locker or, at the Sheriff's Office and looked at the various items that were in evidence at that time. There's one thing that we did not see, because, at that point, it had not been returned from SLED, were the items of clothing that had been tested. We received the results of those tests.

THE COURT: Those were the items that we talked about the results earlier before I left on vacation, is that right?

MR. ALLEN: Yes, Your Honor.

THE COURT: Okay.

MR. ALLEN: Not only those items, but apparently the other items that were previously tested that we previously received---

THE COURT: All right.

MR. ALLEN: ---received copies of.

If -- we would like and we'll probably schedule another attempt to go see them today or tomorrow. We were told yesterday that they were due to be returned yesterday some

time, and--

THE COURT: All right.

MR. ALLEN: So, but that's the only thing. We would like to be able to see the clothing. I'm sure that the Sheriff's Office and the Solicitor's Office will make them available to us. It's perfectly understandable that they weren't in yesterday, but we would like to at least see it before we start the case.

THE COURT: I understand.

Do you have a knowledge of that, Mr. Solicitor?

I know he said he had mentioned to you at this point.

SOLICITOR GOWDY: Well, yes, sir, just because Mr. Barnette and I have been discussing when the Sheriff's Office, Department was gonna go get the clothes that SLED tested.

THE COURT: Uh-huh. (Affirmative).

SOLICITOR GOWDY: The two smart lawyers on my team are at SLED this morning, and I am optimistic that they will---

THE COURT: Return with those items.

SOLICITOR GOWDY: Either accelerate it or that hopefully -- my understanding is they're gonna be back by Tuesday. So, I hope it's already there. If it's not there, I will have the sheriff send somebody today to bring it back.

THE COURT: Okay. We'll make arrangements to have that

for you before the weekend.

MR. ALLEN: Thank you.

And, of course, I did not check either late yesterday---

THE COURT: Okay.

MR. ALLEN: ---or early morning to determine if it was returned yesterday.

THE COURT: All right. Anything else?

MR. ALLEN: Yes, Your Honor.

There is a, what I'm gonna call the crime scene video. We have been provided a copy of it. Our copy is on a, either a CD or a DVD. It's on a disk. The original is on a cassette, a tape, and ours jumps a little bit. And what I mean by that is it goes into a certain room, and then it basically stops, and there's a little interruption, and then it goes to a different room.

We can't tell from our DVD or our CD if there was a glitch in the copying process or if there, or if indeed the camera was shut off and then resumed at a later time. We asked for permission to, with Mr. Lindsey, the investigator of the case who was showing us the items yesterday, to be able to view it. They didn't have the equipment. He asked us to arrange it through one of the Solicitor's Office investigators, Mr. Davis, and I don't know if that's been done yet.

But, but, nonetheless, again, I haven't mentioned that to the solicitor. I don't know.

Did you have a chance to talk to him?

Okay. We, we, with our schedule yesterday, did not talk to him. We would like to be able to view the original under whatever controlled circumstances they would like. But just so that we make sure that we can see---

THE COURT: That your copy is an accurate representation of what's on the original?

MR. ALLEN: Make sure our copy is---

THE COURT: That shouldn't be a problem, solicitor, for them to see that?

SOLICITOR GOWDY: No, sir, I have, I have a CD. I don't, I didn't, I didn't realize that there was another tape, and, and maybe I ought to look at it too. But I'm happy to -- if he thinks Tank Davis can resolve this riddle, Tank will be available from now until Monday.

THE COURT: All right.

MR. ALLEN: We just need to get somebody---

THE COURT: Just let me know if that becomes a problem---

MR. ALLEN: Yes, sir.

THE COURT: ---by Monday.

MR. ALLEN: We will. We would also ask permission to get into the home at [redacted] Montgomery Street, the scene of the

incident. We believe that it has not been sold to, to anyone else. I believe it's probably in the name of the son of the, of the Emery's, and we have not been successful, I don't think, in trying to contact him or I don't know what the solicitor---

THE COURT: I don't know what kind of control the solicitor has over the crime scene at this point in time. It certainly would have to be by their permission I would imagine. You perhaps could subpoena that crime scene and, and require him to produce it. But that would be something you'd have to do.

MR. ALLEN: I see.

THE COURT: I don't think the solicitor has control over the victims or what they agree to or don't agree to.

SOLICITOR GOWDY: I haven't, I haven't been in the crime scene. If it would help Mr. Allen, I, I do know how to get in touch with Chuck Emery. But I am not at all convinced that Chuck Emery is the lawful owner of that, of that home.

There's also a daughter, Crystal Cook. I'll, I'll try to help him. But I haven't been out there myself. So, I wouldn't begin to know how to start that.

THE COURT: And, and sometimes, in those situations, you run into foreclosures or one thing or another. There could be lots of, several certain entanglements as to who

has control of that house.

Do you wish to, do you wish to get in touch with those individuals and see if that can be done?

SOLICITOR GOWDY: If he wants me to I will.

THE COURT: Okay. And again, I don't know that I can order them to do it unless there's been some motion or something placed before me, a subpoena that's not been honored or something of that nature.

MR. ALLEN: Yes, sir.

THE COURT: I don't think I can just sua sponta order them to let you in that scene.

MR. ALLEN: Okay.

THE COURT: So, to the extent it can be done voluntarily, I think the solicitor would help you in that regard.

MR. ALLEN: Yes, sir.

THE COURT: Other than that, it will require a motion or subpoena I believe.

MR. ALLEN: Thank you, Your Honor.

We've been provided a, a, a CD by the Solicitor's Office, which is best described as telephone calls between, well, our client made to a certain telephone number from the jail. Mrs. Hodges has been reviewing those items for us. The label of the CD indicates that these are calls, that there are 33 calls on the CD. Mrs. Hodges has advised me

that the tracks show that there are 21 tracks.

Again, I don't know if a mistake has been made or if there are some missing tracks, and I just want to -- again, I apologize for not -- Mrs. Hodges was reviewing these calls mostly yesterday, and, and so -- and she brought that to my attention.

SOLICITOR GOWDY: Your Honor, could, could I, I inquire from whom she got that CD because I again---

MRS. HODGES: From your office.

SOLICITOR GOWDY: I know. But specifically from whom. None of the three attorneys have listened to any tapes from the jail. So, I don't know who subpoenaed them and I don't---

MR. ALLEN: I think it came---

SOLICITOR GOWDY: From Missy?

MR. ALLEN: From Mrs. House I believe. I can---

SOLICITOR GOWDY: I don't---

MR. ALLEN: Sure.

SOLICITOR GOWDY: I'll find out, judge. And if, if 33 is wrong, then we'll correct it. And if it's 21, then we'll edit the front of their CD.

MRS. HODGES: I don't know. I mean I just need to know if---

SOLICITOR GOWDY: I didn't receive any phone calls from the jail. So, I can't tell you how many there are.

THE COURT: Okay.

SOLICITOR GOWDY: Do you -- who are the calls to? Are they to the Hughey family?

MRS. HODGES: It's two. [redacted]18 number.

SOLICITOR GOWDY: Is that the Hughey phone? Do you know?

MR. ALLEN: No.

MRS. HODGES: I would actually think it would be the, the home where his mother resides.

SOLICITOR GOWDY: Mrs. Lamb.

MRS. HODGES: Right.

THE COURT: This is the, the defendant's calls from jail to outside?

MRS. HODGES: That's correct, Your Honor.

MR. ALLEN: Yes, sir, to a, to a, to one telephone number and that be the number Mrs. Hodges just indicated. I can't remember.

MRS. HODGES: It's [redacted]18.

SOLICITOR GOWDY: We'll find out. I'll find out.

MR. ALLEN: Okay. Again, if there's only 21 tracks, that's fine. If there are 33 tracks---

THE COURT: Well, I'll, I'll ask the solicitor to clear that issue up and then we'll -- you should have them after that.

MR. ALLEN: Yes, sir. I believe that's all I've got at

this time.

THE COURT: Okay. All right. I had indicated that I was interested in finding out if exhibits can be stipulated to if at all possible, Mr. Solicitor.

SOLICITOR GOWDY: Your Honor, I am delighted to meet with defense counsel. I have found that to be productive in the past. I am also willing, if the Court would like me to, and Madam Court Reporter would like me to, we can premark every exhibit that we intend to use, which would not require Madam Court Reporter to stop during the trial. But that's her job. If she doesn't want me to do it, I won't do it. I'm not trying to, to -- I can't do my job very well and I certainly don't want to do hers.

But I have had it speed up the process when we mark it ahead of time. Then Mr. Allen and I can sit down. The ones that he has an objection to, we can set them aside.

It -- the only glitch I can see in that is if Your Honor sustains on objection that we might not go in order in terms of the numbers. But I've never gone in order in any trial that we've ever had. So --.

THE COURT: Well, if it's presented, then it obviously can be marked for identification purposes so it could be then raised on appeal by either side.

SOLICITOR GOWDY: Yes, sir.

THE COURT: So marking them is I think a good idea. I

don't know if you'll have time to do that.

She said that would be fine.

So, if you want to present them before then, we'll get them marked.

SOLICITOR GOWDY: Okay.

THE COURT: I'm in a civil trial today. I expect it to end today, and I don't intend to start another jury trial. I may do some pleas. We'll see what happens on that.

SOLICITOR GOWDY: I'll -- but we are delighted to sit down with defense counsel, anything that we can agree to, and I suspect 95 percent of it we will be able to agree to it.

THE COURT: All right. Stipulations as to evidence, do you want to work on that with him?

MR. ALLEN: I do. I think I'd like co-counsel to be involved as well---

THE COURT: I understand.

MR. ALLEN: ---so that we can---

THE COURT: But I'd like for us, if at all possible, to get as many exhibits agreed to if they can be agreed to --

MR. ALLEN: Yes, Your Honor.

SOLICITOR GOWDY: Yes, sir.

THE COURT: -- so that we don't run then, unduly prolong that phase of the trial.

MR. ALLEN: Yes, Your Honor. We'll have a stipulation

to as many of them, as many as we can. But we'll certainly have to discuss our proposed stipulations with our client to make sure that he agrees. And if he doesn't, we'll have to ask the Court.

THE COURT: Well, I'm gonna ask that you meet on that as soon as you can --

MR. ALLEN: Yes, sir.

THE COURT: -- so that maybe you'll have a chance to talk it over with him. We can get that resolved by the end of the week.

MR. ALLEN: Yes, sir.

THE COURT: All right. Unusual evidentiary issues, is the State aware of any?

SOLICITOR GOWDY: One, Your Honor. I'm not sure unusual is, is the best word. It, it doesn't come up a lot. But it comes up some, which is the, the issue of third party guilt. And I would defer to the Court's readings on the cases.

My reading of it would suggest that the defense needs to proffer that testimony outside the presence of the jury for the Court to decide whether or not the Holmes case has been satisfied. We're ready whenever the Court wants to hear that. But that's the only evidentiary issue that I'm -- I mean there's a, there's a Denno hearing that will need to take place because the defendant made certain

statements after Miranda. There may be the Fifth Amendment issues. I, I can't anticipate everything that they're gonna raise. But I can tell you there is a statement and I can tell you that there is a third party guilt argument that the State would have.

THE COURT: All right. Anything that, evidentiary issues that you think I need to be aware of?

MR. ALLEN: In addition to that which the solicitor has raised, we will like to have a motion in limine concerning the testimony of the DNA. Specifically the opinion evidence from the expert. There's a number of items in which the expert has indicated that he can not include or exclude certain individuals and we would respectfully ask the Court to rule on that before, outside the presence of the jury, before they get into that.

I don't know if that -- we -- I take the position that that does not meet the standard for expert testimony if they can not say one way or the other if DNA matches.

THE COURT: Well, also, does the, does the State intend to present any testimony on matters that can not be included or excluded?

SOLICITOR GOWDY: Well, Your Honor, I think the issue, when the State doesn't do it, is the defense counsel will stand in front of the jury and say there were all these items that the State didn't bother to test or no expert

tested it and the reality is we did test them all. There was just no opinion that can be drawn from them.

So, if they agree not to mention a single item of evidence that was tested, but nonconclusive, then I don't need to put that in front of the jury. But certainly they're gonna cross-examine my officers on the scope and depth of their investigation, which includes testing anything that could be tested.

And, you know, the Court knows better than I do, they're different tiers of, of inclusion and exclusion. Some of them Torres can be excluded from. Some of them he can not be excluded from. But that doesn't mean it's 50/50.

The, the testimony of the expert may be, you know, five of the seven alleles match. But we can't, we don't know about the other two because they were degraded. So, I mean I, I---

THE COURT: I understand, I understand the State's position.

And do you have any comment on what the State is raised?

Obviously, in this era of forensic testing, the jury does have a curiosity about items that aren't mentioned or aren't tested. And so, that sometimes is a matter that does need to be discussed in front of the jury. I don't know if you want to try to reach some agreement as to whether or not

that would be argued to the jury, that those items, what about the, I don't know what we're talking about, the shirt, what about some item that, that there was no conclusion drawn, but every effort was made to try to test it.

MR. ALLEN: If the testimony is gonna be no conclusion was drawn, that is certainly one thing. I mean my concern is if they're gonna testify we can not exclude Mr. Torres from this particular item, my concern is that that is gonna lead the jury to believe that well, since they can't exclude him, that means they have to include him, and, therefore, hear that his DNA was on items in which he can not be excluded.

THE COURT: Normally that can be cleared up in cross-examination that you -- but we'll -- maybe we'll have to make a proffer and we'll have to see about that.

MR. ALLEN: Yes, sir.

THE COURT: So, I, I'll allow you to make your motion at the appropriate time and we'll have a hearing, if necessary.

MR. ALLEN: Yes, sir.

THE COURT: Sounds like there's not gonna be able to be an agreement on that point.

MR. ALLEN: Yes, sir.

Also with respect to the statement that I understand that my client made after Miranda was a statement to the

effect of prove it. We will certainly ask for a hearing, Jackson v. Denno hearing as to that, as to whether or not that's even a statement, and whether or not it is admissible as, as well.

THE COURT: What is the -- on the, on the pretrial hearings, so far I'm hearing we have a Jackson v. Denno. We have a question of the evidence.

Estimated time for those?

SOLICITOR GOWDY: Your Honor, I, I don't know, and I'm not asking them today, what their third party guilt evidence is. I could, I could imagine that would take some length of time. Maybe not. But I could imagine -- if past histories is an indicator, sometimes those hearings take a little while because you have to proffer to call the witnesses. I might say two or three hours for something like that. Denno would not take that long cause he didn't say that much.

THE COURT: Okay. I'm just trying to get some idea, after we, after we get the jury selected, how long this is gonna take. It sounded like to me maybe a half a day or something like that.

MR. ALLEN: Yes, Your Honor. I think I concur with that.

THE COURT: Okay. All right. Any other evidentiary evidence, matters that we need to discuss?

MRS. HODGES: Your Honor, the DNA, there's also some

latent prints that were done for a pair of shoes that were taken into evidence. There is similar indication on the latent report that, that the shoes could have been or that those prints that were examined could have come from those shoes. I think we can probably do all that in the same kind of---

SOLICITOR GOWDY: Well, what, the tread or the fingerprints?

MRS. HODGES: Yeah, the tread.

SOLICITOR GOWDY: The tread wear.

MRS. HODGES: The tread wear.

SOLICITOR GOWDY: Well, that strikes me as a little bit of a different issue. But I'm happy to wait -- I mean, you know, it, it, I can -- my understanding of SLED's opinion is that the tread on this shoe matches the tread in this house.

All right. That's unequivocal. We're also gonna have to concede, on cross, that Nike probably made 500,000 pairs of shoes, and that certainly goes to the weight of how much the jury wants to consider the tread. But, but there will be no ambiguity, from SLED's standpoint, that the tread found in that house matches the tread on the bottom of Torres shoes. There's no inconclusive, whatever, inconclusiveness about that.

MRS. HODGES: Well, and that may be semantics, Your Honor. But the, the, the report that I saw says that it

could have as opposed to definitely does. So, you know, that's just something that, you know---

THE COURT: Okay. Well, we'll take that up at the time if that's the case and -- all right. Anything else?

MR. ALLEN: Your Honor, we would also -- well, I mean I imagine they'll be a number of photographs and video that we'll be moving to exclude based on its shocking value. I mean I'm sure the solicitor will, maybe we can come to some agreement when we look at the evidence, but, you know, we'll like to have those issues raised, if necessary, both in the first phase of the trial and as well as in the mitigation or aggravation phase and ask for rulings.

THE COURT: Well, that will have to be -- you'll have to make a motion in limine. I'm sure you'll do that, and we'll, we'll consider it.

MR. ALLEN: Yes, sir.

THE COURT: Unless you can reach an agreement on what ought to be shown and what shouldn't be shown.

SOLICITOR GOWDY: Your Honor, I---

THE COURT: I haven't seen them. So, I have no idea what you're talking about.

SOLICITOR GOWDY: I have a stack on my desk right now of sentencing phase photos, if we get to that point, and guilt phase. I, I have a rough idea, I think, of what, you know, would not come in in a guilt phase, and I'm not gonna

try to put it in there. But part of it also depends on the defense.

Some of the photos at the crime scene are inextricably linked to what defense can put up, and, and I can't anticipate their defense. So, what the, what their defense is could make some photos more relevant than otherwise. But in terms of the ones that Mr. Allen is talking about, the grotesque pictures, I'm not trying to put those in in the guilt phase.

THE COURT: Well, what I'd like you to do, once you sit down to look at the, your stipulated evidence, if you could show him what you intend to use in your case in chief.

SOLICITOR GOWDY: Yes, sir.

THE COURT: And then, of course, depending on the defense, and then we'll just have to see what happens then, because we're not gonna require him to disclose anything for the defense.

SOLICITOR GOWDY: Yes, sir.

THE COURT: So, we'll, we'll have to deal with that as they come up.

MR. ALLEN: Yes, sir.

THE COURT: But as to the ones you're planning on putting in your case in chief, you can review those and see if it's necessary or you feel it's necessary to file your motion.

MR. ALLEN: Yes, sir, thank you.

And finally, we would respectfully request copies of essentially rap sheets of all what I call lay witnesses, non-law enforcement related witnesses that the State would intend to call in its case in chief.

THE COURT: Solicitor, I'm sure you'll provide that.

SOLICITOR GOWDY: Yes, sir.

THE COURT: Okay.

MR. ALLEN: Thank you.

THE COURT: All right. Now, particular voir dire, do, from the State?

SOLICITOR GOWDY: With respect to general voir dire, Your Honor, of the entire panel, Madam Clerk I believe has in her hand, if I gave her the right stack, some proposed general voir dire questions, Your Honor.

THE COURT: All right. Thank you.

All right. I'll take a look at those.

SOLICITOR GOWDY: Yes, sir.

THE COURT: Defense have any general voir dire questions that---

MR. ALLEN: I do, Your Honor.

THE COURT: Okay.

MR. ALLEN: And I provided a copy to the clerk and to the solicitor as well.

THE COURT: All right. Thank you very much.

Now, as to the jury panel, I have been going through the responses to our questionnaires. We are handling the statutory exemptions. Those are available to you if you want to review those in the Clerk's Office. I've got -- the last stack I reviewed is on my desk. I did that last night. So, they'll be passed over to the clerk this morning.

I'm -- you're certainly entitled to receive copies of the answers or responses to the, to the questionnaires. I intend to -- there's a, there's a group that we're excluding statutorily. There's a -- I have a couple back that claim to have convictions on their record. We're gonna have those checked out before we decide which way those go. And then most of the ones that are somewhat questionable I am putting in a stack to come in and be, be examined for, during the voir dire process.

You certainly have a right to review those. There are some that I am moving to other terms because they have confirmed travel plans, their stuff, things of that nature that I would normally grant those people release, and, of course, if you have an objections to those, please let me know and we'll need to notify those folks.

But I don't know of anything unusual that I've seen that, that's terribly out of the ordinary. There was one individual that I did exclude who indicated that he was a distant relative of the defendant or former relative of the

defendant. Must be some former in-law or something of that nature. And that individual indicated that they would be a good juror for the State and would be prejudiced against him. So, I have excluded that particular individual just because of family relationships. That's the only one that I can recall that, that struck me as being terribly unusual from the list.

But certainly you have a right to look at the responses. I'll have the clerk make the stacks available to you as the ones that I have told them to excuse, and then the ones that we will bring in for the hearing. All those will be available to you today.

SOLICITOR GOWDY: Yes, sir.

MR. ALLEN: The ones that we're gonna, that the Court wants to bring in to question, have those responses been previously copied and provided to---

THE COURT: The clerk -- I talked to the clerk yesterday and indicated that they should have copies of all of that information available for you today. So, I'm, I'm assuming they'll follow my directions and have that ready. If they don't, let me know.

MR. ALLEN: Yes, sir.

THE COURT: But I'm having them make copies of any and all the responses that, that have been returned.

Now, the sheriff's deputies are out yesterday

attempting to serve individuals who had not responded to the questionnaires or try to pick up the questionnaires from those individuals. I know they went out yesterday and tried to locate people. We've not gotten responses from them. And so, I don't know what the result of that was yesterday. But I do know yesterday, they, they were out attempting to do that.

MR. ALLEN: Yes, sir.

THE COURT: Right now I think I've excluded about 108 as of yesterday not counting the ones I went over last night. And then that's, that's one that have statutory exemptions. They're over 65, things of that nature. It's about 108 that have come out so far.

Anything else I can share with you about that process?

SOLICITOR GOWDY: Your Honor, do you, do you purport to bring the first panel back Monday or, or -- and I know part of it depends on how quickly general -- do you -- would you like to go immediately into the panel qualification on Monday if at all possible?

THE COURT: Yes, I would. As soon as we're ready to go.

SOLICITOR GOWDY: Okay.

THE COURT: We'll, we'll go through the general qualification process and then we'll begin, we'll divide them into panels and I'll intend to go into that as soon as

we can.

SOLICITOR GOWDY: Would you like our witness list?

I can get it to you as soon as you want it. I have -- some Courts call the witness list out in general voir dire and some give it to the panel so they can look at while they're waiting. And I -- ours will be ready whenever you direct us to give it to you.

THE COURT: I'll probably call it out during the general voir dire, and I know you're -- if I can get to the extent that you can give me a list of witnesses so that I can inquire of those for the jury as well.

MR. ALLEN: Okay. Would you want witnesses in both phases, Your Honor, that we---

THE COURT: Yes, sir.

All right. Anything else, gentlemen?

If you can get that to me this week so I can have it for Monday.

MR. ALLEN: Yes, sir.

SOLICITOR GOWDY: Your Honor, the last time we met Mr. Allen had indicated that mental retardation was not an issue and that, and that -- I think, I don't know, but whatever is fine, I don't think he foresaw it being an issue, but I just wanted, because I, I think that's something we would have to deal with ahead of time, I assume that is not still an issue.

The, the other issue, and I think the law is a little bit unsettled, and I, I, whatever the Court says is what we're gonna live with, I would not be surprised if there are experts called, if we reach the sentencing phase, I haven't received any reports from any experts. If, when they testify, you know, if the, if they have reports, we'd like them. I think we're entitled to them. If they don't have reports, which is the trend now, and I have no way of knowing if they're coming, I would hope the Court would give us some lead way in terms of consulting with our own experts because I, I'm not good enough to cross-examine an expert when I have no notice and have no idea what they're gonna say.

THE COURT: Mr. Allen.

MR. ALLEN: Your Honor, as to the first issue, we have no evidence of mental retardation. And so, I do not foresee that as an issue in this case.

As to the experts, they're still conducting their evaluations. I've not received a written report, an official written report even though I've spoken with some of these experts. If I do receive a report, I'll certainly provide that to the State at the appropriate time. But -- and, and this is where I'm gonna have to ask for some lead way or some guidance from the Court.

I understand the solicitor's desire to, to be able to

review this information with State experts. But because of the information that my experts have, and I would prefer to go into this if the Court desires more in an ex parte fashion, so, you know, that I do not disclose things to the solicitor that I---

THE COURT: Well, Mr. Solicitor, why don't you step outside for just a moment, and I'll let him go into it with me right now.

SOLICITOR GOWDY: Yes, sir, I'll go with Mr. Bailiff.

THE COURT: Okay. That will be fine. And this part of the record will be a separate record and sealed.

(Whereupon, the following takes place outside the hearing of Solicitor Gowdy.)

MR. ALLEN: Thank you, Your Honor.

Your Honor, this past -- well, last week I received extensive records from my investigator, my mitigation investigator. Now, I'm talking somewhere in the neighborhood of 3,000 pages. I spent the weekend reviewing those as well. These items have been provided, and these items have been provided to some of the experts that I anticipate discussing.

But these records are, and I tell the Court they're from the Continuum of Care. This is for severely emotionally disturbed children. This would be a big part of mitigation. But it contains a lot of information, which if

the solicitor has early on, I'm afraid they're gonna find and discover additional witnesses to testify against my client at the penalty phase.

Now, while we will be acknowledging some of these other incidents, but we would like to present this in a fashion to explain essentially our client, but I would like not to provide that to the solicitor in, in so early of a time to give them and the State additional time to find witnesses, if they've already not found them, from information that we have been provided and would end up turning over and providing witnesses against our client. That's my main concern.

THE COURT: Well, when do you anticipate the appropriate time to give the State this information?

MR. ALLEN: It could be when he's been convicted and that we, and we know we're going into the mitigation phase.

THE COURT: All right. Well, I'll, I'll, I'm not sure I understand exactly what you're talking about.

The -- apparently there's some information concerning instances in your client's past that the solicitor may not have dug up or may not have discovered that you have discovered through your efforts?

MR. ALLEN: Yes, sir.

THE COURT: Is that what you're saying?

MR. ALLEN: Yes, sir.

THE COURT: Okay. And you'd rather not provide that information so that they develop other witnesses on, based on that information?

MR. ALLEN: Yes, Your Honor. It concerns specifically, well, a lot of or other incidents of violence. Some of these witnesses are still around, and I just don't want to give them that additional opportunity to be able to show a violent past in my client through witnesses that they have not discovered that we don't want to be handing that information over.

THE COURT: All right. Well, I'll, I'll take that under advisement. I'll let you know what I want to do about that one.

MR. ALLEN: Yes, sir.

THE COURT: All right. Bring the solicitor back.

(Whereupon, the following takes place within the presence of Solicitor Gowdy.)

THE COURT: All right. Mr. Solicitor, I have been made aware of certain information from the defense. I've told him I'll take the matter under advisement. I'll let you know as to when I'll require that information to be turned over.

SOLICITOR GOWDY: Yes, sir.

THE COURT: All right. Now, anything else before I, I -- one other thing I need take up with Mr. Allen.

SOLICITOR GOWDY: I was, I was looking at Your Honor's list. I do have a list of statutory aggravating circumstances if the Court would like to see those.

THE COURT: I do want those to be submitted. I don't see it, no.

SOLICITOR GOWDY: Thank you.

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

And for the mitigating circumstances?

SOLICITOR GOWDY: You want me to leave again, judge?

THE COURT: I don't know if he has them in writing. I don't know how he---

MR. ALLEN: I do not have them in writing, Your Honor. I do apologize.

THE COURT: All right. You submit them in writing before the end of the week then.

MR. ALLEN: Yes, Your Honor.

THE COURT: Thank you.

Now, I think we need to be sure that we've stated educational and professional qualifications for the defense counsel and I assume, Mr. Allen, you are the lead counsel, is that correct?

MR. ALLEN: I am lead counsel, Your Honor, if the Court please, and I've made a copy of my certificate as to serve as lead counsel. I can provide it to the Court at this time.

THE COURT: Let's, let's make it a Court's Exhibit. And any objection, Mr. Solicitor?

SOLICITOR GOWDY: No, sir.

THE COURT: All right. She'll mark it.

(Whereupon, the document was marked as Court's Exhibit No. 1 and received into evidence for purposes of this hearing only.)

THE COURT: Anything further I need to consider, Mr. Allen?

MR. ALLEN: Yes, Your Honor.

As the exhibit shows, I was approved on December 17 of 2003 to serve as lead counsel in death penalty cases. Been a member of the South Carolina Bar since 1979, November of 1979. As the Court may be aware, most of my career has been involved with the, in criminal law in the State of South Carolina having previously been a assistant public defender for Richland County for, for about three years. For ten years I was one of the contract attorneys providing indigent criminal defense in Greenville County, and I've been with the Spartanburg County Public Defender's Office first as an assistant public defender since 2001. 2006 I became, I became chief public defender, and, of course, this year I was named circuit public defender to the Seventh Judicial Circuit.

I can't tell the Court the number of murder cases I've

actually tried. It's been, I think conservatively, more than ten. I've tried I think at least four, if not more, murder cases in the last couple of years. I've also been lead counsel in a death penalty case that was tried in Spartanburg County in 2004, The State versus Eric Morgan, and that was the only other death penalty of which I've been involved.

I also tried and I know I defended four murder cases at trial as an assistant public defender in Richland County from 19, between 1984 and 1987. And again, I don't know the number, but a fair number of murder cases during the time that I was a contract indigent defense attorney in Greenville. None of those have been death penalty cases.

THE COURT: All right. State have any comment?

SOLICITOR GOWDY: No, sir, he's as qualified as anybody in the State of South Carolina. So---

THE COURT: Well, that would be the Court's finding as well. So, the Court finds, on the, on the record, that Mr. Allen is qualified and is, and is designated as lead counsel in the case.

All right. Anything further, gentlemen?

(No response.)

THE COURT: All right. If you have any problem with the jury questionnaires, let me know. That should be available for you in the Clerk's Office. I will be here the

remainder of the week with the exception of the fact that I am speaking in a CLC seminary in Columbia Friday afternoon. So, I will not be available Friday afternoon. I'll be down there taking care of those duties.

All right. Thank you very much.

SOLICITOR GOWDY: Thank you, judge.

MR. ALLEN: Thank you.

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

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 8th day of October, 2008.

I do further certify that I am neither of kin, counsel nor interest to any party hereto.

December 3rd, 2008

PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG)

STATE OF SOUTH CAROLINA,)
) TRANSCRIPT
PLAINTIFF,)
) OF
vs.)
) RECORD
ANDRES ANTONIO TORRES,) 07-GS-42-2773 - 2778
) 08-GS-42-880
DEFENDANT.) 08-GS-42-4677

October 13th - 23rd, 2008
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE ROGER L. COUCH, Judge.

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S-1	Diagram		1919
S-1-A	Diagram		1890
S-2			
S-3	Hammer		1906
S-3.1	Swab		2037
S-3.2	Swab		2037
S-3.3	Swab		2037
S-3.4	Swab		2037
S-4			
S-5	Fingerprint Card		1736
S-6			
S-7	Buccal Swab		1907
S-8	Buccal Swab		1907
S-9	Fingerprint Analysis		1821
S-10	Photograph		1821
S-10-A	Fingerprint Card		1815
S-11	Photographic Lineup		1685
S-12	Photographic Lineup		
S-13	Photographic Lineup		
S-14	Fingerprint Card		1808
S-15			

NO.	DESCRIPTION	ID	EV
S-16	Fingerprint Analysis		1821
S-17	Yellow Gas Can Spout		1905
S-18	Fingerprint Card		1821
S-19	Video		1695
S-20	Video		1759
S-21	CAD Report		1677
S-21-A	CD		1677
S-22	Photograph		1617
S-23	Photograph		1638
S-24	Photograph		1638
S-25	Shoe Print		1942
S-26	Shoe Print		1941
S-27	Shoe Print		1942
S-28	Shoe Print		1942
S-29	Shoe Print		1940
S-30	Shoe Print	1571	1943
S-31	Blue Jeans		1746
S-31.1	Cuttings From Blue Jeans		2018
S-31.2	Cuttings From Blue Jeans		2018
S-31.3	Cuttings From Blue Jeans		2018
S-31.4	Cuttings From Blue Jeans		2018
S-32	Swabs		1735
S-33	Swabs		1735

NO.	DESCRIPTION	ID	EV
S-34.4	Vaginal Swabs		2063
S-34.6	Vaginal Swabs		2063
S-35	Photograph		1638
S-36	Yellow Shirt	1982	1982
S-36.1	Cutting from Yellow Shirt		2020
S-37	Socks	1984	1985
S-37.1	Cuttings from Socks		2021
S-37.2	Cuttings from Socks		2021
S-38	Photograph		1617
S-39	Khaki Pants	1983	1984
S-39.1	Cutting from Khaki Pants		2022
S-39.2	Cutting from Khaki Pants		2022
S-39.3	Cutting from Khaki Pants		2022
S-40	Photograph		1764
S-41	Boxer Shorts	1984	1985
S-41.1	Cutting from Boxer Shorts		2024
S-41.2	Cutting from Boxer Shorts		2024
S-42	Tennis Shoes		2035
S-42-A	Shoe Laces	1984	1985
S-42.1	Swab from Tennis Shoes		2050
S-42.2	Swab from Tennis Shoes		2050
S-42.3	Swab from Tennis Shoes		2036
S-42.4	Swab from Tennis Shoes		2050

NO.	DESCRIPTION	ID	EV
S-42.5	Swab from Tennis Shoes		2036
S-42.6	Swab from Tennis Shoes		2036
S-43	Swab from Jewelry Box		
S-44	Swab from Jewelry Box		2254
S-45			
S-46	CD of Photographs		1940
S-47	Broken Cell Phone		1908
S-48	Buccal Swab		1934
S-49	Gas Can		1742
S-50	Photograph		1764
S-51	Photograph		1764
S-52	Photograph		1919
S-53	Photograph		1919
S-54	Photograph		1617
S-55			
S-56	Photograph		1617
S-57	Photograph		1617
S-58	Photograph		1667
S-59	Photograph		1667
S-60	Photograph		1667
S-61	Photograph		1708
S-62	Photograph		1708
S-63	Photograph		1708

NO.	DESCRIPTION	ID	EV
S-64	Photograph		1708
S-65	Photograph		1708
S-66	Photograph		1708
S-67	Photograph		1726
S-68	Photograph		1726
S-69	Photograph		1726
S-70	Photograph		1726
S-71	Arson Sample		1839
S-72	Arson Sample		1840
S-73	Arson Sample		1841
S-74	Arson Sample		1842
S-75	Arson Sample		1843
S-76	Arson Sample		1844
S-77	Arson Sample		1845
S-78	Arson Sample		1846
S-79	Arson Sample		1846
S-80	Arson Sample		1849
S-81	Arson Sample		1849
S-82	Photograph		1726
S-83	Photograph		1726
S-84	Photograph		1726
S-85	Photograph		1726
S-86	Photograph		1726

NO.	DESCRIPTION	ID	EV
S-87	Photograph		1726
S-88	Photograph		1726
S-89	Photograph		1726
S-90	Photograph		1726
S-91	Photograph		1726
S-92	Photograph		1726
S-93	Photograph		1726
S-94	Photograph		1726
S-95	Photograph		1726
S-96	Photograph		1726
S-97	Photograph		1726
S-98	Photograph		1726
S-99	Brown Purse		
S-100	Photograph		1726
S-101			
S-102	Photograph		1726
S-103	Photograph		
S-104	Photograph		1726
S-105	Photograph		1718
S-106	Photograph		1718
S-107	Photograph		1718
S-108	Photograph		1718
S-109	Photograph		1718

NO.	DESCRIPTION	ID	EV
S-110	Photograph		1718
S-111	Photograph		1718
S-112	Photograph		1718
S-113	Photograph		1718
S-114	Photograph		1718
S-115	Photograph		1718
S-116	Photograph		1718
S-117	Photograph		1718
S-118	Photograph		1718
S-119	Photograph		1718
S-120	Photograph		1718
S-121	Photograph		1718
S-122	Photograph		1718
S-123	Photograph		1718
S-124	Photograph		1718
S-124-A	Keys		1742
S-125			
S-126			
S-127	Part of Cell Phone		1742
S-128			
S-129	Driver's License		1742
S-130	Vehicle Registration		1742
S-131			

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S-133	Cell Phone		1935
S-134			
S-135	Photograph		1718
S-136	Photograph		1718
S-137	Photograph		1718
S-138	Photograph		1742
S-139	Photograph		1718
S-140	Photograph		1718
S-141	Photograph		1718
S-142	Photograph		1718
S-143	Purse		1737
S-144	Wallet	1739	1740
S-145	Planner		1718
S-146	White Planter		1742
S-147	Payment Book		1742
S-148	Angel Tree Certificate		1742
S-149	Photograph		1718
S-150	Photograph		1718
S-151	Photograph		1718
S-152	Breathing Mask		1718
S-153	Photograph		1718
S-154	Photograph		1718

NO.	DESCRIPTION	ID	EV
S-155	White Shirt	1980	1981
S-156	Photograph		1718
S-157	Photograph		
S-158	Photograph		
S-159	Photograph		
S-160	Photograph		1960
S-161	Photograph		1960
S-162	Photograph		
S-163	Wallet		1979
S-164	Photograph		1638
S-165	Photograph		1638
S-166	Photograph		1638
S-167	Photograph		1617
S-168	Photograph		1919
S-169	Photograph		1919
S-170	Photograph		1919
S-171	Photograph		1919
S-172	Photograph		1919
S-173	Photograph		1919
S-174	Photograph		1919
S-175	Photograph		1919
S-176	Photograph		1919
S-177	Photograph		1919

NO.	DESCRIPTION	ID	EV
S-178	Photograph		1919
S-179	Photograph		1919
S-180	Photograph		1919
S-181	Photograph		1919
S-182	Photograph		
S-183			
S-184	Photograph		1919
S-185			
S-186			
S-187	Photograph		
S-188	Photograph		1919
S-189	Photograph		
S-190	Photograph		1919
S-191			
S-192	Photograph		1919
S-193	Photograph		1919
S-194	Photograph		1919
S-195	Photograph		1919
S-196	Photograph		1919
S-197	Photograph		1919
S-198	Photograph		1919
S-199	Photograph		1919
S-200	Photograph		1617

NO.	DESCRIPTION	ID	EV
S-201	Photograph		1919
S-202	Photograph		1919
S-203	Photograph		1919
S-204	Photograph		1919
S-205			
S-206	Photograph		1919
S-207	Photograph		1919
S-208	Photograph		1919
S-209	Photograph		1919
S-210	Photograph		1919
S-211	Photograph		1919
S-212	Photograph		1919
S-213	Photograph		1919
S-214	Photograph		1919
S-215	Photograph		1919
S-216	Photograph		1919
S-217	Photograph		1919
S-218	Photograph		1919
S-219	Photograph		1919
S-220	Photograph		1919
S-221	Photograph		1919
S-222	Photograph		1919
S-223	Photograph		1919

NO.	DESCRIPTION	ID	EV
S-224	Photograph		1919
S-225	Photograph		1919
S-226	Photograph		1919
S-227	Photograph		1919
S-228	Photograph		1919
S-229	Photograph		1919
S-230	Photograph		1919
S-231	Photograph		1919
S-232	Photograph		1919
S-233	Photograph		1919
S-234	Photograph		1919
S-235	Photograph		1919
S-236	Photograph		1919
S-237	Photograph		1919
S-238	Photograph		1919
S-239	Photograph		1919
S-240			
S-241	Photograph		1973
S-242	Photograph		1973
S-243	Photograph		1973
S-244	Photograph		1973
S-245	Photograph		1973
S-246	Photograph		1973

NO.	DESCRIPTION	ID	EV
S-247	Photograph		1973
S-248	Photograph		1973
S-249	Photograph		1973
S-250	Photograph		1973
S-251	Photograph		1973
S-252	Photograph		1973
S-253	Photograph		1973
S-254	Photograph		1973
S-255	Photograph		1973
S-256	Photograph		1973
S-257	Photograph		1973
S-258	Photograph		1973
S-259	Photograph		1973
S-260	Photograph		1973
S-261	Photograph		1973
S-262	Photograph		1973
S-263	Photograph		1973
S-264	Photograph		1973
S-265	Photograph		1973
S-266	Photograph		1973
S-267	Photograph		1973
S-268	Photograph		1799
S-269	Photograph		1799

NO.	DESCRIPTION	ID	EV
S-270	Photograph		1799
S-271	Photograph		
S-272	Photograph		1799
S-273	Photograph		1799
S-274	Photograph		1799
S-275	Photograph		1799
S-276	Photograph		1799
S-277	Photograph		1799
S-278	Photograph		1836
S-279	Photograph		1836
S-280	Photograph		1836
S-281	Photograph		1836
S-282	Photograph		1836
S-283	Photograph		1836
S-284	Photograph		1836
S-285	Photograph		1836
S-286	Photograph		1836
S-287	Photograph		1836
S-288	Photograph		1836
S-289	Photograph		1836
S-290	Photograph		1836
S-291	Photograph		1836
S-292	Photograph		1836

NO.	DESCRIPTION	ID	EV
S-293	Photograph		1836
S-294	Photograph		1836
S-295	Photograph		1836
S-296	Photograph		1836
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S-298	Photograph		1836
S-299	Photograph		1836
S-300	Photograph		1836
S-301	Photograph		1836
S-302	Photograph		1836
S-303	Photograph		1836
S-304	Photograph		1836
S-305	Photograph		1890
S-306	Photograph		1890
S-307	Photograph		1890
S-308	Photograph		1890
S-309	Photograph		1890
S-310	Photograph		1890
S-311	Photograph		1890
S-312	Photograph		1890
S-313	Photograph		1890
S-314	Photograph		1890
S-315			

NO.	DESCRIPTION	ID	EV
S-316	Photograph		1890
S-317	Photograph		1890
S-318	Photograph		1890
S-319	Photograph		1890
S-320	Photograph		1890
S-321	Photograph		
S-322	Photograph		1890
S-323	Photograph		1890
S-324	Photograph		1890
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S-326	Photograph		1890
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S-328	Photograph		1890
S-329	Photograph		
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S-331	Photograph		1890
S-332	Photograph		1890
S-333	Photograph		1890
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S-337	Photograph		1890
S-338	Photograph		1890

NO.	DESCRIPTION	ID	EV
S-339	Photograph		1890
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S-341	Photograph		1890
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S-344	Photograph		1890
S-345	Photograph		1890
S-346	Photograph		1890
S-347	Photograph		1890
S-348	Photograph		1890
S-349	Photograph		1890
S-350	Photograph		1890
S-351	Photograph		1890
S-352	Photograph		1890
S-353	Photograph		1890
S-354	Photograph		1890
S-355	Photograph		1890
S-356	Photograph		1890
S-357	Photograph		1890
S-358	Photograph		1890
S-359	Photograph		1890
S-360	Photograph		1890
S-361	Photograph		1980

NO.	DESCRIPTION	ID	EV
S-362	Photograph		1890
S-363	Photograph		1890
S-364	Photograph		1890
S-365	Photograph		1890
S-366	Photograph		1890
S-367	Photograph		1890
S-368	Photograph		1890
S-369	Photograph		1890
S-370	Photograph		1890
S-371	Photograph		1890
S-372	Photograph		1890
S-373	Photograph		1890
S-374	Photograph		1890
S-375	Photograph		1890
S-376	Photograph		1890
S-377	Photograph		1890
S-378	Photograph		1919
S-379	Photograph		1919
S-380	Photograph		1919
S-381	Photograph		1919
S-382	Photograph		1919
S-383	Photograph		
S-384	Photograph		1919

NO.	DESCRIPTION	ID	EV
S-385	Photograph		1919
S-386	Photograph		1919
S-387	Photograph		1919
S-388	Photograph		1919
S-389	Photograph		1919
S-390	Photograph		1919
S-391	Photograph		1919
S-392	Photograph		1919
S-393	Photograph		1919
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S-397	Photograph		1919
S-398	Photograph		1919
S-399	Photograph		1919
S-400	Photograph		1919
S-401	Photograph		1919
S-402	Photograph		1919
S-403	Photograph		1919
S-404	Photograph		1919
S-405	Photograph		1919
S-406	Photograph		1919
S-407	Photograph		1919

NO.	DESCRIPTION	ID	EV
S-408	Photograph		1919
S-409	Photograph		1919
S-410	Photograph		1919
S-411	Photograph		1919
S-412	Photograph		1919
S-413	Photograph		1919
S-414	Photograph		1919
S-415	Photograph		1919
S-416	Photograph		1919
S-417	Photograph		1919
S-418	Photograph		1919
S-419	Photograph		1919
S-420	Photograph		1919
S-421	Photograph		1919
S-422	Photograph		1919
S-423	Photograph		1919
S-424	Photograph		1919
S-425	Photograph		1919
S-426	Photograph		1919
S-427	Photograph		1919
S-428	Photograph		1919
S-429	Photograph		1919
S-430	Photograph		1919

NO.	DESCRIPTION	ID	EV
S-431	Photograph		1919
S-432	Photograph		1919
S-433	Photograph		1919
S-434	Photograph		1919
S-435	Photograph		1919
S-436	Photograph		1919
S-437	Photograph		1919
S-438	Photograph		1919
S-439	Photograph		1919
S-440	Photograph		1919
S-441	Photograph		1919
S-442	Photograph		1919
S-443			
S-444	Cell Phone Records		
S-445			
S-446			
S-447			
S-448	Photograph		2369
S-449	Photograph		2369
S-450			
S-451	Photograph		2369
S-452			
S-453			

NO.	DESCRIPTION	ID	EV
S-454	Photograph		2369
S-455	Photograph		2369
S-456			
S-457			
S-458	Photograph		2369
S-459	Photograph		2369
S-460			
S-461			
S-462			
S-463			
S-464	Photograph		2365
S-465	Photograph		2365
S-466	Photograph		2339
S-467	Photograph		2339
S-468	Photograph		2339
S-469	Photograph		2339
S-470	Photograph		2339
S-471	Photograph		2339
S-472	Photograph		2339
S-473	Photograph		2339
S-474	Photograph		2339
S-475	Photograph		2339
S-476	Photograph		2369

NO.	DESCRIPTION	ID	EV
S-477			
S-478	Photograph		2369
S-479			
S-480	Photograph		
S-481			
S-482	Photograph		
S-483	Photograph		2356
S-484	Photograph		2356
S-485	Photograph		
S-486	Photograph		
S-487			
S-488	Photograph		2356
S-489	Photograph		2356
S-490			
S-491	Photograph		2356
S-492	Photograph		2356
S-493	Photograph		2356
S-494			
S-495	Photograph		
S-496			
S-497			
S-498			
S-499	Certified Copy of Conviction		2225

NO.	DESCRIPTION	ID	EV
S-500	Certified Copy of Conviction		2225
S-501	Certified Copy of Conviction		2225
S-502	Certified Copy of Conviction		2225
S-503	Certified Copy of Conviction		2225
S-504	Certified Copy of Conviction		2225
S-505	Certified Copy of Conviction		2225
S-506	Certified Copy of Conviction		2225
S-507	Certified Copy of Conviction		2225
S-508	Certified Copy of Conviction		2225
S-509	Certified Copy of Conviction		2225
S-510	Certified Copy of Conviction		2225
S-511	Certified Copy of Conviction		2225
S-512	Certified Copy of Conviction		2225
S-513	Certified Copy of Conviction		2225
S-514	Certified Copy of Conviction		2225
S-515	Certified Copy of Conviction		2225
S-516	Certified Copy of Conviction		2225
S-517	Certified Copy of Conviction		2225
S-518	Certified Copy of Conviction		2225
S-519	Certified Copy of Conviction		2225
S-520	Certified Copy of Conviction		2225
S-521	Certified Copy of Conviction		2225
S-522	Certified Copy of Conviction		2225

NO.	DESCRIPTION	ID	EV
S-523	Certified Copy of Conviction		2225
S-524	Certified Copy of Conviction		2225
S-525	Certified Copy of Conviction		2225
S-526	Certified Copy of Conviction		2225
S-527	Certified Copy of Conviction		2225
S-528	Certified Copy of Conviction		2225
S-529	Certified Copy of Conviction		2225
S-530	Certified Copy of Conviction		2225
S-531	Certified Copy of Conviction		2225
S-532	Certified Copy of Conviction		2225
S-533	Certified Copy of Conviction		2225
S-534	Certified Copy of Conviction		2225
S-535	Certified Copy of Conviction		2225
S-536	Certified Copy of Conviction		2225
S-537	Certified Copy of Conviction		2225
S-538	List of Convictions		2240
S-539	SLED Report		2015
S-540	SLED Report		
S-541	Photograph		2038
S-542	Photograph		2041
S-543	Shoe Prints		2041
S-544	Shoe Prints		2040
S-545	Photograph		

NO.	DESCRIPTION	ID	EV
S-546	Chart	2067	
S-547	Autopsy Report		2367
S-548	Autopsy Report		2367
S-549	Photograph		2356
S-550	Photograph		2356
S-551	Photograph		
S-552	Photograph		2356
S-553	Photograph		2356
S-554	Videotape		2289

NO.	DESCRIPTION	ID	EV
	Defendant's Exhibits		
D-1	Notes	2437	2438
D-2	Chart	2545	2651
D-3	Chart	2545	2659
D-4	Chart	2545	2660
D-5	Photograph	2545	2662
D-6	Photograph	2545	2663
D-7	Photograph	2545	
D-8	Photograph	2545	2663
D-9	Photograph	2545	
D-10	Photograph	2545	
D-11	Photograph	2545	2669
D-12	Photograph	2545	2669
D-13	Photograph	2545	2670
D-14	Photograph	2545	2672
D-15	Photograph	2545	
D-16	Photograph	2545	
D-17	Photograph	2545	

NO.	DESCRIPTION	ID	EV
	Court's Exhibits		
C-1	Copies of Witness Lists	210	
C-2	Document of Type of Jurors	210	
C-3	Note from Juror and Subpoena	1067	
C-4	SLED Report	1480	
C-5	Probate Records		1489
C-6	Waiver		1500
C-7	Charge	2182	
C-8	Note from Juror	2183	
C-9	Note from Juror	2194	
C-10	Stipulation	2213	
C-11	State's Exhibit No. 444	2260	
C-12	Subpoena	2421	
C-13	Statutory Instructions		

PROCEEDINGS

(Whereupon, the following takes place outside the presence of the entire jury panel.)

THE COURT: Mr. Gowdy, Mr. Allen, this is the document I told you I'd provide you a copy of.

SOLICITOR GOWDY: Thank you.

MR. ALLEN: Thank you.

THE COURT: Mr. Solicitor, I'm going to ask you call the case. And if you pass the indictment to the clerk, I'll have the clerk read the body of the indictment. We'll do them individually.

SOLICITOR GOWDY: Yes, sir.

Would the Court like to read them collectively or do them individually and pass them up to Madam Clerk?

THE COURT: Do them individually.

SOLICITOR GOWDY: Okay.

THE COURT: Call the name of the case, what the general charge is, pass it to the clerk. I'd let them read the body of it.

SOLICITOR GOWDY: Yes, sir.

(Whereupon, a bench conference was held at this time.)

THE COURT: All right, sir. If your name is Andres Antonio Torres, I'd ask you raise your right-hand please.

(Defendant complies.)

THE COURT: All right. The record will reflect Mr. Torres is present.

Mr. Solicitor, you may call the first case.

SOLICITOR GOWDY: Your Honor, may it please the Court.

The State would call 2008-GS-42-4677, the State versus Andres Torres, which is an indictment for attempt to burn. That indictment has been true billed.

THE COURT: Pass it to the clerk please.

(Solicitor complies.)

THE COURT: Madam Clerk, if you'd read the indictment to the defendant.

CLERK: This is an indictment for attempt to burn. This is 08-GS-42-4677. The State versus Andres Antonio Torres. That on or about May the 11th, 2007, the defendant, Andres Antonio Torres, did, in Spartanburg County, unlawfully and maliciously attempted to set fire to, or aid, counsel, or procure the burning of the home and/or property (buildings or property mentioned) of Charles Ray Emery and Mary Ann Emery located at [redacted] Montgomery Street, Spartanburg, South Carolina, or committed an act in furtherance of burnings of the buildings in violation of Section 16-11-190, Code of Laws of South Carolina.

THE COURT: And you read against the peace and dignity of the State, that, that paragraph there.

CLERK: Okay. Against the peace and dignity of the

State and contrary to statute in such case made and provided.

THE COURT: Thank you, Madam Clerk.

Mr. Torres, do you understand the indictment, if so, please say yes.

DEFENDANT: Yes.

THE COURT: How do you wish to plead, guilty or not guilty?

DEFENDANT: Not guilty.

THE COURT: Sir?

DEFENDANT: Not guilty.

THE COURT: How will you be tried on this indictment?

DEFENDANT: By God and by country.

THE COURT: God send you a good deliverance.

Are you ready for trial on this, Mr. Allen?

MR. ALLEN: Yes, Your Honor.

THE COURT: All right. Next indictment.

SOLICITOR GOWDY: May it please the Court, Your Honor.

This is 2007-GS-42-2773. This is The State of South Carolina versus Andres Antonio Torres. This is an indictment for armed robbery, which has been true billed.

THE COURT: Pass that to the clerk please.

(Solicitor complies.)

THE COURT: Madam Clerk, please read the indictment to the defendant.

CLERK: The Indictment is 07-GS-42-2773. The State versus Andres Antonio Torres. This is, an indictment is for armed robbery. That the defendant, Andres Antonio Torres, did, in Spartanburg County, on or about May the 11th, 2007, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife, hammer, or other deadly weapon, or while alleged, either by actions or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Ann Emery, by means of force or intimidation, goods or monies of Ann Emery described as follows, clothes, jewelry, and miscellaneous items, with intent to deprive the owner permanently of such property in violation of Section 16-11-330, Code of Laws of South Carolina, against the peace and dignity of the State and contrary to the statute in such case made and provided.

THE COURT: Mr. Torres, do -- did you understand that indictment?

DEFENDANT: Yes, sir.

THE COURT: How do you wish to plead, guilty or not guilty?

DEFENDANT: Not guilty.

THE COURT: How do you wish to be tried?

DEFENDANT: By God and by country.

THE COURT: God give you good deliverance.

Are you ready for trial on that indictment?

MR. ALLEN: Your Honor, subject to my motions for continuance as, that we made at a pretrial conference, other than that, which I renew at this time, other than that, I'm ready for trial.

THE COURT: All right. You may proceed.

SOLICITOR GOWDY: Your Honor, 2007-GS-42-2775, the State of South Carolina versus Andres Antonio Torres. This is an indictment for armed robbery, which has been true billed.

THE COURT: Madam Clerk, please read the indictment.

CLERK: This is Indictment 07-GS-42-2775, the State versus Andres Antonio Torres. This is an indictment for armed robbery. That the defendant, Andres Antonio Torres, did, in Spartanburg County, on or about May the 11th, 2007, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife, hammer, or other deadly weapon, or while alleging, either by actions or words, he was armed, while using a representation of a deadly weapon or any other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Charles Ray Emery, by means of force or intimidation, goods or monies of

Charles Ray Emery, described as follows, clothes, jewelry, and miscellaneous items, with intent to deprive the owner permanently of such property in violation of Section 16-11-30(a) against the peace and dignity of the State and contrary to the statute in such case made and provided.

THE COURT: Mr. Torres, do you understand that indictment?

DEFENDANT: Yes, sir.

THE COURT: How do you wish to plead, guilty or not guilty?

DEFENDANT: Not guilty.

THE COURT: How do you wish to be tried?

DEFENDANT: By God and by country.

THE COURT: God send you good deliverance.

Are you ready to proceed with the trial on that subject to any motion you already made?

MR. ALLEN: Yes, Your Honor. Subject to my motion.

THE COURT: You may proceed.

SOLICITOR GOWDY: May it please the Court, Your Honor.

This is 2008-GS-42-0880, the State of South Carolina versus Andres Torres. It's an indictment for criminal sexual conduct in the first degree, which has been true billed.

THE COURT: Madam Clerk, read the indictment.

CLERK: This is Indictment 08-GS-42-880. The State

versus Andres Torres. This is an indictment for criminal sexual conduct in the first degree. That is the defendant, Andres Torres, did, in Spartanburg County, on or about May the 11th, 2007, engage in sexual battery, to wit, by use of aggravated force to overcome the victim of one Ann Emery without her consent to accomplish a sexual battery. Such sexual battery was accomplished by the use of force of a high and aggravated nature. To wit, by use of aggravated force to overcome the said victim and/or the victim, Ann Emery, submitted to a sexual battery by the defendant under circumstances where the defendant is also the victim of a forcible confinement, kidnapping, robbery, extortion, burglary, house breaking, or any other similar offense or act in violation of 16-3-652, Code of Laws of South Carolina.

THE COURT: Also against the peace and dignity of the State and contrary to the statute in such case made and provided.

Mr. Torres, do you understand that indictment?

DEFENDANT: Yes, sir.

THE COURT: How do you plead, guilty or not guilty?

DEFENDANT: Not guilty.

THE COURT: How do you wish to be tried?

DEFENDANT: By God and by country.

THE COURT: God send you good deliverance.

Again, subject to your previous motions, are you ready for trial?

MR. ALLEN: Yes, Your Honor, I am.

THE COURT: You may proceed, Mr. Solicitor.

SOLICITOR GOWDY: Your Honor, may it please the Court.

2007-GS-42-2776, the State of South Carolina versus Andres Antonio Torres. The indictment is for burglary in the first degree, which has been true billed.

THE COURT: Madam Clerk, please read the indictment.

CLERK: 07-GS-42-2776, the State versus Andres Antonio Torres, this is an indictment for burglary in the first degree dwelling. The defendant, Andres Antonio Torres, did, in Spartanburg County, on or about May the 11th, 2007, willfully and intentionally enter the dwelling belonging to Charles Ray Emery and Ann Emery located at [redacted] Montgomery Street, Spartanburg, South Carolina without consent and with intent to commit a crime therein. And either, one, the defendant did enter in the nighttime, in the nighttime, two, armed with a deadly weapon, three, caused physical injury to any person who is not a participant in the crime, four, uses or threatens the use of a dangerous instrument, five, displays what is, what is or appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearms in violation of Section 16-11-311 and Section 16-1-570, Code of Laws of South Carolina, against the peace and dignity of the

State, and contrary to the statute in such case made and provided.

THE COURT: Mr. Torres, did you understand that indictment?

DEFENDANT: Yes, sir.

THE COURT: You have the right to plead guilty or not guilty.

How do you plead?

DEFENDANT: Not guilty.

THE COURT: How do you wish to be tried?

DEFENDANT: By God and by country.

THE COURT: God send you a good deliverance.

Again, subject to your motions for continuance, are you ready for trial, Mr. Allen?

MR. ALLEN: Yes, Your Honor.

THE COURT: All right. Solicitor may proceed.

SOLICITOR GOWDY: Your Honor, may it please the Court.

2007-GS-42-2776 and 2007-GS-42-2778, I am informed he has previously been arraigned on both counts of murder and will proceed as the Court instructs at that point.

THE COURT: Mr. Allen, is that correct?

MR. ALLEN: Yes, Your Honor. That's my understanding. He does continue to plead not guilty.

THE COURT: Okay. And he does request trial by jury?

MR. ALLEN: We are, Your Honor. He does.

THE COURT: All right. Any other indictments, solicitor?

SOLICITOR GOWDY: No, sir, Your Honor. At, at the appropriate time we would discuss the, the matter of amending one burglary indictment and dropping the other.

THE COURT: Let's go ahead and put that on the record while we're here.

SOLICITOR GOWDY: Yes, sir, Your Honor.

The State, on 2007-GS-42-2776, has moved to amend it. It only reflected the male victim, Charles Emery's name. We would move to reflect both victims and drop the burglary that just referenced Ann Emery.

THE COURT: Mr. Allen, we discussed that briefly in chambers a moment ago.

It's my understanding that you consent to that amendment, is that correct?

MR. ALLEN: I did, Your Honor.

THE COURT: All right. I will note the amendment on the, the face of the indictment.

Anything further we need to take up at this time, Mr. Solicitor?

SOLICITOR GOWDY: No, sir, Your Honor.

THE COURT: Anything from the defense at this time?

MR. ALLEN: Okay. I was briefly talking to my client about the amendment. And as the solicitor said, I, I

apologize for being repetitive, but part of the understanding in the agreement is they have dropped a separate indictment for---

THE COURT: He indicated another separate indictment was being dropped and that becomes now one charge.

MR. ALLEN: Thank you.

THE COURT: Do you need a moment to talk to him about that?

MR. ALLEN: Just one moment, Your Honor.

THE COURT: I'll allow you to do so.

(Pause.)

MR. ALLEN: Thank you, Your Honor.

THE COURT: All right. We'll move to the other courtroom for jury qualification.

Thank you very much.

SOLICITOR GOWDY: Thank you, Your Honor.

(Whereupon, the following takes place within the presence of the entire jury panel.)

THE COURT: First of all, I'd like to say good morning, ladies and gentlemen.

As you have heard, my name is Roger Couch, and I am a Circuit Court Judge here in the Seventh Circuit. The Seventh Circuit is made up of Spartanburg and Cherokee Counties.

It's my pleasure and privilege today to be conducting a

term of General Sessions Court. Some of you probably have served on juries before. And for those of you who are new, I want to welcome you very, to this courtroom and to the experience that you're about to have. For those of you who have served on juries and those of you who haven't, experience tells me that some of you are apprehensive or worried about jury service, maybe scared, and yet some of you might even be mad about the fact that you have been summons to be here and serve as jurors.

I would say those feelings are all natural and normal feelings. So, don't let that bother you. Once we've completed the process that we're going to go through this morning, you will be qualified as a juror at some point in time perhaps, and I believe you will feel comfortable about following, about your service on the jury following this term of court.

This is a term of court for more than one week. Therefore, your service as jurors may be needed into next week if you are selected.

The first thing I want to do is to thank you very much for being here and I want to let you know that I appreciate the fact that you're here being away from your homes and your families and perhaps from your jobs. I want you to know that I recognize the hardships of serving on a jury. I have served on a jury panel myself in the past. We

recognize those hardships, and the disruption, disruption that jury service can cause. And we're going to do our best to streamline the process and to minimize the amount of inconvenience that you have and the amount of time that you might have to be here at the courthouse.

It's my personal belief, and it's been said by many, that, many, that service on a jury is the second highest form of service that a citizen can render to your country. Of course, the first being service in the active military. And so, I want to thank you very much for your willingness to come forward and serve. If it weren't for individuals, good citizens such as yourselves who were willing to come forward and serve on juries, our system could not function as it was designed by our forefathers in the Constitution and laws that we operate under in our state and country. So, I do appreciate the fact that you are here and your willingness to come forward and serve.

I'm confident that you will appreciate the serious and solemn nature of the proceedings that we are involved in and that you will discharge your duties, as jurors, in good faith and with integrity.

Each of you are here because you are potentially an eligible juror under South Carolina law, and we have three sources from which jurors, juror names are selected in this state.

First of all, those of you who are registered voters are on the list. Also those of you who possess a South Carolina driver's license are on the list. And those of you who might possess a South Carolina identification card are on the list as potential jurors in this state. And your names have been selected from those lists.

Now, we're going to go through a process this morning of determining your qualifications to serve as jurors generally. At a later time we will go through some additional procedures in connection with selection of the jury. It -- the process will take several stages, and I will explain those to you as we go along in the, in the jury selection process.

The first step is, however, to call the roll. The roll is called to determine and confirm, on the court record, that the people that are present who have been summons and are properly before the Court for service.

When your name is called, we're going to ask that you stand and give us some information. But before we do that, it is necessary for us to assure ourselves that the information that you provide us, at every stage of this proceeding, proceeding, is truthful, honest, and complete.

For that reason, it is necessary that each of you and all of you take an oath concerning the responses that you will be giving to the Court during the jury selection

process.

So, at this time, Mr. Clerk, I'd ask that you proceed with swearing the prospective jury panel.

(Whereupon, the entire jury panel was placed under oath at this time.)

THE COURT: Now, if there was any member of the prospective jury panel who either failed or refused to the, take the oath just administered by the clerk, I'd ask that you now please stand.

(No response.)

THE COURT: The record will reflect that all prospective jurors have been sworn for the jury selection process.

Now, each of you were submitted a questionnaire a, along with your jury summons.

And is there any member of the jury panel who has not completed and submitted the jury questionnaire that was sent to you?

If there are any of you, I'd ask that you please, stand please.

(Jurors respond.)

THE COURT: All right. They're several. Just, just a couple. You can be seated at this time. Thank you.

(Jurors comply.)

THE COURT: We're going to ask that you fill out the

jury questionnaire for us, and we will give you a opportunity, those of you who have submitted that questionnaire to the Court, an opportunity to change, amend, or modify any of the responses that you have given under the questionnaire in a little while. Not at this point in time. But we're going to be asking you to get the information on one of the questionnaires and that it be accurate and complete as of today.

Now, before we begin the, the jury selection process -- do we have any blank forms of the questionnaire, Mr. Clerk?

CLERK: Yes, sir, we do.

THE COURT: All right. Those of you who stood, if you would, come forward to the clerk's stand. We'll pass out the forms for the questionnaires and we'll give you something to write with so that you can be completing that for us. If you'll come right down here to the clerk. Stand please.

(Jurors comply.)

THE COURT: All right. Also, at this time, I do want to introduce you to the people from the Clerk's Office and the people that will be assisting us this week during jury selection process and later during the trial of the case.

First of all, Mr. Mark Kitchens is our Clerk of Court, the gentleman seated right here. He's been assisting us in getting you-all checked in.

Also, a deputy clerk of court, Tonya Camp.

Mrs. Camp, if you'll stand.

(Mrs. Camp complies.)

THE COURT: She'll be assisting us in the courtroom as, as well.

Pamela Green is my court reporter. This is the lady seated here to my left. She's taking down everything that goes on during these proceedings. This is a court of record and she'll be taking down everything that goes on this week and into next week during the trial.

We have several of the bailiffs around the courtroom. I'd ask that you raise your hand or stand.

Gantt Scruggs, he's over here.

Vaughn Hawkins, where -- there he is over here.

Jim Humphries, over here behind me.

Dexter O'Shields. He's the gentleman right over here.

Donnie Seay.

BAILIFF: Right here, Your Honor.

THE COURT: Okay. Behind me again. There we go.

Bernie Ingram. The gentleman back by the door here.

Tuck Turner. The gentleman standing over here by this door.

Bill Hipp.

BAILIFF: He's across the hall, Your Honor.

THE COURT: He's, he's, he's busy. Thank you.

We also have several people from the Sheriff's Department who will be assisting us with security.

Floyd Turley. He's the officer over here to my left.

And Sergeant Corey Cole. I don't know if he's in the courtroom right now. He's somewhere around here.

And Mr. Craig Coggins.

Seated immediately to my right is Mrs. Amanda, Mrs. Amanda Gallivan. She is my law clerk and she is -- you will see her coming and going and assisting me in the discharge of my duties as the week goes on.

Now, as I told you, our purpose this morning is to determine your qualifications and eligibility to serve as jurors. Jury qualification, as I said, was done in several stages. The first one is the roll call, and we are going to begin that shortly.

Now, when your name is called, we're going to ask that you please stand, state your full name so that we know you're present. We would like to get your mileage one way from your home to the courthouse.

At this time, Mr. Clerk, I'm going to ask you to proceed with the roll call.

CLERK: Yes, sir. Thank you.

THE COURT: Thank you.

(Whereupon, a roll call was done of the jurors at this time.)

THE COURT: Thank you, Mr. Clerk.

Ladies and gentlemen, I now have certain questions to ask you to determine your qualifications to serve as jurors. These are general eligibility questions. Some jurors have---

(Pause.)

THE COURT: Before I start this, Juror 282 came in late.

Please stand.

Please stand, ma'am.

THE COURT: Thank you.

You came in a little late and I, and I don't think you were sworn to answer my questions in a truthful fashion. I'm gonna ask the clerk to swear you please.

(Whereupon, the juror was placed under oath at this time.)

THE COURT: All right. Thank you, ma'am. You can be seated.

All right. Thank you, Mr. Clerk.

CLERK: Yes, sir.

THE COURT: Some of your fellow jurors may have already been excused because of their responses to the documents that were sent out. Those have to do with statutory and constitutional exemptions and disqualifications. And once we've looked over those documents, those individuals were

excluded as a matter of law. For those of you who have sent in information that requires some discretion on the part of the Court, we'll take those matters up during our questioning this morning, and we'll go over any problems that you have in connection with your jury service.

Now, some of the questions I'm about to ask you, and these questions -- the first questions I'm going to ask you are prescribed by law. Might be somewhat embarrassing for you to stand up and talk about in front of this large assembly of people.

So, if you have a response to any of the questions that I'm about to ask you, and you'd rather speak with me in a more private setting, I'll allow you to do that. I'm going to ask that you make a mental note of that question or that issue. And when I finish asking, asking the prescribed questions, I'll give you an opportunity to come up and speak with me in a more private setting concerning any responses you might have that you do not wish to speak about in open Court.

Now, I will tell you that any and all responses must be taken down on the public record. So, you'll have to come up and meet with me in front of the court reporter so that any responses you have are taken down on the public record. But it will be in a more private setting than in open court in front of everyone who's assembled here today.

So, again, if there's any matters such as that that you have any problems with, it's not our purpose here to embarrass anyone. But it is our purpose to gather factual and correct information concerning you so that we can determine your eligibility and qualifications to serve as a juror in this particular case.

My first questions have to do with matters that could disqualify you from service. I realize that some of these are on the documents that you've been sent. But it is necessary that I go over with, these with you in open court so that the responses are taken down on the public service.

The first question, is there any member of the jury panel who is not a citizen of the United States of America, if that's true, I'd ask that you stand.

(No response.)

THE COURT: Is there any member of the prospective jury panel who is not a resident of and a citizen of Spartanburg County, South Carolina, if that's true, please stand.

(Juror responds.)

THE COURT: Ma'am, when you -- I'm gonna ask you, first of all, to state your name and your number as a juror.

JUROR: I'm sorry. Peggy L. West. 282 I believe is correct. I have moved to Cherokee County.

THE COURT: So, you are residing now in Cherokee County?

JUROR: Yes, sir, I am.

THE COURT: Well, ma'am, that would exclude you from jury service. If you'll see the bailiff on the way out.

JUROR: Thank you.

THE COURT: You are free to go at this time. Thank you, ma'am.

Anyone else who is not a resident of Spartanburg or a citizen of Spartanburg County, South Carolina?

(No response.)

THE COURT: Is there anyone here for jury service who does not possess one of the following three identifications:

Number one, voter registrations card.

Number two, a driver's license.

Or number three, a South Carolina Highway Department identification card.

If that's true, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is unable to read, write, speak, or understand the English language, if that's true, please stand.

(No response.)

THE COURT: My next question requires just a little bit of explanation. I'm going to go over that with you so that you'll understand what this question means.

State Law requires a juror in the Circuit Court must

possess a sixth grade education or its equivalency. By equivalency, what we mean is we realize that some people, because of self education, their jobs, life experiences, have reached the proficiency of someone who has finished or completed a sixth grade education. Someone who's completed a sixth grade education should be able to read, write, and speak the english language. That person should also be able to do basic calculations such as add, subtract, multiply, divide, things of that nature.

So, my question is is there any member of the jury panel who has less than a sixth grade education or its equivalency, if that's true, please stand.

(No response.)

THE COURT: Now, my next question has to do with your ability to serve as a juror either mentally or physically. Let me explain to you what will be required of you if you're selected to serve on a jury, on the jury this week.

If you're, excuse me, selected to serve on the jury, you'll be required to sit in the jury box and the one that's gonna be in use for this trial is this jury box over here to my right. Those chairs are wooden chairs. They have some padding in the seat. They will swivel and they will tilt sightly, have arms all around them.

You'll be required to sit in the jury box and listen attentively to what goes on in the courtroom, be able to pay

attention to what is said, and what is done for periods of time varying between one and a half to two hours in length.

During those periods of time we'll be conducting the trial or the, the Court business. We will take breaks and allow you to move about, take a break, and, and stretch your legs, and clear your head about every one and a half to two hours. The trial is expected to last at least into this week, perhaps into next week is what we're looking at. But we'll do that daily. The court hours are from about nine o'clock in the morning until around 5:00 to 5:30, perhaps six o'clock in the evenings. So, that will be the time frame that we'll be going on.

Now, my question is though, however, is there any member of the jury panel who is incapable, because of a mental or a physical condition or infirmity, to render good and efficient jury service this week, if that's true, please stand.

(Juror responds.)

THE COURT: Sir, I'm going to need your name and number please.

JUROR: 284, Richard Whelchel.

THE COURT: Your situation, sir?

Remain standing.

JUROR: I can't sit long at a time and walk.

THE COURT: So, you have a problem with sitting for

long periods of time?

JUROR: Yes, sir, I have a doctor's statement I mailed in with my questionnaire.

THE COURT: All right, sir. I'm going to allow you to be excused. If you'll see the bailiff on the way out. Thank you, sir.

Anyone else?

(No response.)

THE COURT: Now, the law further provides that no person who is a clerk or a deputy clerk of court, a constable, a sheriff, a probate judge, a county commissioner, a magistrate, or other county officer, or any person employed within the walls of any courthouse is eligible to serve as a juror, or anyone that has a states constable's commission issued by SLED that gives you the power of arrest.

So, if you are an individual so employed, I'd ask that you now please stand.

(No response.)

THE COURT: Now, my next question has to do with a possible criminal record that you might have. Let me explain this to you briefly so you'll understand the question before I ask it.

State Law states that an individual who has been convicted or pled guilty to a crime which is punishable by

imprisonment for more than one year and your civil rights have not been restored either by pardon or amnesty are not able to serve. Now, that doesn't mean that you were sentenced to imprisonment for more than one year. That means, in the case that you were either found guilty of or pled guilty to, you could of been sentenced to a length of imprisonment for more than one year. So, I'll ask the question. Be sure to listen carefully.

Has any member of the jury panel ever been convicted by a guilty plea or in a trial in a State or a Federal Court of record of a crime which was punishable by imprisonment for more than one year and your civil rights have not been restored either by pardon or amnesty, if you, if that's true, I'd ask that you please stand.

(Jurors respond.)

THE COURT: Yes, sir, I need your name and number please, sir.

JUROR: Joe Wheeler, 283.

THE COURT: And your situation, sir?

JUROR: Mine has to do with back a long time.

THE COURT: Sir, can you tell me what the nature of the offense was?

JUROR: It's murder.

THE COURT: Okay, sir. So, you were convicted of that or pled guilty to that?

JUROR: Yes, sir.

THE COURT: All right, sir. That would excuse you or disqualify you by law from service. If you'll see the bailiff on the way out. Thank you very much.

I need your name and number, sir.

JUROR: Willie Harris, Junior, 143.

THE COURT: And your situation, sir?

JUROR: Well, this happened back in '91.

Does that matter?

THE COURT: It doesn't matter the length of time. It's just whether or not you've been pardoned or gotten amnesty. But it goes back for your entire lifetime.

JUROR: Yes, sir, I did, I did time for it.

THE COURT: What, what was the offense, sir?

JUROR: Distribution.

THE COURT: Okay, sir. That would disqualify you from service. If you'll see the bailiff on the way out. You're free to go.

MR. ALLEN: What was that number?

THE COURT: What was your number, sir?

JUROR: 143.

THE COURT: Thank you, sir.

CLERK: 134.

THE COURT: 134. I think you might of read that upside down. 134.

JUROR: That's what it is, 134.

THE COURT: Thank you, sir.

Now, my next question has to do with your previous service on a Circuit Court jury. Let me explain. First of all, if you were on a Circuit Court jury, you would of served on this level of this courthouse either in one of these two courtrooms. The petition's been removed from these two. So, there's two courtrooms here or the courtroom that's across the lobby on the other side. That's where we conduct Circuit Court business.

My question is is there any member of the jury panel who has previously served on jury duty in a Circuit Court, that's not Magistrate's Court, not Federal Court, not City Court, during this calendar year, 2008, if that's true, please stand.

(No response.)

THE COURT: Now that completes the list of statutory disqualification matters. We're now going to move on to a set of questions that have to do with exemptions. Exemptions are a little bit different from disqualification matters. Exemptions means that you have the right to say that I, I will serve and continue to serve or you have the right to say that I choose not to continue to serve.

Also, I am given certain discretion to arrange or rearrange your service to some other week of service if

that, I deem that to be more appropriate given your situation. So, I'm going to go over these exemptions. And again, as I stated, I'll be asking you if you wish to stay or you wish to leave should the exemption apply to you.

Now, they're -- I'll start where I kind of left off on the qualification. There's an exemption that deals with prior jury service. If you've already served on a jury during this calendar year, you are disqualified from service. However -- and so, the law doesn't allow you a choice.

However, the law does not permit a juror to serve more than once in any calendar year, this calendar year. It does provide an exemption for someone who has served on jury duty in a State Circuit Court, again, on this level of this courthouse, during any of the previous three full calendar years.

So, if there's any member of the jury panel who has served on jury duty in a State Circuit Court, again not Magistrate Court, not Municipal Court, and not Federal Court, in any of the three previous calendar years, and you wish to claim an exemption, I'd ask that you now please stand.

(Juror responds.)

THE COURT: Ma'am, I need your name and number.

JUROR: It's Juror Number 50. My name is Christalynn

H. Butts.

THE COURT: Yes, ma'am.

JUROR: I served about two years ago.

THE COURT: Okay. Was it on this level of this courthouse?

JUROR: Yes, sir.

THE COURT: All right, ma'am. You have the right then to decide whether you wish to stay or not stay.

How do you wish to proceed?

JUROR: I wish to go.

THE COURT: Okay, ma'am. If you'll step out. See the bailiff on your way out. Thank you very much.

My next exemption deals with those of you who are 65 years of age or older. Looking around the crowd, I don't, I don't see that many who might qualify, but you never know these days. So, I'm gonna ask the question anyway.

The exemption has to do that if you are 65 years of age or older, you have the right to serve or the right not to serve, and it is a basis, again, for you to make that choice. Again, you certainly have the right to serve.

Is there any member of the jury panel who is 65 years of age or older who wishes to be exempted based on your age, if that's true, please stand.

(No response.)

THE COURT: Now, a person who has served as a grand

juror during any of the last five calendar years has the right to be exempted from jury service.

If you have served as a member of a Grand Jury during any of the last five calendar years, and you wish to claim an exemption for that service, I'd ask that you now please stand.

(Juror responds.)

JUROR: Sir?

THE COURT: Yes, sir.

JUROR: I was a, I was a witness for a Grand Jury.

THE COURT: No, sir, it has to be a juror. Yes, sir. Thank you very much.

My next exemption deals with those of you who may have small children. I'm going to ask you to listen very carefully to what I have to say about this because they're several different things that have to occur before the exemption will apply to you. You -- excuse me.

You may be exempted from jury service if you have a child or children who is under the age of seven years for whom you have legal custody of that child or children and also for whom you have the principal duty of care, custody, and control, and you have been unable to make arrangements, arrangements for the adequate care of that child or children while performing jury duty.

If all of these requirements apply to you and you wish

to claim an exemption, I'd ask that you now please stand.

(Jurors respond.)

THE COURT: Yes, ma'am, I need your name and number.

JUROR: My name is Pamela Ellison and my number is 89.

THE COURT: And your situation, ma'am?

JUROR: I have a five year old that's in kindergarten and I have no one to pick him up from school.

THE COURT: Yes, ma'am.

And you are the -- you do have custody and are the person who has primary duty of care?

JUROR: Yes, sir.

THE COURT: All right. Do you wish to claim an exemption, ma'am?

JUROR: Excuse me, sir?

Do you wish to claim the exemption?

JUROR: Yes.

THE COURT: Okay. See the bailiff on the way out. Thank you very much.

I need your name and number please, ma'am.

JUROR: My name is Amy Carver, Number 56.

THE COURT: Yes, ma'am.

JUROR: I have a five year old that's in kindergarten and I lost my sister 12 days ago due to passing away and I don't have adequate care.

THE COURT: All right, ma'am. Would you wish to claim

an exemption for that situation?

JUROR: I do.

THE COURT: See the bailiff on the way out. Thank you very much.

Yes, sir, your name and number.

JUROR: Jerry Shane Davis, Number 76.

THE COURT: Yes, sir.

JUROR: I have a six year old daughter I have to pick up from school everyday.

THE COURT: Now, is that child in your custody, sir?

JUROR: Yes, Your Honor.

THE COURT: And are you the person responsible for the care of that child?

JUROR: Yes, sir.

THE COURT: Do you wish to claim that exemption?

JUROR: Yes, sir.

THE COURT: You may step out. Thank you.

I had another one step up over here.

Your name please, ma'am?

JUROR: It's Christina Marie Short.

THE COURT: Yes, ma'am.

JUROR: I have -- he's 14 and he's autistic and I have to pick him up at 11:30.

THE COURT: Ma'am, we're gonna get to an exemption that might apply to that situation. Don't want to cut you off.

But when we get there I'll hear from you on that.

Okay. The gentleman in the back, your name and number?

JUROR: Robert Clubb, Number 64. My daughter has Type I diabetes. She's under my care and I have to---

THE COURT: Again, we're going to get to a question concerning illness and disability in just a minute. We're dealing with small children right now.

JUROR: Yes, sir.

THE COURT: So, I'll get to that in just a minute.

Yes, sir, your name and number?

JUROR: Jack Morris, 199.

THE COURT: Yes, sir.

JUROR: I have full custody of two small boys, a three and a half year old and a two and a half year old.

THE COURT: Are you the person primarily responsible for their care?

JUROR: Yes, sir.

THE COURT: Do you wish to claim an exemption for that?

JUROR: Yes, sir.

THE COURT: And you've been unable to arrange for other care for them during this period, is that right?

JUROR: Yes, I, I have day care for them. Well, not day care. It's -- my sister-in-law keeps them.

THE COURT: Well, is, is there a way for them to be cared for if you were selected on a jury?

JUROR: Yes.

THE COURT: All right, sir. You -- it would not apply. You'll need to have a seat.

Anyone else?

(No response.)

THE COURT: Now, the, there's a similar exemption that applies to someone who is a primary caretaker of a person who is age 65 years of age or older. So, if you are the primary caretaker of a person who is 65 years of age or older, and they are unable to care for themselves, and you've been unable to arrange for their adequate care, and they are, and they can not be left unattended, and you wish to claim an exemption for that reason, I'd ask that you now please stand.

(No response.)

THE COURT: There's a similar exemption for those of you who are the primary caretaker of someone who is so severely disabled that they are unable to care for themselves, and you've been unable to arrange for their adequate care during the period that the Court would be in process, and you wish to claim an exemption for that reason, I'd ask that you now please stand.

(Juror responds.)

THE COURT: Now, ma'am, I need your name and number on that one.

JUROR: Christina Marie Short, 242.

THE COURT: Yes, ma'am, your situation again?

I'm sorry.

JUROR: Okay. I have an autistic child, and I have a mentally retarded child, and I do not have care for them. I'm their primary caretaker. My autistic child gets out at 11:30 and I do have a note from his school stating that I have to pick him up, a doctor's note that states that I am the person that picks him up because he can't ride public, the public transportation.

THE COURT: All right, ma'am. Do you wish to claim an exemption for that reason?

JUROR: Yes.

THE COURT: All right. I'll excuse you. See the bailiff on the way out. Thank you very much.

JUROR: Thank you.

THE COURT: There was a gentleman standing in the back that I think this one might apply to.

Your name and number please, sir?

JUROR: Robert Clubb, Number 64.

THE COURT: Yes, sir, I'll hear from you.

JUROR: My daughter is in the fourth grade. She has Type I diabetes and I have to pick her up at school every day at three o'clock. Sometimes I have to be at school about 11:30 to give her a shot.

THE COURT: Now, that's your daughter you indicated?
JUROR: Yes, sir.
THE COURT: And you're the person primarily responsible for her care at that time?
JUROR: Yes, sir.
THE COURT: I'm gonna excuse you, sir. See the bailiff on the way out.
JUROR: Thank you.
THE COURT: Thank you very much.
Ma'am, I need your name and number.
JUROR: Faye Ferguson, Number 285. Concerning my daughter and my grand kids, I need to talk to you.
THE COURT: All right. When the time comes, if you'll step up, we'll give you instructions then.
Okay?
JUROR: Yes, sir.
THE COURT: Thank you, ma'am.
All right. Is there anyone else that that might apply to?
(No response.)
THE COURT: My next exemption provides for a postponement of jury service. Not an exemption. This has to do with those of you who perform services for a school, or if you are a full or a part-time student in a school, and you wish to arrange your jury service to a week that would

not conflict with your duties, either as a student or a full-time employee at a school, or a part-time employee of a school.

So, if you are a student or you are employed in a school, and you wish to claim an exemption such that your service would be moved to another week of jury service, I'd ask that you now please stand.

(Jurors respond.)

THE COURT: I'll start with you, ma'am, your name and number?

JUROR: Penelope S. Atkinson, Number 15.

THE COURT: Yes, ma'am.

JUROR: I'm assistant principal at D.R. Hill Middle School in Spartanburg District 5.

THE COURT: All right, ma'am. Do you wish to move your service to another week of service?

JUROR: Yes, sir.

THE COURT: All right, ma'am. If you'll step out, the clerk will make those arrangements for you.

Yes, ma'am, your name and number?

JUROR: Tangye Lagette Middlteon, Number 192. I work at Mary Black Child Development.

THE COURT: Just one second. I heard, I heard some noise. I couldn't hear you.

Could you speak up just a little bit?

JUROR: Tangye Lagette Middleton. I work at Mary Black Child Development, and I got to be there.

THE COURT: Well, do you wish to move your service to a week would, that would not conflict with your work?

JUROR: Yes, sir.

THE COURT: All right. Mr. Clerk, make that note.

Give, give us your juror number again please?

JUROR: 192.

THE COURT: All right. We'll move you to another week of service. Thank you very much, ma'am.

The lady over here, your name and number please, ma'am?

JUROR: My name is Lorris Sawyer. My number is 235. I'm a teacher at Carlisle Foster Grove Elementary School.

THE COURT: Do you wish to move your service to another week?

JUROR: Yes.

THE COURT: All right. The clerk will make that note. You're free to go, ma'am. Thank you very much.

I need your name and number, please.

JUROR: Susan Hoffman and I'm Number 143. I'm the departmental assistant for the industry department at Wofford College. I covered my classes for the professors---

THE COURT: All right. Do you wish to claim an exemption and move to another week of service?

JUROR: Yes, sir.

THE COURT: All right. Make that note.

Did you get her number?

MR. ALLEN: No, sir.

THE COURT: Your number please, ma'am?

JUROR: I'm sorry. 143.

THE COURT: Thank you very much.

Didn't see anybody over here.

Okay. My next exemption is for persons who perform services for business, commercial, or agricultural enterprises, and your services are so essential to that enterprise or the operation of that business or enterprise that, should you be selected on a jury and required to serve, that during the period of your service that enterprise would have to cease doing business and close its doors during the period of your jury service.

If that applies to you and you wish to claim an exemption, I'd ask that you now please stand.

(Jurors respond.)

THE COURT: Ma'am, I'm gonna start with you. I need your name and number.

JUROR: Number 82, Kimberly Dillard. I work at the Upstate Shopper. It's a weekly paper. My husband and I do that. He's in a wheelchair. He does the graphic artist work, and I do the leg work as meet clients and pick up add copy.

THE COURT: So, ma'am, if you were selected on a jury, that business would cease functioning during that period of time?

JUROR: Yes, sir, he can't get out and see the clients.

THE COURT: Okay. Do you, do you wish to claim the exemption?

JUROR: Yes, sir.

THE COURT: All right, ma'am. See the bailiff on the way out.

Did you get her number, Mr. Clerk?

CLERK: Yes, sir, I did.

THE COURT: All right. Sir, I need your name and number.

JUROR: Jorge Espina, 92.

THE COURT: Yes, sir.

JUROR: I do own a bicycle tour in Duncan and I do have an employee there. But he's not fully capable of running the operation daily, daily operation.

THE COURT: Well, sir, I mean would the business close if you were here serving on a jury?

JUROR: He might have to close down cause, like I say, there's only so much he can do by himself if I'm not there.

THE COURT: Well---

JUROR: I mean I'm the one that owns the store and runs the whole thing.

THE COURT: All right, sir. I'm gonna excuse you. If you'll see the bailiff on the way out.

JUROR: Thank you.

THE COURT: Your name and number please, sir?

JUROR: Lanny M. Mathis, Number 180.

THE COURT: Yes, sir.

JUROR: I run a small auto restoration business. If I'm not there, it doesn't, it doesn't go.

THE COURT: You're, you're it, right?

JUROR: I'm it basically.

THE COURT: All right, sir. You wish to claim the exemption?

JUROR: Yes, sir, I do.

THE COURT: All right. See the bailiff on the way out. Your name and number please, sir?

JUROR: I'm Juror 200, Charles B. Murdock, M.D. I'd like to speak with you.

THE COURT: All right. We'll do that in just a moment. Your name and number, sir?

JUROR: James Eckstein, Juror 88. I'd like to speak with you prior---

THE COURT: All right. Yes, sir.

JUROR: 199, Jack Morris. I do landscaping and I'll---

THE COURT: Are you the only employee of the business?

JUROR: Yes, sir.

THE COURT: So, if you're not there, it closes down?

JUROR: That's right.

THE COURT: Do you wish to claim the exemption?

JUROR: Yes, sir.

THE COURT: All right. See the bailiff on the way out.

Now, the law provides -- oh, we got somebody else standing.

Your name and number?

JUROR: Herbert Guy, 126.

THE COURT: Yes, sir.

JUROR: I'm a roofing contractor and with the storms and the winds and the hurricanes, I don't have any way to run the business and me be on this jury.

THE COURT: I'm going to ask you to step up and speak with me. Sounds like you have -- a, a little later on when we do that.

JUROR: Okay.

THE COURT: Sounds like you have other employees though?

JUROR: Yes, sir, I have. But not do what I do.

THE COURT: We need to talk about that. So, have a seat.

Anyone else?

(No response.)

THE COURT: Now, the law provides that anyone who is a

guard or a correctional officer with the Department of Corrections, Corrections or other detention facilities has the right to be exempted. We didn't see this on your responses.

But is there any member of the jury panel who is employed as a guard or a correctional officer with the Department of Corrections or at any other detention facility who wishes to be exempted, if that's true, please stand.

(No response.)

THE COURT: Now, ladies and gentlemen, that concludes the statutory list of qualifications and exemptions from jury service. I will now ask you and I will advise you that, under the law, I'm given certain discretion concerning jury service or people continuing to serve on a jury. However, the law that gives me that right states that I should exercise that right only under extreme or compelling circumstances.

So, if there are extreme or compelling circumstances that you think that I should consider concerning your jury service, I'm going to ask you to step up and speak with me in the situation where we're gonna speak in a more private setting. I will tell you that I can not promise that I can excuse anyone. But if I determine that your reason given for not continuing your service is legally sufficient, then we will discuss that matter in that situation.

Now, at this point in time, if there, if there's any member of the jury panel who wishes to speak with me in a more private setting, I'm going to ask that you please raise your hand. See how many we have.

(Jurors respond.)

THE COURT: All right. Seems like we have more over this way than we have over that way. So, what we'll do is we will start with the people in the jury box first. And if you'll bring them down. They'll need to come right up here where I can speak with them. I'll -- and attorney, an attorney for each side can come forward so that you can listen.

(Whereupon, the following takes place out of the hearing of the entire jury panel.)

BAILIFF: Number 4, Your Honor.

THE COURT: Number 4.

Ma'am, come forward please.

I'm off the loud speaker I hope. I moved that over there.

Yes, ma'am.

JUROR: Sir, I have a 12 year old and I'm, I'm the only -- my husband travels all the time.

THE COURT: Uh-huh. (Affirmative).

JUROR: And I have his itinerary for next week and for his school and I'm the only one at home. I'm a stay at home

mom. I don't -- today I have arrangements for him.

THE COURT: Uh-huh. (Affirmative).

JUROR: Somebody can pick him up.

THE COURT: All right. So, this child though is 12 years old?

JUROR: Yes.

THE COURT: He can't stay on his own somewhere?

JUROR: No, he's my only child.

THE COURT: Well, I, I understand that. But usually when they get to that age they can maybe come home and be by themselves for some period of time. You have---

JUROR: No, he has---

THE COURT: ---a concern about that?

JUROR: Yes, I mean he's never been home on his own ever.

THE COURT: All right. Well, I'll excuse you, ma'am. If you'll see the bailiff.

JUROR: Thank you.

THE COURT: Did you get that one?

All right, Mr. Bailiff.

Order please.

BAILIFF: Number 88, Your Honor.

THE COURT: Come forward, sir.

JUROR: Your Honor, I do, I do have a doctor's excuse.

THE COURT: If you don't want them to hear you now talk

a little lower.

JUROR: Excuse me, sir?

THE COURT: If you don't want them to hear you, then speak a little lower.

JUROR: I do have a doctor's excuse. I---

THE COURT: There's some security problems here.

Go ahead.

JUROR: I understand. I do have a doctor's excuse for the type of medications I am taking.

THE COURT: Can I see that?

Was it already in?

JUROR: They sent it to them.

THE COURT: Mr. Clerk.

JUROR: But I do have a copy.

THE COURT: Mr. Clerk, do we have an excuse, a doctor's excuse that he sent in?

CLERK: Number 88, sir. I don't know.

THE COURT: Let's take a look at that.

JUROR: I do---

THE COURT: Just one second. Let me let them look at it and then we'll talk some more.

CLERK: Your Honor, can I speak to you?

THE COURT: Yes, sir.

CLERK: He has been transferred several times.

THE COURT: The clerk advises me you've transferred

several times on jury service.

JUROR: Yes, cause I had the, I had---

THE COURT: For what?

JUROR: For the thyroid condition. I had surgery on it.

THE COURT: When did you have your surgery?

JUROR: January.

THE COURT: Of this past year?

JUROR: This year. I had cancer. I was going in there for my final MRI and they found something on my thyroid.

THE COURT: So, you're being treated for cancer?

This just says neck and back pain.

JUROR: Right.

THE COURT: It doesn't indicate anything about treatment for cancer.

JUROR: No, I didn't get treated for cancer. I just -- I lost half my thyroid.

THE COURT: Well, let's get -- let's start back over this time.

The reason that you think you ought to be exempted are?

JUROR: Pain and I take medication for it.

THE COURT: Okay, sir. Are you taking medication for this pain?

JUROR: Yes.

THE COURT: Tell me what you're taking.

JUROR: I'm taking Ativan.
THE COURT: Ativan?
JUROR: Yes.
THE COURT: Are you taking it today?
JUROR: Yes.
THE COURT: Okay. Is this something that's gonna get better?
JUROR: It's been like this for 12 years.
THE COURT: So, the surgery made no difference?
JUROR: The -- I was going for surgery and they found something on my thyroid. I had to have the thyroid -- they thought it was cancer. So, since it is in the general area, so they just did surgery. But---
THE COURT: Is this---
JUROR: I still---
THE COURT: Is this the excuse you're saying?
JUROR: Yeah, that's the reason.
THE COURT: Did you see that?
MR. ALLEN: I have not seen it, Your Honor.
JUROR: That's the reason it's been put off all this time.
THE COURT: All right, sir. I'm gonna excuse you from service this week.
Let's transfer him to another week.
At some point in time you're gonna serve.

JUROR: I understand.
THE COURT: Thank you.
BAILIFF: Number 200.
THE COURT: Thank you.
Yes, sir.
JUROR: I'm Charles B. Murdock.
THE COURT: Uh-huh. (Affirmative).
JUROR: I'm a nephrologist.
THE COURT: Uh-huh. (Affirmative).
JUROR: There are several hundred dialysis patients under my care in the Upstate.
THE COURT: Uh-huh. (Affirmative).
JUROR: In Cherokee, and Union, and Spartanburg County. And I have to provide care for those patients on an ongoing basis. Right now I have a physician's assistant covering call. But I'm, I'm really not suppose to do that for periods of time. And I don't have any way to provide care---
THE COURT: All right.
JUROR: ---for these patients.
THE COURT: I'm going to excuse you from service.
JUROR: Thank you.
THE COURT: This---
JUROR: Do I leave?
THE COURT: See that bailiff right there.

BAILIFF: 195.

THE COURT: Yes, ma'am.

JUROR: Your Honor, I'm under, under a lot of medications. I take 14 kinds a day.

THE COURT: What, what, what, what are the problems, ma'am?

JUROR: I have -- I've had heart surgery.

THE COURT: Uh-huh. (Affirmative).

JUROR: I'm on like depression medicine, Afexor 75. I'm on nerve medicines. I'm on Oxycodone, you know, for pain. And I have spasms in my chest.

THE COURT: I'm gonna excuse you from service, ma'am. See the bailiff on the way out.

JUROR: Thank you.

BAILIFF: 161.

THE COURT: Mr. Scruggs.

Thank you.

Hi.

JUROR: I would like to be, you know, to do it in the future cause my son's a dialysis patient. I need not to be here. You know, if I'm here and they can't get a hold of me. He's got a blood clot in his shoulder and he's waiting for a kidney transplant. So, I am his donor.

THE COURT: Now, what, what age is your son?

JUROR: He's 29.

THE COURT: Is he under your care?

JUROR: Yeah, that's what -- he's got me and that's it. I'd like to do it in the future. Just not now.

THE COURT: So, I'm -- let me be sure I understand what you're saying.

He's a dialysis patient?

JUROR: Right.

THE COURT: How---

JUROR: Monday, Wednesday, and Friday.

THE COURT: How often?

He goes Mondays, Wednesdays, and Fridays?

JUROR: Right.

THE COURT: You transport him and go with him to those?

JUROR: No, I pick him up. No, I use the Spartanburg bus system to take him.

THE COURT: You use the bus system to pick him up, and I mean you, you pick him up from those?

JUROR: Right.

THE COURT: Is that the only thing you're doing involved in his care?

JUROR: I am gonna be the donor, give him a kidney.

THE COURT: Oh, I understand that.

But that's not happening in the next two weeks?

JUROR: He also has a blood clot in his shoulder. So, it's moving and he's in dialysis and if it moves too far. I

don't know about the dialysis or not.

THE COURT: Could he not take the bus back home?

They won't, they won't transport him back?

JUROR: I'm having many problems. I have tried, let me tell you. They picked him up last Friday and I had to take off work to pick him up. It's just the system. It's really not good right now.

THE COURT: Ma'am, I'm gonna -- I think they'll transport him back and forth from what I understand.

JUROR: Right, they will if you can get them to do it. I mean I have called and called.

THE COURT: Well, if you're here, if you're here and you have any problems in that regard, we'll get that taken care of for you.

JUROR: Okay. I appreciate it.

THE COURT: You can stay. Thank you, ma'am.

JUROR: Okay. Cool.

BAILIFF: 27.

JUROR: Your Honor, how are you doing?

My name is---

THE COURT: Just fine.

JUROR: My name is Bobbie Allen Blake.

THE COURT: Yes, sir.

JUROR: And I am going through some legal issues myself. I was arrested a week and a half ago, and I've got

a Court trial coming up on the 30th.

THE COURT: What's the, what's the nature of the charge?

JUROR: Possession, possession of illegal gambling devices, and I'm going through a forfeiture case, and I'm having meetings with my lawyers and such as that.

THE COURT: When is that coming up?

JUROR: The 30th of this month.

THE COURT: All right.

JUROR: And we're having to go through all kind of stuff.

THE COURT: All right. I'm going to excuse you from service.

JUROR: All right. Thank you, sir.

THE COURT: See this bailiff right here.

BAILIFF: 244.

THE COURT: Yes, ma'am.

JUROR: Your Honor, the deceased, from her prior, prior marriage to, to Ray---

THE COURT: Uh-huh. (Affirmative).

JUROR: ---I was one of her best friends.

THE COURT: All right, ma'am. Would that fact affect your ability to be fair and impartial in the trial of this case?

JUROR: I'm, I'm scared that it would because Crystal

has talked to me about her relationship.

THE COURT: Well, again, do you think it would affect your impartiality?

JUROR: Yes, sir.

THE COURT: All right, ma'am. I'm gonna excuse you from service. You can see the bailiff.

Mr. Scruggs---

BAILIFF: 216.

THE COURT: ---this lady right here.

JUROR: Your Honor, I was convicted---

OFFICER: Put your hands down.

JUROR: I was convicted of a felony in '99 or 2000.

THE COURT: You did what now?

JUROR: Convicted of a felony in '99, 2000.

THE COURT: What was the charge?

JUROR: Drug charges.

THE COURT: Dealing drugs?

JUROR: Yes.

THE COURT: Okay. And you were convicted or did, would you have pled guilty?

JUROR: I was on -- I was found guilty.

THE COURT: They found you guilty, a jury trial?

JUROR: (Nods affirmatively.)

THE COURT: And had you -- were you on probation for a period of time?

JUROR: Yes, sir.

THE COURT: Now, when you say dealing drugs, it was a distribution case?

JUROR: Yes, sir.

THE COURT: It wasn't just a possession case?

JUROR: No.

THE COURT: All right, sir. I'm gonna excuse you. You'll be legally disqualified.

MR. ALLEN: What's the---

THE COURT: Your number?

JUROR: 216.

THE COURT: 216.

MR. ALLEN: 216.

THE COURT: All right. See this gentleman right here.

BAILIFF: 285.

THE COURT: Yes, ma'am.

JUROR: Your Honor, my daughter had a baby on the 18th of this month. But she have a four year old and a one year. They have to be out of the day care by five o'clock. Then I have a 18 year old that have to be to work. She don't have to work today. But the rest of the week she have to be there at five o'clock. And I'm the only licensed driver. And this morning my granddaughter---

THE COURT: I'm sorry. I couldn't hear you.

JUROR: I say this morning, then this morning my

grandmother took them---

THE COURT: Uh-huh. (Affirmative).

JUROR: And I wouldn't be able to stay for the next two weeks.

THE COURT: Well, I'm going to move you to another week of service, ma'am.

JUROR: Okay.

THE COURT: All right.

JUROR: Thank you.

THE COURT: She'll be transferred to another week of service.

BAILIFF: 295.

THE COURT: Yes, sir.

JUROR: Sir, I had a son that had a motorcycle accident on Saturday.

THE COURT: Uh-huh. (Affirmative).

JUROR: I have to pick him up at Concord tomorrow afternoon. They had to get his arm sewed back together.

THE COURT: Uh-huh. (Affirmative).

JUROR: And we have to bring, to bring his vehicle and everything back with us. So---

THE COURT: Well, now, for the next couple of days we're just gonna be doing jury selection.

JUROR: Okay.

THE COURT: And we can arrange for you to be here some

time other than when we'll be doing that. So, be sure to make us aware of tomorrow.

JUROR: Tomorrow I have to go to Concord.

THE COURT: Mr. Clerk.

CLERK: Yes, sir.

THE COURT: This juror, we need to get him on an individual panel that will not be meeting -- when do you have to go get him?

JUROR: I have to go tomorrow afternoon.

THE COURT: So, in the morning would be okay?

JUROR: In the morning.

THE COURT: You could be here in the morning?

JUROR: Yes.

THE COURT: Okay. He's, he's excused for tomorrow afternoon.

CLERK: Tomorrow.

What's his number?

THE COURT: Your number?

JUROR: 295.

THE COURT: 295.

All right. Have a seat, sir.

MR. CLERK: So, he's excused tomorrow afternoon.

THE COURT: Thank you. Thank you very much.

BAILIFF: 209.

THE COURT: Yes, sir.

JUROR: Yes, Your Honor. I have a persistent sinus infection. I have an appointment with a specialist Thursday morning and I ask that I not be excused, but rather re, reassigned.

THE COURT: Okay. So, you've got an appointment with a specialist for a sinus infection?

JUROR: Yes.

THE COURT: Is that something that's been ongoing for some period of time?

JUROR: Yes, I've been under treatment for a couple weeks.

Would you care to see this?

THE COURT: Well, why don't we do this, sir?

I'm going to -- we're gonna, we're gonna be speaking with individual -- you need, you need to move your hand off the top of that.

We're gonna be speaking with jurors on an individual basis, and we'll make arrangements for you not to be here during that period of time so you can keep that appointment.

JUROR: That will be great.

THE COURT: Okay. What -- that's Thursday morning?

JUROR: Yes, sir.

THE COURT: Thursday morning.

He'll be excused on Thursday morning.

CLERK: 209 is excused for---

THE COURT: 209.

CLERK: ---for Thursday morning?

THE COURT: Uh-huh. (Affirmative).

So, you can stay with us.

JUROR: All right.

THE COURT: Thank you, sir.

BAILIFF: 126.

THE COURT: Mr. Guy, how you doing?

JUROR: Fine, Your Honor.

THE COURT: What's up?

JUROR: I was---

THE COURT: He's got certain rules he has to follow.

JUROR: I was telling you about my roofing business, and I'm the only---

THE COURT: Uh-huh. (Affirmative).

JUROR: I'm the only certified inspector for the company. There's an -- the insurance adjustors that we meet---

THE COURT: Uh-huh. (Affirmative).

JUROR: ---nobody can meet them except me. You see, I've got people that put roofs on. But I'm the person that has to go meet the insurance---

THE COURT: Well, is it because of the potential length of the trial?

JUROR: Yeah, I even called them this morning. I have

to meet them everyday with ladders and things of that nature.

THE COURT: All right. And you're the only one there that can do that?

JUROR: I'm the only, I'm the only one that can do it because I'm the only one that's certified.

THE COURT: All right. I'll excuse him for the purpose of the trial.

JUROR: Okay.

THE COURT: See that gentleman right there.

CLERK: Number sir?

THE COURT: Number, Mr. Guy?

Number?

JUROR: Number 126.

THE COURT: Thank you. 126.

BAILIFF: 112.

JUROR: Good morning. I'm willing to serve. I've made arrangements for my son.

THE COURT: Uh-huh. (Affirmative).

JUROR: I just wanted you to be aware of three issues.

THE COURT: Uh-huh. (Affirmative).

JUROR: One of them is that my sister works for the Public Defender's Office as an attorney, and I don't know if this is the Public Defender's Office defending Mr. Torres. But that---

THE COURT: It, it is.

JUROR: ---makes me kind of nervous..

THE COURT: It is.

Your sister is who?

JUROR: Angela Moss.

THE COURT: Okay. She will not be participating directly in this trial. Now, I don't know if that would affect, however, your ability to be fair and impartial in this trial.

JUROR: It's kind of awkward.

THE COURT: Well---

JUROR: But I just wanted you to be aware of that.

THE COURT: That wasn't my question.

JUROR: I'm willing to serve. I mean---

THE COURT: Would it affect your impartiality?

Could you make a decision based on the law and the evidence?

JUROR: I think I could.

THE COURT: Okay. Then you can stay with us. We'll talk about it in more detail later on I'm sure.

JUROR: And the second item was that I believe I worked on some of your personal partnership work before.

THE COURT: Uh-huh. (Affirmative).

JUROR: And thirdly, I had outpatient procedures done Friday, and I'm having a lot of nausea and diarrhea and---

THE COURT: Okay.

JUROR: I was---

THE COURT: If you have any -- we're gonna be breaking in a minute. We'll just be, for the next few days, taking up jurors.

JUROR: I just wanted to make you aware of that.

THE COURT: All right.

JUROR: I've, I've went by the office and they said just come here and they may put me back in later.

THE COURT: All right. If you have any problems in that regard in the next few days, let us know.

JUROR: Okay. I just wanted you to be aware of it.

THE COURT: Thank you. That's fine.

BAILIFF: 28.

THE COURT: Just a second. Ma'am -- just -- hold that one just a second.

MR. ALLEN: On my way over here today Angela Moss stopped me and mentioned that she's got some arrangements with her sister about picking up her children.

THE COURT: Okay.

MR. ALLEN: Mrs. Moss is not involved in this case.

THE COURT: Okay.

MR. ALLEN: I haven't discussed this case with her.

THE COURT: Well, I understand that. But---

MR. ALLEN: There will be some communication between

what -- well, there might be some communications between Mrs. Moss and her sister as the week progresses. I just wanted to make y'all aware of that.

THE COURT: I'll let the solicitor see if he wants to pursue that further. I don't know if he does or not. But we'll, we'll have her back to talk about it.

MR. ALLEN: All right.

THE COURT: You can have a seat, ma'am.

Yes, ma'am.

BAILIFF: 28.

JUROR: This is not life and death, but I'm the director of Women's Ministry at Spartanburg Community Church.

THE COURT: Uh-huh. (Affirmative).

JUROR: I have 14 speaking engagements in the next two weeks, and plane tickets have been bought and they're expecting me to come.

THE COURT: Uh-huh. (Affirmative).

JUROR: And I just wanted to ask---

THE COURT: Nonrefundable?

JUROR: Yes, sir.

THE COURT: Okay. Well, now, you've, you've got 14 speaking engagements?

JUROR: In the next -- between now and a week from---

THE COURT: Out of town?

JUROR: Not all of them are out of town. The next three days are at North Greenville University.

THE COURT: Uh-huh. (Affirmative).

JUROR: And then I'm home for a day.

THE COURT: Uh-huh. (Affirmative).

JUROR: And then the next week I'll have three in Wisconsin, Wisconsin.

THE COURT: Wisconsin.

JUROR: And I have---

THE COURT: All right. I'll move you to another week of service.

JUROR: Thank you.

THE COURT: She'll be moved to another week of service.

BAILIFF: 67.

JUROR: Sir, I'm friends with one of the family members on the front row on this side. I just wanted to make that known.

THE COURT: Well, what we're going to do is we're going to ask you to come back on an individual sessions and discuss this with us. You'll be asked about whether you know people who are witnesses or involved in the case at that time. If you'll respond appropriately. The real question is would that fact, in any way, affect your ability to be fair and impartial should you be selected on the jury.

JUROR: No, sir.

THE COURT: Okay. So that answers the question. If you'll step over, we'll be glad to keep you around. Thank you.

JUROR: Thank you.

BAILIFF: 32.

JUROR: Afternoon, sir. The bailiff said that it would require weekend duty, weekend---

THE COURT: Perhaps.

JUROR: My, my nephew I raised---

THE COURT: Uh-huh. (Affirmative).

JUROR: ---is coming back from Iraq.

THE COURT: Uh-huh. (Affirmative).

JUROR: Fort Bragg on Saturday.

THE COURT: Uh-huh. (Affirmative).

JUROR: I really -- I'd love, I'd love to do the jury duty. But I, I really don't want to miss him.

THE COURT: Well, sir, I can move you to another week of service---

JUROR: That would work.

THE COURT: ---if you think -- now, this is somebody -- you said you raised this person?

JUROR: No, I didn't raise him though. But you know, his brother, his father's out in Colorado, Colorado.

THE COURT: Well, in that case I'm probably gonna keep you with us. Glad to have you. Have a seat please, sir.

BAILIFF: 111.

THE COURT: Yes, sir.

JUROR: Yes, Your Honor.

THE COURT: You have to get back. You can't lean on the bench.

JUROR: I'm sorry. I'm involved in---

THE COURT: Security purposes.

Go ahead.

JUROR: I'm involved in, I'm involved in the automotive industry.

THE COURT: Uh-huh. (Affirmative).

JUROR: I'm the only one that can perform uploads for forklift changes and bucket changes.

THE COURT: Uh-huh. (Affirmative).

JUROR: And we're going through an annual budget presentation. So, that changes this week. And the duration of the time involved would not allow me to do that.

THE COURT: Uh-huh. (Affirmative).

JUROR: It's not a duration as opposed to---

THE COURT: So, you're the only one at that business who can perform that function?

JUROR: That can perform the uploads.

THE COURT: Okay, sir. And can you tell something about where this is, who we're talking about?

JUROR: This is Cooper Standard Automotive.

THE COURT: Uh-huh. (Affirmative).

JUROR: And if -- my concerns is we got a duration of time that we need to get these done. Now, let's say Monday through Wednesday, I can be available. But anytime later, I have to do forecast uploads as well as budget uploads.

THE COURT: Well, sir, everybody here probably has some inconvenience in this, in their situations.

JUROR: Okay.

THE COURT: And we're not actually starting the trial of the case for a couple of days yet.

JUROR: Uh-huh. (Affirmative).

THE COURT: So, I'm gonna ask you to stay with us. Thank you very much.

JUROR: Okay. That's fine.

THE COURT: Uh-huh. (Affirmative).

JUROR: That's fine.

THE COURT: Uh-huh. (Affirmative).

BAILIFF: 131.

THE COURT: Yes, sir.

JUROR: I have two small children.

THE COURT: Uh-huh. (Affirmative).

JUROR: Two and a half and seven.

THE COURT: Uh-huh. (Affirmative).

JUROR: I'm fine if -- I take care of them Monday through Friday.

THE COURT: Uh-huh. (Affirmative).

JUROR: But on Saturday and Sunday night my wife will be gone, and I can't, I can't -- I know I can't get anybody to watch them.

THE COURT: So, you would be the only person who would have the duty of care of the children during the weekends?

JUROR: Yes, sir.

THE COURT: Is that what you're saying?

JUROR: Yes, sir.

THE COURT: Okay. And she's not gonna be in town?

JUROR: No.

THE COURT: Is there some -- is this, is this an optional travel on her part---

JUROR: It's optional.

THE COURT: ---or is this required?

JUROR: It's optional.

THE COURT: Well, I'm gonna ask you to stay with us.

JUROR: Okay.

THE COURT: Thank you, sir.

BAILIFF: 197.

THE COURT: Yes, ma'am.

JUROR: Yes, sir.

THE COURT: You can't lean on the bench. They'll -- the gentlemen will stop you from that.

JUROR: Okay. I'm having trouble with transportation

getting back and forth.

THE COURT: If you get selected, let us know. We'll have a sheriff's deputy pick you up. And once you're selected, you'll be here the whole time.

THE COURT: Okay.

JUROR: He did today. But my son is wanting to rent a car.

THE COURT: Well, don't worry. If you have a problem, just let the bailiffs know. We'll take care of that for you.

JUROR: All right. Thank you.

THE COURT: Thank you, ma'am.

BAILIFF: Seven.

THE COURT: Yes, sir.

JUROR: I don't know if this matters or not.

THE COURT: You can't put your hands up on the bench. Okay.

JUROR: I got -- I know the family here this morning. I actually worked with the family members for the past four years.

THE COURT: Would that affect your ability to be fair and impartial if you were selected on a jury?

JUROR: No, sir.

THE COURT: Could you decide the case based on the evidence and the law?

JUROR: Yes.

THE COURT: Have a seat. Glad to have you with us.

They're gonna, they're gonna have to come around this way.

BAILIFF: All right.

THE COURT: So, send them around this way.

BAILIFF: 186.

JUROR: Come forward, sir. Right here. Can't put your hands on the bench. Come on up, come on up where we can talk to you.

Yes, sir.

JUROR: Well, I have a Court, I have a child support court next Tuesday, the 23rd.

THE COURT: If you're selected on a jury, you let me know and we'll make that arrangement, arrangements to have that changed.

JUROR: Okay.

THE COURT: Okay. Thank you, sir.

Next one.

BAILIFF: 229.

THE COURT: Thank you, sir.

JUROR: Judge, I'm having surgery the next, on November the 3rd.

Would we be through by then?

THE COURT: Yes, sir.

JUROR: Okay. Good.
THE COURT: We plan to be through by then.
JUROR: I'd like to stay.
THE COURT: Glad to have you with us. And if that, if that, if that, for any -- I don't think that's gonna be a problem by any stretch of the imagination, but if it became a problem, we'll take care of that for you.
JUROR: Yes, sir.
THE COURT: Okay.
BAILIFF: Number 43.
THE COURT: Yes, ma'am.
JUROR: I'd like to be excused.
THE COURT: You can't put your hand up on the bench.
JUROR: Oh, I'm sorry. I'd like to be excused. I can't sit in the Court all day because of my back problems.
THE COURT: Well, ma'am, you've been sitting here today for a little over an hour already, and you seem to be doing okay. You're smiling and not hurting.
JUROR: Well---
THE COURT: If you have any problems while you're sitting, you let me know and we'll make arrangements to get up and move around.
JUROR: All right.
THE COURT: Okay. Thank you, ma'am. You can stay with us.

JUROR: Okay.

BAILIFF: 132.

THE COURT: Yes, ma'am. Yes, sir.

Can't put your hand on the bench.

JUROR: Yes, sir.

THE COURT: Thank you.

JUROR: I'm executive director of the youth, Youthful Rehabilitation Center and I have contracts with the Department of Juvenile Justice. I have employees who go out on the day-to-day operations.

THE COURT: Uh-huh. (Affirmative).

JUROR: But when it comes to accounts payable, payroll, and things of that nature, they're only two other people that can sign off on it. One of which is in Tampa, Florida, which is my vice-president and my board chair has to go to Tampa this, this week.

THE COURT: Now, if there's any problem with signing off on that, we can make arrangements to get the paperwork to you so you can sign it.

Okay?

JUROR: Appreciate it.

THE COURT: Thank you, sir.

BAILIFF: 93.

THE COURT: Yes, ma'am.

JUROR: Possible conflict with next week if it goes

into next week. I'm subpoenaed for another trial.

THE COURT: Ma'am, if it, if you're in that situation, and you're on the jury and this is coming up, it's a subpoena to testify in a Magistrate's Court -- yeah, Magistrate's Court case.

JUROR: I didn't know if it could be postponed.

THE COURT: Let us know. We'll see that you get an excuse on that.

Okay?

JUROR: Thank you.

BAILIFF: 291.

THE COURT: Yes, sir.

JUROR: How you doing?

THE COURT: I'm good.

JUROR: Your Honor, I'm Andre Wilson, Your Honor.

THE COURT: Yes, sir.

JUROR: I'm one of the top performers for Volkswagen Corporation.

THE COURT: Congratulations.

JUROR: If I'm not there, then I'm the only provider for my home as well. And so, if I'm not there making sales---

THE COURT: Well, sir, unfortunately everybody here will have a hardship if they're picked as far as their jobs and things of that nature and that's not one of the reasons

I can excuse you.

So, if you'll have a seat. Thank you very much.

JUROR: All right.

BAILIFF: 290.

THE COURT: Yes, ma'am.

JUROR: I don't know if I need to let you know this.

THE COURT: They won't let you put your hands up on the bunch.

Okay. Thank you, ma'am.

JUROR: We did have some business dealings with Mr. Emery many years ago.

THE COURT: Well, ma'am, what -- I'll, I'll ask you now, but, but would that fact prevent you from being able to decide this case based on the evidence and the law presented?

JUROR: I don't know.

THE COURT: So, you think it could affect your ability to be fair and impartial?

JUROR: Well, I think I would be thinking about Mr. Emery.

THE COURT: All right, ma'am. I'm gonna excuse you from service.

Your number again?

JUROR: 290.

THE COURT: 290.

Mr. Scruggs, she'll be excused.

You can come forward, sir.

BAILIFF: 254.

THE COURT: And don't put your hands up on the bench and you can talk to me.

JUROR: Yes, sir. I have three sons, which I'm the only provider and I'm -- my wife home schools and I just want to be dismissed.

THE COURT: Now, sir, I can't dismiss you for those reasons.

JUROR: Okay.

THE COURT: You need to stay with us. Thank you very much.

JUROR: Yes, sir.

BAILIFF: 178.

THE COURT: Yes, ma'am.

JUROR: I don't know if it has any bearing, but I am opposed to the death penalty.

THE COURT: We'll get into all those issues later on.

JUROR: Okay.

THE COURT: So, if you'll just have a seat, we'll talk about that later on.

JUROR: All right.

BAILIFF: 298.

JUROR: I just want to confirm---

THE COURT: You can't put your hands up on the bench. Thank you.

JUROR: I'm sorry. I'm embarrassed. A long time ago I had a DUI charge and I just wanted to make sure.

THE COURT: One time?

JUROR: (Nods affirmatively.)

THE COURT: And that was handled in Magistrate's Court probably?

JUROR: I don't know. It's a long time ago.

THE COURT: Okay. If you were only charged with DUI first, you can stay with us.

JUROR: Thank you.

THE COURT: That's fine.

BAILIFF: 259.

THE COURT: Yes, ma'am.

JUROR: Hi. I didn't realize the process was gonna go through. So, I didn't make arrangements. My oldest one I can cover. He's 16. If I could -- he can get a ride home. But the youngest one, he's 13. So, I don't have that privilege to do that with him. I don't have a problem with serving. I can be---

THE COURT: Well, here's what we're gonna do. We're not gonna -- we're gonna be breaking a little later on in the day in the not too distant future.

JUROR: Okay.

THE COURT: And we'll be asking jurors to come back on an individual basis. You can make arrangements at that time.

JUROR: Okay.

THE COURT: And if there's a problem, Tet us know.

JUROR: Okay.

THE COURT: Okay. Thank you.

BAILIFF: 119.

THE COURT: Yes, sir, they won't let you put your hands up on the bench. Thank you, sir.

JUROR: I know him. I know his wife and I know their daughter.

THE COURT: Uh-huh. (Affirmative).

Well, we're gonna be asking questions about those things later on.

JUROR: All right.

THE COURT: That's not -- the issue right now is whether there's some kind of---

JUROR: Oh, no.

THE COURT: ---unusual situation I should consider.

JUROR: No, I just wanted to be fair.

THE COURT: I understand. We'll talk about that a little bit later on.

Thank you, sir.

(Whereupon, the following takes place within the

hearing of the entire jury panel.)

THE COURT: All right. Ladies and gentlemen, at this point in time we're going to be taking a brief break. I'm going to ask that any member of the jury panel who wishes to make any changes to the jury questionnaire that you brought in, I mentioned that when we first started, that if you had any amendments or updates or additions to that questionnaire, to be thinking about those. We're gonna give you an opportunity to come forward and meet with the clerk down here at this, this place, and make any additions or changes to that jury questionnaire that you sent in.

Also, the three individuals that I passed out questionnaires for that did not respond, I think I've excused at least one of them, but I think I see one lady in the back and there's another one I believe, who need to turn in their jury questionnaires during our break. So, if you'll get those matters taken care of during the break.

Also, ladies and gentlemen, when we take your break, you are not to discuss any matter pending in this Court with anyone in any way. I don't know how I can make that any clearer. Don't discuss the case at all, even among yourselves, during this particular break. You're not, absolutely not to discuss this case. And should anyone attempt to discuss with you anything involved in this case or says anything about it within your ear shot, I wish you

would report that to me. I'm gonna ask and require that you report that to me when we complete the break because I'll take that matter very seriously.

I will tell you I'm very serious about what, my instructions at this time, and if you violate these instructions, it will be punishable by contempt of Court. This Court has the authority to put someone in jail for up to one year based on contempt of Court.

I don't want to get into that situation with you. I don't think you want me in that situation. So, again, do not discuss this case or anything about this case or any other case pending before this Court during the break. Do not allow anyone to discuss it in your presence so that you can overhear them. And if you do hear something of that nature or someone does discuss this with you, again, report it upon our reconvening and I will take the appropriate action should that occur.

Now, it would appear to this Court, at this time, that all of you who have not either been transferred or excused are qualified to serve under the law as jurors in this case.

I'm going to ask that you be back in your seats ready to proceed. I'm gonna give you a little more than 15 minutes. Let's say at twenty minutes until one o'clock this afternoon. That's about a twenty minute break.

I'll tell you that -- just one second, sir. There are

restrooms outside for you to use. If you are a smoker, you can step outside onto the patio, smoke a cigarette, something of that nature, and there is a canteen one level below this level at the foot of the stairs if you need a Coke or something to drink or something of that nature.

But again, do not discuss the case with anyone during the break. Don't allow them to discuss it in your presence. And if anyone violates my instructions, I'd ask that you report that upon your return to the courtroom.

Now, at this point in time I'll allow you to take a break. Again, those of you who are going to correct your questionnaire, you can come forward and do that.

Yes, sir.

(Pause.)

If any of these jurors are present, there are parts of your questionnaires that have not been filled out. I'm gonna call your name. And when we take the break, if you'll step forward, see this lady right here on my left. She'll, she'll assist you with that.

Penelope Atkinson.

Bobby Blake.

This one is Shoshannah Burnett.

Tony McDowell.

Alice Otto.

Phyllis Moore.

Yvonne Roebuck.

If those jurors, if they're still present, come forward. See the lady on my left. She'll assist you in getting those jury questionnaires completed.

All right. We'll take our break. We'll come back at twenty minutes until one o'clock. Thank you very much.

Court's in recess.

Mr. Allen.

(Whereupon, a bench conference was held at this time followed by a short recess being taken.)

THE COURT: Ask the attorneys to approach please.

(Whereupon, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: I understand there may be some jurors who are still downstairs. We're checking on them.

(Pause.)

THE COURT: All right. Juror Number 72, if you'd please stand please.

(Juror stands.)

THE COURT: And Number 218, would you please stand?

(No response.)

THE COURT: Juror Number 218?

(No response.)

THE COURT: Do we have a name for that one?

CLERK: Prysock.

THE COURT: Prysock.

Is, is that the other one you're---

CLERK: Yes, sir.

THE COURT: All right. I'll ask that Number 72, sir, you'll need to come forward and speak with me for just a second.

The attorneys may approach.

(Whereupon, the following takes place out of the hearing of the entire jury panel.)

THE COURT: You can't, you can't put your hands on the bench. You can't put your hands on the bench.

Sir, according to some information we have you may have a criminal conviction on your record, is that true?

JUROR: Yes, sir.

THE COURT: Okay. And what was that criminal conviction for?

JUROR: DUI.

THE COURT: What number?

How many DUI's have you had?

JUROR: One.

THE COURT: One DUI.

Any other convictions on your record?

JUROR: I pled guilty.

THE COURT: Yes, sir.

To?

JUROR: Accessory.
THE COURT: Accessory to a felony?
JUROR: Grand larceny.
THE COURT: Yes, sir.
Doesn't that carry up to more than one year in prison, a potential sentence?
You could of been sentenced to more than one year?
JUROR: Oh, potentially, yeah.
THE COURT: Yes, sir.
All right, sir. But you pled, you pled guilty to that offense?
JUROR: Yes, sir.
THE COURT: All right, sir. That will disqualify you from service. If you'll see the bailiff, you'll have to leave.
JUROR: Yes, sir.
CLERK: Number again, sir?
THE COURT: 72.
I'd ask you stay up here for a second.
(Whereupon, a bench conference was held with the attorneys out of the hearing of the jury at this time.)
THE COURT: Sir, are you Mr. Prysock?
JUROR: Yes, sir.
THE COURT: We were looking for you. If you'll step up here please, sir.

(Whereupon, the following takes place out of the hearing of the entire jury panel.)

THE COURT: Mr. Prysock, don't put your hands up on the bench. Thank you.

According to some information we have you may have a criminal conviction on your record.

Do you?

JUROR: No, sir.

THE COURT: Never been convicted of any crimes or pled guilty to any crimes?

JUROR: No, sir.

THE COURT: All right. Do you have some identifying information, solicitor?

Social Security Number, anything like that?

JUROR: Oh, yes, sir.

THE COURT: Just one second.

SOLICITOR GOWDY: [redacted], Social Security Number.

THE COURT: Is that your Social Security Number?

JUROR: Yes, sir.

THE COURT: What do you show on his record, Mr. Solicitor?

JUROR: A grand, grand larceny from 1970.

THE COURT: 1970, do you have a grand larceny?

Long time ago.

JUROR: That been, might of been a long time ago.

THE COURT: Did you?

JUROR: Yes, sir.

THE COURT: Okay, sir. Did you ever get a pardon or were you ever given any type of release from that?

JUROR: Yeah.

THE COURT: Pardon, parole?

JUROR: Well, I got release from a, from---

THE COURT: You were on, you were on probation?

JUROR: It was, was, it was a murder case. Somebody, somebody told me, told lies on me in the court.

THE COURT: I don't need to know all the details.

I just need to know have you had any type of pardon for that?

JUROR: Oh, no, sir.

THE COURT: Okay, sir. Then that's gonna disqualify you from service.

(Whereupon, the following takes place within the hearing of the entire jury panel.)

THE COURT: Okay, sir. This juror is disqualified as a matter of law.

See the bailiff on the way out.

See the bailiff, sir.

THE COURT: All right. Ladies and gentlemen of the jury, I was just looking at my watch. And given the time, it's about ten minutes till 1:00, we're gonna break at this

point in time for lunch. The instructions that I gave you when you stepped out for your, for your break here at the courthouse will continue outside of this court, courthouse. If anyone attempts to talk to you about this case, please report that upon your return. You should not discuss this case with anyone whatsoever in any fashion whatsoever. And again, if you violate that direction, it's punishable by contempt of this Court.

Before we break, I want to ask any juror did anyone attempt to contact you or talk with you about this case during our break or did you discuss this case with anyone during the break, if that's true, please stand.

(No response.)

THE COURT: Also I will advise you, during the break, I will, not to gather any information outside of this courthouse about the case from the news media or from any other source, internet, or any other location. If you're selected to serve on this jury, it will be your obligation to decide this case solely upon the evidence presented during the trial and upon the law as given to you by the Court. It would be improper for you to consider any other information in reaching a decision in this case from any other source. So, it will be highly improper for you to attempt to gather any information outside of this courthouse.

Should you be exposed to any media reports by radio, television, or print, do not read them, watch them, or listen to them during the break. Again, don't attempt to gather any information outside of this courthouse and don't allow anyone to discuss the case during the break.

I'll ask you to be back in this courtroom -- now, we had a little problem with getting people back in here at, at a timely fashion after our break. We want you in this courtroom at two o'clock. At that point in time we'll proceed with jury qualification.

Again, I want to thank you very much for your presence and your willingness to serve. At this point in time, you're free to go.

I'd ask all the parties and other individuals involved in the case remain seated until the jury retires.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: I'll ask you to step outside the courtroom please, ma'am.

All right. Anything from the State before we break?

SOLICITOR GOWDY: No, sir, Your Honor.

THE COURT: Anything from the defense before we break?

MR. ALLEN: No, Your Honor.

THE COURT: All right. We'll be back at two o'clock. Court's in recess until that time.

Thank you very much.

(Whereupon, Court was in recess for the lunch hour.)

THE COURT: Ask the attorneys to approach briefly.

(Whereupon, a bench conference was held out of the hearing of the jury at this time.)

THE COURT: All right. Mr. solicitor, you may call your case.

SOLICITOR GOWDY: Your Honor, may it please the Court?

THE COURT: Yes, sir.

SOLICITOR GOWDY: The State would call Indictment 2008-GS-42-4677, the State of South Carolina, State of South Carolina versus Andres Antonio Torres. An indictment for attempt to burn.

2007-GS-42-2773, the State of South Carolina versus Andres Antonio Torres. An indictment for armed robbery.

2007-GS-42-2775, the State of South Carolina versus Andres Antonio Torres. An indictment for armed robbery.

2007-GS-42-2776, the State of South Carolina versus Andres Antonio Torres. An indictment for, an indictment for burglary in the first degree.

2008-GS-42-0880, the State of South Carolina versus Andres Torres. An indictment for criminal sexual conduct in the first degree.

2007-GS-42-2778, the State of South Carolina versus Andres Antonio Torres. An indictment for murder.

2007-GS-42-2777, the State of South Carolina versus Andres Antonio Torres. An indictment for murder.

All indictments have been true billed.

THE COURT: Pass it to the clerk, please.

(Solicitor complies.)

THE COURT: Thank you, sir.

SOLICITOR GOWDY: Yes, sir.

THE COURT: Ladies and gentlemen, the State has called the case of The State versus Andres Antonio Torres. We're gonna talk about the case, this specific case to be tried and the process that we're going to follow in selecting the jury.

The case is one charging an individual with certain crimes. In this case, the State is seeking the death penalty against the defendant. Because the State is seeking the death penalty, the law requires that I address certain issues and matters with you.

Please understand, as I address you concerning this case, that I have no opinion concerning the facts of this case. The Constitution and the laws of the State of South Carolina prohibit a trial judge from making any comments to a jury about the facts of the case. So, please do not infer, from anything that I may say during this process, that I have any opinion concerning the facts of this case.

A criminal case comes to this Court by way of a legal

document called an indictment. The indictment is not evidence of any kind and can not be used by a jury, in any fashion, in determining the guilt or the innocence of a defendant. The indictment, indictment merely contains the charge or crimes against an individual. The indictment is merely the vehicle or the means by which the case is allowed to come to the Court to be tried.

In this case, there are seven indictments. I'm going to go over the indictments with you at this point in time so that you will understand what is alleged in the indictments. It will also allow you to more fully answer some questions that I'm going to ask you that apply to this case.

The first indictment I will go over with you is the Indictment 2007-GS-42-2273. That indictment charges the defendant, Andres Antonio Torres, with the offense of armed robbery.

That indictment alleges that Andres Antonio Torres did, in Spartanburg County, on or about May 11, 2007, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife, hammer, or other deadly weapon, or while engaging, either by actions or word, or excuse me, or while alleging, either by actions or words, word, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take

from the person or presence of Ann Emery, by means of force or intimidation, goods or monies of Ann Emery described as follows, clothing, jewelry, miscellaneous items, with the intent to deprive the owner permanently of such property in violation of Code Section or S.C. Code of Laws Section 16-11-330(a) 1976, '76 as amended.

The second indictment is in Case Number 2007-GS-42-2775. It charges the defendant, Andres Antonio Torres, with the offense of armed robbery.

That indictment alleges that Andres Antonio Torres did, in Spartanburg County, on or about May 11, 2007, while armed with a pistol, dirk, slingshot, metal knuckles, razors, knife, hammer, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Charles Ray Emery, by means of force or intimidation, goods or monies of Charles Ray Emery described as follows, clothes, jewelry, and miscellaneous items, with the intent to deprive the owner permanently of such, such property in violation of Code Section 16-11-330(a), 1976 as amended.

The third indictment, 2007-GS-42-2776, charges the defendant with the offense of burglary in the first degree

of a dwelling. It alleges that Andres Antonio Torres did, in Spartanburg County, on or about May 11 of 2007, willfully and intentionally enter the dwelling belonging to Charles Ray Emery and Ann Emery located at [redacted] Montgomery Street, Spartanburg, South Carolina, without consent and with the intent to commit a crime therein and either one, the defendant did enter in the nighttime, and/or two, armed with a deadly weapon, and/or three, cause physical injury to any person who is not a participant in the crime, and/or four, uses or threatens the use of a dangerous instrument, and/or five, displays what appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm in violation of Section 16-11-311 and Section 16-1-57 of the Code of Laws of South Carolina, 1976 as amended.

The fourth indictment is in Case Number 2007-GS-42-2777. Charges the defendant, Andres Antonio Torres, with the offense of murder. It alleges that Andres Antonio Torres did, in Spartanburg County, on or about May 11, 2007, feloniously, willfully, and with malice aforethought kill one Charles Ray Emery by beating the victim with a hammer about the face and body and the victim died as a proximate result thereof all in violation of Section 16-3-10 and 20 of the Code of Laws of South Carolina, 1967 as amended.

The fifth indictment in this case, Case Number

2007-GS-42-2778, charges the defendant, Andres Antonio Torres, with the offense of murder and alleges that Andres Antonio Torres did, in Spartanburg County, on or about May 11, 2007, feloniously, willfully, and with malice aforethought kill one Ann Emery by beating the victim with a hammer about the face and body and the victim died as a proximate result thereof. All in violation of Sections 16-3-10 and 20 of the Code of Laws of South Carolina, 1976 as amended.

The sixth indictment charges the defendant, Andres Antonio Torres, with the offense of attempt to burn. It alleges that Andres Antonio Torres, on or about May 11, 2007, did, in Spartanburg County, unlawfully and maliciously attempt to set fire to or aid, counsel, or procure the burning of the home and/or property, buildings or property mentioned in Section 16-11-110 to 16-11-140 of the South Carolina Code of Laws, of Charles Ray Emery and Ann, Mary Ann Emery located at [redacted] Montgomery Street, Spartanburg, South Carolina, or committed an act in furtherance of the burnings of the buildings in violation of Section 16-11-190 of the Code of Laws of South Carolina, 1976 as amended.

The seventh indictment in this case is Case Number 2008-GS-42-880, charges the defendant, Andres Antonio Torres, with the offense of criminal sexual conduct in the first degree.

That indictment alleges that Andres Antonio Torres did, in Spartanburg County, on or about May 11, 2007, engage in sexual battery, to wit, by use of aggravated force to overcome the victim of Ann Emery, without her consent, to accomplish a sexual battery. Such sexual battery was accomplished, accomplished by the use of force of high and aggravated nature. To wit, by the use of aggravated force to overcome the said victim and/or the victim, Ann Emery, submitted to a sexual battery by the defendant under circumstances where the victim is also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, house breaking, or other similar offense all in violation of Section 16-3-652 of the Code of Laws of South Carolina, 1976 as amended.

Now, ladies and gentlemen, I remind you that indictments are not proof of any kind. It is simply a piece of paper that charges are written down on. It, the -- to the charges contained in the indictment, this defendant, Andres Antonio Torres, has pled not guilty and has requested a jury trial at your hands. That plea of not guilty places the burden on the State to prove the allegations of each and every element of the offenses in each of the indictments beyond a reasonable doubt. A defendant is always and will always be presumed to be innocent of the crimes or crimes for which he is charged unless and until his guilt is proven

by evidence satisfying you of that guilt beyond a reasonable doubt.

Now, before we begin questioning concerning these cases, I'm going to ask that the attorneys introduce themselves to the jury panel.

First of all, for the State.

SOLICITOR GOWDY: May it please the Court, Your Honor?

THE COURT: Yes, sir.

SOLICITOR GOWDY: Good afternoon. My name is Trey Gowdy. I am solicitor for the Seventh Judicial Circuit, which is Spartanburg and Cherokee Counties.

SOLICITOR BARNETTE: Ladies and gentlemen of the jury, my name is Barry Barnette, the principal deputy solicitor in the Seventh Circuit.

SOLICITOR CRICK: My name is Cindy Crick and I'm an assistant solicitor in the same circuit.

THE COURT: All right. Thank you very much.

All of those individuals are employed in the Seventh Circuit Solicitor's Office here in Spartanburg County and in the Seventh Circuit.

Now for the defense, if you would, please introduce yourselves to the jury panel.

MR. ALLEN: Thank you.

My name is Clay Allen. I'm an attorney here in Spartanburg.

MR. RECKENBEIL: My name is John Reckenbeil. I'm a private lawyer here in Spartanburg and have a law office of John Reckenbeil.

MRS. HODGES: My name is Kathleen Hodges also known as Kathy Hodges, and I am a partner with Mr. Allen's office.

THE COURT: And Mr. Allen, would you please introduce the defendant to the jury panel and ask him to please stand and turn so they can see his face.

(Defendant stands.)

MR. ALLEN: Today, Mr. Reckenbeil, Mrs. Hodges, and I represent Andres Torres also known as Tony Torres.

THE COURT: Thank you very much. Thank you.

Now, ladies and gentlemen of the jury, I'm going to go through a series of questions that are case specific to this particular case. We'll go through the same process that we went through this morning. When I ask a question, if you have a response to any of my questions, I'm going to ask that you stand and I'll be taking your name and number first. It's necessary that we identify who I'm talking to on the record before I can proceed with getting your response. So, we'll go through that same process that we used this morning in discussing your responses to the questions that I have.

The first question I have, is there any member of the jury panel who is related or has ever been related by blood

or marriage or who enjoys a personal or any other relationship with the defendant, Andres Antonio Torres, or any member of his immediate family, if so, please stand.

(No response.)

THE COURT: Does any member of the prospective jury panel work with the defendant or with any member of his family, if that's true, please stand.

(No response.)

THE COURT: Is there any member of the prospective jury panel who is related or has ever been related by blood or marriage or, or who enjoys any personal or, personal or social relationship with the alleged victims, Mary Ann Emery and Charles Ray Emery, if that's true, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who has worked in the past with either of the alleged victims, Mary Ann Emery or Charles Ray Emery, if that's true, please stand.

(No response.)

THE COURT: Is there any member of the prospective jury panel who has been related or is related by blood or marriage or who enjoys any personal or social relationship with any of the attorneys who are involved in the trial of this case, if so, please stand.

(Jurors respond.)

THE COURT: All right, sir. I'll start with you.

First of all, name and number.

JUROR: I'm Todd Webber, 280. I'm a personal friend of Trey Gowdy's.

THE COURT: All right, sir. Would that fact prevent you from being able to handle this case or keep, prevent you from having an open mind if you were selected on this jury?

JUROR: Yes, sir.

THE COURT: All right, sir. I'm gonna excuse you from the panel. If you'll see the, the bailiff on your way out.

Yes, sir, your name and number?

Yes, ma'am. I'm sorry. Yes, ma'am.

JUROR: Amy McKinney, 187.

THE COURT: Yes, ma'am.

JUROR: And I'm friends with Trey's wife, Teri.

THE COURT: All right. Would that relationship prevent you from being fair and impartial to either the State or the defense in the trial of this case?

JUROR: No.

THE COURT: Be seated. Thank you, ma'am.

Yes, sir, your name and number.

JUROR: Samuel Wade Godfrey, Junior. I'm Number 110.

THE COURT: Yes, sir.

JUROR: My sister-in-law worked for the Solicitor's Office.

THE COURT: All right. Would that fact prevent you from being fair and impartial to both the State and the defense in the trial of this case?

JUROR: It's possible.

THE COURT: Well, sir, I need to know if it would affect your impartiality.

JUROR: Yes.

THE COURT: All right, sir. You're excused. Thank you very much.

Yes, sir, your name and number.

JUROR: I'm John F. Green, Juror 119. I know the solicitor and his family.

THE COURT: All right, sir. Would that fact prevent you from being fair and impartial if you were selected as a juror in this case?

JUROR: No, sir, I don't believe it would.

THE COURT: Thank you very much. You can be seated.

Anyone else?

(No response.)

THE COURT: Now, has any member of the prospective jury panel ever been represented by any of the attorneys who are involved in the trial of this case in some legal matter or have they ever appeared on the other side of some legal matter from you, if that's true, please stand.

(Juror responds.)

THE COURT: Yes, sir, I need your name and number.

JUROR: Your Honor, Scott Katrosh, Juror Number 158.

THE COURT: Yes, sir.

JUROR: Your Honor, I have defended a case brought by Mr. Reckenbeil on another matter.

THE COURT: All right, sir. Would the fact that Mr. Reckenbeil had been involved on the other side of a legal matter from you affect your ability to be fair and impartial in the trial of this case?

JUROR: No, Your Honor.

THE COURT: Thank you very much. You can be seated.

Anyone else?

(No response.)

THE COURT: Now, is -- has, has any member of the jury panel ever been represented by any member or anyone working in any fashion whatsoever, either as a witness or as a party, by anyone employed in the Seventh Judicial Circuit Solicitor's Office, if that's true, please stand.

(No response.)

THE COURT: Has any member of your family ever been represented by any of the attorneys who are involved in the trial of this case or have they appeared on the other side of legal matters from you, if that's true, please stand.

(Jurors respond.)

THE COURT: Yes, sir, your name and number.

JUROR: Aundra Wilson, 291.
THE COURT: Yes, sir.
JUROR: John Reckenbeil represented my brother.
THE COURT: All right. Would the fact that he represented a relative of yours affect your impartiality in this trial?
JUROR: Yes.
THE COURT: All right, sir. It would affect your impartiality?
JUROR: Yes.
THE COURT: All right, sir. I'm gonna excuse you. You can step out.
JUROR: Juror 61, Marvin Clements.
THE COURT: Yes, sir.
JUROR: The team prosecuted a murder victim that killed my stepson, sir.
THE COURT: All right, sir. Would that fact affect your ability to be fair and impartial in this trial?
JUROR: No.
THE COURT: Thank you, sir. You can be seated.
BAILIFF: Judge, you have another one.
THE COURT: Yes, ma'am.
JUROR: Not any of these particular attorneys, but the Solicitor's Office did prosecute someone who was convicted of killing a family member.

THE COURT: All right, ma'am. Your name and number please?

JUROR: I'm sorry. My name is Brook McCombs. I'm Number 183.

THE COURT: Would that fact affect your ability to be fair and impartial in this trial?

JUROR: I don't believe so, no, sir.

THE COURT: Thank you, ma'am. You can be seated.

Is there any member of the jury panel who previously served on the Spartanburg County Grand Jury that found or considered the indictments that I have announced to the Court, if that's true, please stand.

(No response.)

THE COURT: Has any member of the jury panel expressed or formed an opinion about this case, if that's true, please stand.

(Juror responds.)

BAILIFF: Judge, you got one here.

THE COURT: I'm sorry.

JUROR: 202, Claire Myers. I did hear about the case yesterday and---

THE COURT: Well, ma'am, my question was had you formed or expressed an opinion concerning this case?

JUROR: Yes, sir.

THE COURT: Okay. Ma'am, would -- I'm gonna ask you to

step forward and meet with me beside the bench here.

JUROR: Okay.

THE COURT: Thank you, ma'am.

Ask the attorneys to approach.

BAILIFF: Juror 202.

(Whereupon, the following takes place outside the hearing of the entire jury panel.)

THE COURT: Right up here please, ma'am.

All right, ma'am. Have you, have you formed or expressed an opinion about this case?

JUROR: I -- it's hard to not when you hear the specifics of the case before you.

THE COURT: Okay. Now, ma'am, can you tell me would that opinion affect your ability though to consider the facts and evidence presented during this case and follow the law as given to you by the Court and let, set that opinion aside?

JUROR: Yes, sir.

THE COURT: So, you could proceed impartially in the case?

JUROR: Yes, sir.

THE COURT: Okay. I'm gonna allow you to continue.

Did you get her number?

MR. ALLEN: 202, yes, sir.

THE COURT: Okay. Thank you, ma'am.

(Whereupon, the following takes place within the hearing of the entire jury panel.)

THE COURT: Has any member of the jury panel seen, heard, or read any account about this case either today or before today, and if you have read any news articles or heard any news coverage concerning this case, do you remember any of the details or allegations about this case?

Now, in this case, I want you to stand, give me only your name and number, and remain standing.

If that's true, please stand.

(Jurors respond.)

THE COURT: All right. We're gonna take it by sections over here.

Everyone, everyone else be seated. This section first.

All right. Ma'am, I need your name and number.

JUROR: Lynda Glugover, Number 109.

THE COURT: All right. Yes, ma'am, your name and number.

JUROR: Cheryle Clutter, Number 65.

THE COURT: Yes, ma'am, your name and number.

JUROR: Candice Chapman, 58.

THE COURT: Yes.

JUROR: Annette Ledford, 167.

THE COURT: I'll ask you to please be seated.

JUROR: Sharon Glenn, 108.

THE COURT: Thank you.
JUROR: Randall Wallis, 274.
JUROR: Randall McAbee, 181.
JUROR: Larry Means, 191.
THE COURT: You can be seated.
Yes, sir, your name and number.
JUROR: Jack Vaughn, 271.
THE COURT: Thank you, sir. You can be seated.
Yes, sir.
JUROR: William Altman, 6.
THE COURT: I'm sorry?
JUROR: William Altman, 6.
THE COURT: Thank you, sir. Be seated.
Yes, ma'am.
JUROR: Phyllis Moore, 197.
THE COURT: Yes, ma'am. Thank you.
JUROR: Chad Collins, 67.
THE COURT: Thank you. You can be seated.
Yes, ma'am.
JUROR: Leona Kennedy, 161.
THE COURT: Thank you.
Yes, ma'am.
JUROR: Lettie O'Neal, 207.
THE COURT: Thank you.
Now, in this section, if you'll please stand.

(Jurors comply.)
THE COURT: Start with you, sir, name and number?
JUROR: David Anderson, Number 7.
THE COURT: Thank you.
JUROR: Jennifer Davis, Number 75.
JUROR: Lynda Rice, 222.
THE COURT: You can be seated. Thank you.
Yes, sir.
JUROR: My name is Tony Solesbee, 248.
THE COURT: Thank you.
JUROR: Lynn Gilmer, 104.
THE COURT: Thank you.
Yes, ma'am.
JUROR: Anne Goff, 112.
THE COURT: Thank you.
JUROR: Henry Villaneuva, 272.
THE COURT: Thank you.
JUROR: Anita Hammerbeck, 130.
JUROR: Fred Don Heatherly, 138.
THE COURT: Thank you, sir.
In this section, please stand please.
(Jurors comply.)
THE COURT: I need your name and number.
JUROR: Dorothy Martin, 178.
THE COURT: Thank you.

JUROR: Deannna Odom, 14.
THE COURT: Thank you.
JUROR: Dianna Keenan, 159.
THE COURT: Thank you.
Yes, ma'am, the lady in the purple dress.
JUROR: Evonia Anderson, Number 8.
THE COURT: Thank you, ma'am.
Yes, sir.
JUROR: James Rush, 229.
THE COURT: Thank you.
JUROR: Richard Hardy, 132.
THE COURT: Thank you, sir.
JUROR: Terry Sturgill, 254.
THE COURT: Thank you.
JUROR: Kathy Porter, 298.
THE COURT: Thank you. You can be seated.
Yes, ma'am.
JUROR: Susan Steiner, 251.
THE COURT: Thank you.
JUROR: Andrew Gilpin, 105.
THE COURT: Thank you.
JUROR: Ronald Davidson, Number 74.
THE COURT: Thank you, sir.
Yes, ma'am.
JUROR: Kathy Settle, 239.

THE COURT: Thank you.
JUROR: Rhonda Mahaffey, 176.
THE COURT: Thank you.
JUROR: Chandis Digby, Number 81.
THE COURT: Thank you.
Over in this section.
(Jurors stand.)
THE COURT: Yes, sir, your name and number.
JUROR: Neil Nichols, 204.
THE COURT: Thank you, sir.
JUROR: Pat Young, 208.
THE COURT: Thank you.
Sir?
JUROR: Jerry E. Williams, 288.
THE COURT: Thank you.
Yes, ma'am.
JUROR: Janis Emplit, 91.
THE COURT: Ma'am?
JUROR: Christine Fulmer, 125.
THE COURT: Be seated.
Yes, ma'am.
JUROR: Regina Clinton.
THE COURT: Thank you.
JUROR: Richard Pack, 209.
THE COURT: All right. We'll start with you back

there, sir.

JUROR: James E. Rosemond, 227.

THE COURT: Thank you.

JUROR: Justin Turner, 267.

THE COURT: Thank you.

JUROR: Jeff Siggins, 243.

THE COURT: Thank you, ma'am, sir.

JUROR: Marcella Belzer, 23.

THE COURT: Thank you.

JUROR: Beth Kitchens, 163.

THE COURT: Thank you.

JUROR: Dora Jackson, 149.

THE COURT: Thank you, ma'am.

Yes, sir.

JUROR: John Green, 119.

THE COURT: Thank you, sir.

JUROR: Tammy Tucker, 266.

THE COURT: Thank you.

JUROR: Cindy A. Hall, 127.

JUROR: Kelly Norfolk, 205.

JUROR: Marilyn Roddy Koons, 224.

THE COURT: Thank you, please. Thank you, ma'am.

All right. Based on those accounts that those individuals who responded, have any of you formed or expressed an opinion about this case, if you would, please

stand.

If you have formed or expressed an opinion about this case, one way or the other based on the reports that you may have seen or read, I'd ask you now please stand.

(Juror responds.)

THE COURT: Yes, ma'am, your name and number.

JUROR: Phyllis Moore, 198.

THE COURT: All right. Thank you, ma'am. You can be seated.

JUROR: Anne Goff, 112.

THE COURT: Thank you. You can be seated.

JUROR: Richard Pack, 209.

THE COURT: Thank you, sir.

JUROR: Justin Turner, 267.

THE COURT: Thank you.

JUROR: Cindy Hall, 127.

THE COURT: Thank you very much.

To those of you who have found, either found or expressed an opinion based on those reports, do any of you know of any reason why you could not give a fair and impartial trial to both the State or the defendant in this case?

To those -- so, as to those who have expressed an opinion or formed an opinion based on those news, news reports, if you know of any reason why you could not give a

fair or impartial trial to the State or the defense, I'd ask you to now stand.

(No response.)

THE COURT: Thank you very much.

Has any member of the jury panel or has any member of your immediate family been the victim of a crime of violence or serious assault, if that's true, please stand.

(Jurors respond.)

THE COURT: Now I'm gonna start over here.

Ma'am, your name and number?

JUROR: Cheryl Clutter, 65.

THE COURT: Now, ma'am, would the fact that you or your family members have been involved in something of that nature, would that prevent you from being fair and impartial to both the State and the defense in this case?

JUROR: I don't think so.

THE COURT: Thank you, ma'am.

Your name and number please, ma'am.

JUROR: Annette Ledford, 167.

THE COURT: The fact that a family member of yours who might of been, been involved in such an incident, would that affect your ability to be fair and impartial in the trial of this case?

JUROR: No, Your Honor.

THE COURT: Thank you, ma'am.

Yes, sir, your name and number.

JUROR: Jack Vaughn, 271. No---

THE COURT: The fact -- would it affect your impartiality?

JUROR: No.

THE COURT: Thank you, sir.

Yes, sir, your name and number.

JUROR: Donald Witherstine, 295.

THE COURT: Would that fact affect your impartiality?

JUROR: I don't think so.

THE COURT: Well, I'll need to know would it, would it affect your impartiality.

JUROR: No.

THE COURT: Thank you, sir.

Yes, sir, your name and number.

JUROR: William Altman, Number 6.

THE COURT: Would it, would it affect your impartiality if a family member or you have been involved in such an incident?

JUROR: No.

THE COURT: Thank you, sir.

Your name and number please, ma'am.

JUROR: Brooke McCombs, Number 183.

THE COURT: Yes, ma'am.

Would your impartiality be affected by that fact?

JUROR: I don't believe so, no, sir.
THE COURT: Thank you, ma'am.
Your name and number please, ma'am.
JUROR: Jennifer Davis, 75.
THE COURT: Would the fact that someone in your family had been involved in such a matter or yourself affect your impartiality?
JUROR: No.
THE COURT: Thank you.
Sir, your name and number?
JUROR: Kenneth Akins, 3.
THE COURT: Would that fact affect your impartiality?
JUROR: No, sir.
THE COURT: Thank you, sir.
Yes, ma'am, your name and number.
JUROR: Tina Twitty, 269.
THE COURT: Yes, ma'am.
JUROR: No, sir.
THE COURT: Thank you.
Yes, ma'am, your name and number.
JUROR: Kathy Woodham, 298.
THE COURT: Would that fact affect your impartiality in this trial?
JUROR: No, Your Honor.
THE COURT: Thank you, ma'am.

Yes, ma'am, your name and number.

JUROR: Susan Steiner, 251.

Would that fact affect your impartiality in the trial of this case?

JUROR: No, Your Honor.

THE COURT: Thank you, ma'am. You can seated.

Yes, ma'am, your name and number.

JUROR: Shoshannah Burnett, 46.

THE COURT: Would that fact affect your impartiality in this trial?

JUROR: No, sir.

THE COURT: Thank you, ma'am.

Yes, ma'am, your name and number.

JUROR: Lisa Evans, 93.

THE COURT: Would that fact affect your impartiality in this trial?

JUROR: No.

THE COURT: Thank you, ma'am.

Yes, ma'am, your name and number.

JUROR: Alyce Otto, 208.

THE COURT: Would that fact affect your impartiality in this case?

JUROR: Yes, sir, it could.

THE COURT: Okay, ma'am. I'm gonna excuse you. See the bailiff on the way out.

Did you get her name and number?

MR. ALLEN: Yes, sir.

THE COURT: Okay. Yes, ma'am, your name and number.

JUROR: Janis Emplit, Number 91.

THE COURT: Yes, ma'am.

JUROR: No, sir.

THE COURT: Thank you.

Yes, ma'am, your name and number.

JUROR: Marilyn Roddy, 224.

THE COURT: Would it affect your impartiality, ma'am?

JUROR: No, sir.

THE COURT: Thank you. You can be seated.

Anyone else?

(No response.)

THE COURT: Is there any member of the jury panel who is a member of or a contributor to any group which has as its primary concern the promotion of law enforcement or victims rights?

These groups include, but are certainly not limited to such groups as Mothers Against Drunk Driving, Students Against Drunk Driving, Citizens Against Violent Crime, the South Carolina Troopers Association, or the Sheriff's Association.

If that's true, please stand.

(No response.)

THE COURT: Anybody a member of or a contributor to such organizations, please stand.

(Juror responds.)

THE COURT: I'm sorry. Your name and number, sir?

JUROR: 289, Troy D. Williams.

THE COURT: Yes, sir.

Are you a member of some organization of that nature?

JUROR: I just support the Spartanburg County Police Department.

THE COURT: Okay, sir. The Sheriff's Office then.

JUROR: The Sheriff's Office.

THE COURT: Would that affect your impartiality though---

JUROR: No, it would not.

THE COURT: ---in the trial of this case?

JUROR: It will not.

THE COURT: Thank you, sir.

Anyone else?

(No response.)

THE COURT: Has any member of the jury panel ever been arrested for, charged with, or convicted of any crime involving, involving violent crimes such as murder and/or manslaughter, assault and battery with intent to kill, armed robbery, criminal sexual conduct, burglary, let's see, domestic violence of a high and aggravated nature, or an

assault on another person or similar crimes, if that's true, please stand.

(No response.)

THE COURT: Does any member of the jury panel, panel have a family member or a close friend that has been, either been arrested for or charged with a violent crime, again, such as murder and/or manslaughter, assault and battery with intent to kill, armed robbery, criminal sexual conduct, burglary, domestic violence of a high and aggravated nature, or an assault on any other person or similar crime, if that's true, please stand.

(Jurors respond.)

THE COURT: Sir, I'm gonna start with you.

If you folks want to have a seat I'll, right to here, I'll, since you're the only one, I'll get to you pretty quick. We had another one stand.

Yes, sir, your name and number.

I'll start with you first.

JUROR: Ronald Rogers, 226.

THE COURT: Yes, sir, your situation?

JUROR: I have a nephew that's charged with burglary.

THE COURT: All right. Would that fact affect your ability---

JUROR: It would not.

THE COURT: ---to be fair and impartial?

And is that charge still pending or been ended?
JUROR: It's still pending.
THE COURT: All right, sir. Thank you. You can be seated.
Yes, sir, your name and number.
JUROR: James Bohard, 32.
THE COURT: Yes, sir, your situation?
JUROR: I have a son serving time for car breaking.
THE COURT: All right, sir. Would that fact affect your ability to be fair and impartial in this trial?
JUROR: Not at all, sir.
THE COURT: Thank you, sir. Have a seat.
Yes, sir, your name and number.
JUROR: 289, Troy Williams.
THE COURT: Yes, sir.
JUROR: I have a nephew who is, was involved in a shooting.
THE COURT: All right, sir. Is that case still pending?
JUROR: He's in jail right now.
THE COURT: All right. Would that affect your ability to be fair and impartial in this trial?
JUROR: No, it will not.
THE COURT: Thank you very much.
Yes, ma'am, your name and number.

JUROR: Lettie O'Neal, 207.

THE COURT: Yes, ma'am, your situation?

JUROR: I have a nephew who is serving time in jail for murder.

THE COURT: Ma'am, would that affect your ability to be fair and impartial during this trial?

JUROR: No, sir.

THE COURT: Thank you very much.

Yes, ma'am, your name and number.

JUROR: Anne Goff, 112.

THE COURT: Yes, ma'am.

JUROR: I have a cousin, first cousin that served time for armed robbery.

THE COURT: All right. Would that affect your or was there another one?

JUROR: There's another. I have a very close friend --

THE COURT: Uh-huh. (Affirmative).

JUROR: -- her son was charged and served time for lynching.

THE COURT: All right, ma'am. Would that fact affect your ability to be fair and impartial though in the trial of this case?

JUROR: I do not think so.

THE COURT: Well, would it or would it not?

JUROR: No, sir, it will not.

THE COURT: Thank you, ma'am.

All right. Now, this, these sections, if you'll stand, those who had responses to that question.

(Jurors comply.)

THE COURT: Yes, ma'am, I need your name and number.

JUROR: Linda Lee, 169.

THE COURT: Yes, ma'am.

JUROR: My brother was charged with armed robbery.

THE COURT: All right. That, that is a charge that's pending?

JUROR: No, sir.

THE COURT: Okay.

JUROR: He's already served the time.

THE COURT: All right. Would that affect your impartiality in this trial?

JUROR: No, sir.

THE COURT: Thank you very much, ma'am.

Yes, sir, your name and number.

JUROR: Curtis Marshall, 177. I have a first cousin serving a life sentence in Florida for kidnapping and torture.

THE COURT: Would that affect your impartiality in this trial?

JUROR: No, Your Honor.

THE COURT: Thank you very much.

Yes, sir, your name and number.

JUROR: Tracy H. Waugh, 277.

THE COURT: Yes, sir.

JUROR: My sister was accused of domestic violence, domestic violence high and aggravated nature.

THE COURT: All right. Would that affect your ability to be fair and impartial in this trial?

JUROR: Yes, it might.

THE COURT: Sir?

JUROR: Yes, sir.

THE COURT: It would affect your impartiality?

JUROR: Yes, sir.

THE COURT: Sir, I'm gonna excuse you. Step out and see the bailiff.

Sir, your name and number?

JUROR: Neil Nichols, 204. I have a first cousin that was killed by one of my other first cousins.

THE COURT: All right, sir. Would that fact affect your ability to be fair and impartial in this trial?

JUROR: Not in the least.

THE COURT: Thank you. Yes, sir. Yes, ma'am. Excuse me.

JUROR: January Jones, 156. My half-brother had, was charged with assault and battery.

THE COURT: Ma'am, would that affect your impartiality

in this trial?

JUROR: No.

THE COURT: Thank you.

Yes, ma'am, your name and number.

JUROR: Christine Hollmer, 145.

THE COURT: Yes, ma'am.

JUROR: I've got a fiance that's been charged with assault and battery with intent to kill.

THE COURT: You got to speak up. I'm not sure I can hear you.

JUROR: He's got a charge for assault and battery with intent to kill.

THE COURT: All right. Ma'am, would that affect -- that was a fiance?

JUROR: Yeah.

THE COURT: Would that affect your ability to be fair and impartial in this trial?

JUROR: Yes, sir.

THE COURT: Ma'am, I'm gonna excuse you. See the bailiff on the way out.

Yes, ma'am, your name and number.

JUROR: Dora Jackson, 149.

THE COURT: Yes, ma'am.

JUROR: And I have a cousin that's served time for lynching.

THE COURT: Would that affect your impartiality in this trial?

JUROR: No, sir.

THE COURT: Thank you, ma'am.

Your name and number.

JUROR: Beth Kitchens, 163.

THE COURT: Yes, ma'am.

JUROR: I have a cousin that served time for burglary and robbery.

THE COURT: Would that affect your impartiality in this case?

JUROR: No.

THE COURT: Thank you, ma'am.

Anyone else?

(No response.)

THE COURT: Is there anyone on the jury panel currently or has in the past been prosecuted by any of the attorneys representing the State or the Seventh Judicial Circuit Solicitor's Office?

I'm talking about you members of the panel.

If that's true, please stand.

(No response.)

THE COURT: Is there any member of the jury panel who is related by blood or marriage or do you or are you close personal or social friends with anyone employed in the

Seventh Judicial Circuit Solicitor's Office, the Spartanburg Department of Public Safety, the Spartanburg County Sheriff's Office, the police department of any city, town, or other municipality in Spartanburg or Cherokee Counties, or the State Law Enforcement Division, if that's true, please stand.

(Jurors respond.)

THE COURT: All right. I've been starting on this side. We'll start on this side. You can be seated over here.

Yes, sir, your name and number.

JUROR: 101, Benjamin Harrison Fricks.

THE COURT: Yes, sir.

JUROR: I have friends that work in the probation office.

THE COURT: Would that affect your impartiality in this trial?

JUROR: No, sir.

THE COURT: You can be seated.

Yes, ma'am, your name and number.

JUROR: Beth Kitchens, 163.

THE COURT: Yes, ma'am.

JUROR: Mark Kitchens is my husband's first cousin.

THE COURT: All right. Now, would that fact affect your ability to be fair and impartial in this trial?

JUROR: No, Your Honor.
THE COURT: Thank you, ma'am.
Yes, ma'am, your name and number.
JUROR: Deanna Odom, 14.
THE COURT: Yes, ma'am.
JUROR: And my sister-in-law is employed in law enforcement in Spartanburg.
THE COURT: And I'll get back to her.
JUROR: Go ahead.
THE COURT: I'm sorry. I got distracted.
JUROR: My sister-in-law is a police, a Spartanburg Police.
THE COURT: Can you tell me what department or what agency?
JUROR: She's in the academy right now.
THE COURT: All right. Would that fact affect your impartiality in this trial?
JUROR: No, sir.
THE COURT: All right, ma'am. Your name and number?
JUROR: Tammy Tucker.
THE COURT: Yes, ma'am.
JUROR: 266. I have a sister that works for Spartanburg 9-1-1.
THE COURT: Would that affect your impartiality in this trial?

JUROR: No, sir.
THE COURT: Thank you, ma'am.
Yes, ma'am, your name and number.
JUROR: Evonia Anderson, 8. I have a cousin, Alton Dodd, and no.
THE COURT: Would that affect your impartiality, ma'am?
JUROR: No.
THE COURT: Thank you.
Yes, sir, your name and number.
JUROR: James Rush, 229.
THE COURT: Yes.
JUROR: My son's a police officer.
THE COURT: Would that affect your impartiality in the trial?
JUROR: No, sir.
THE COURT: Thank you.
Yes, sir, your name and number.
JUROR: Ricky Hardin, 132. I have a cousin with the Spartanburg Public Safety.
THE COURT: And would that affect your impartiality, sir?
JUROR: No, sir.
THE COURT: Thank you.
Yes, ma'am.
JUROR: Tammy McSwain, 249, and my brother-in-law is a

police officer in Spartanburg County.

THE COURT: And ma'am, would that affect your impartiality in this case?

JUROR: No, sir.

THE COURT: Thank you very much.

All right. Now, on this side, if you'll stand if you had a response to that question.

(Jurors comply.)

THE COURT: Yes, ma'am, your name and number.

JUROR: Anne Goff, 112.

THE COURT: Yes, ma'am.

JUROR: My sister was formerly employed with the Solicitor's Office.

THE COURT: Would that affect your impartiality in this trial?

JUROR: No, sir.

THE COURT: Thank you, ma'am.

Yes, ma'am, your name and number.

JUROR: Jennifer Davis, 75.

THE COURT: Yes, ma'am.

JUROR: My best friend is a Spartanburg City officer.

THE COURT: Would that affect your impartiality in this trial, ma'am?

JUROR: No, sir.

THE COURT: Thank you very much.

Yes, sir.

JUROR: Don Heatherly, 138.

THE COURT: Yes, sir.

JUROR: Friends with Chuck Wright. We go to church together.

THE COURT: All right. Would that fact affect your impartiality though in this trial?

JUROR: No, sir.

THE COURT: Thank you, sir.

Yes, ma'am, your name and number.

JUROR: Sharon B. Glenn, 108, and my brother is a retired state trooper and I know you also, Judge Couch.

THE COURT: Well, we, we went to high school together a long time ago.

Ma'am, would that fact or those facts affect your impartiality in this trial?

JUROR: No, sir.

THE COURT: Thank you very much.

Yes, sir.

JUROR: Randall Wallis, 274.

THE COURT: Yes, sir.

JUROR: I am friends and went to church with Chuck Wright. He's also was pall bearer for my mother-in-law's funeral last summer.

THE COURT: Would that affect though your impartiality

if you were selected on this jury?

JUROR: No, it would not.

THE COURT: Thank you very much.

Yes, ma'am.

JUROR: Candace Chapman, Number 58. My brother did an externship with SLED. He works for a different county, but he did an externship.

THE COURT: All right. Would that fact affect your impartiality, ma'am?

JUROR: No.

THE COURT: Thank you very much.

Anyone else?

(No response.)

THE COURT: Has any member of the jury panel ever or a member of your family ever been a victim in a case that was prosecuted by the Seventh Judicial Circuit Solicitor's Office, if that's true, please stand.

(Jurors respond.)

THE COURT: Yes, ma'am, your name and number.

JUROR: Brooke McCombs, Number 183.

THE COURT: You, you took -- the question is have you or a member of your family ever been a victim in a case that was prosecuted by the Solicitor's Office.

JUROR: Yes, sir.

THE COURT: Did you understand the question, ma'am?

JUROR: Yes, sir, I -- thank you for repeating it though.

THE COURT: You had a puzzled look on your face as you stood.

JUROR: I was making sure that I heard it correctly.

THE COURT: All right. Now, ma'am, does that question apply to you?

JUROR: It does, yes, sir.

THE COURT: All right. And can you tell me how?

JUROR: My uncle was murdered in 1996 and the Solicitor's Office prosecuted that case.

THE COURT: All right. Would that fact though affect your ability to be impartial in this trial?

JUROR: I don't believe so, no, sir.

THE COURT: Well, I need to know whether it would or not.

JUROR: No, sir.

THE COURT: Thank you, ma'am.

JUROR: Same thing, my stepson was murdered.

THE COURT: And they -- you were involved somehow in the or involved to the extent that you knew about the prosecution?

JUROR: Yes, sir.

THE COURT: All right, sir. Would that fact affect your ability to be fair and impartial in this trial?

JUROR: No.

THE COURT: Thank you, sir.

Anyone else?

(No response.)

MR. ALLEN: Could we get the numbers on---

THE COURT: Name and number, sir, of the last gentleman that just stood.

JUROR: Oh, Marvin L. Clements, 61.

THE COURT: Thank you.

Has any member of the jury panel ever been arrested by the Spartanburg County Sheriff's Department or the South Carolina Law Enforcement Division better known as SLED, if that's true, please stand.

(Juror responds.)

THE COURT: Yes, sir, your name and number.

JUROR: 60, Marshall Chitwood.

THE COURT: Sir, you were arrested at some point in time?

JUROR: Yeah, I was arrested maybe 15, 16 years ago.

THE COURT: The prosecution did not go forward?

JUROR: No, I -- actually they swapped a charge out, a gun charge.

THE COURT: All right, sir. Would that fact though that you were arrested at some time affect your ability to be fair and impartial during this trial?

JUROR: No, sir.
THE COURT: Thank you.
Anyone else?
(No response.)
THE COURT: Is there any member of the jury panel a member of any organization that does not recognize the government of the United States of America or the State of South Carolina, if that's true, please stand.
(No response.)
THE COURT: Is there any member of the jury panel now or formerly employed by any civilian or military law enforcement agency, if that's true, please stand.
JUROR: Repeat the question.
THE COURT: Is there any member of the jury panel who has ever been employed now or in the past by any civilian or military law enforcement agency, if that's true, please stand.
(Jurors respond.)
THE COURT: Yes, sir, your name and number.
JUROR: Your Honor, Scott Katrosh, Juror 158.
THE COURT: All right, sir. You were employed by some law enforcement agency?
JUROR: Your Honor, no, but I am a officer in the Army. I'm currently employed by the Army as a prosecutor.
THE COURT: All right, sir. Would that fact affect

your ability to be fair and impartial in this trial?

JUROR: No, Your Honor.

THE COURT: Thank you. You can seated.

Yes, sir, your name and number.

JUROR: James Rush, 229.

THE COURT: Yes, sir.

JUROR: I worked for Spartanburg County Sheriff's Department.

THE COURT: All right. You -- that was in the past?

JUROR: Yes, sir.

THE COURT: You no longer work there?

JUROR: No, sir.

THE COURT: Would that fact affect your ability to be fair and impartial in this trial?

JUROR: No, sir.

THE COURT: Thank you, sir.

Yes, sir, your name and number.

JUROR: Greg Pappas, 211.

THE COURT: Yes, sir.

JUROR: I was a maximum security prison guard.

THE COURT: All right. Would that affect your ability to be fair and impartial in this trial?

JUROR: No.

THE COURT: Thank you, sir.

Now, are you currently employed that way or in the

past?

JUROR: In the past.

THE COURT: In the past. Thank you, sir.

Is there any member of the panel who knew or was acquainted with the alleged victims in the case, Charles Ray Emery or Mary Ann Emery, if so, please stand.

(Jurors respond.)

THE COURT: All right. To those, two individuals, two individuals, I want you to come forward and meet me by the bench.

Ask the attorneys to come forward.

(Whereupon, the following takes place outside the hearing of the entire jury panel.)

THE COURT: Come forward, sir.

Yes, sir, your, your name and number?

JUROR: Lynn Gilmer, 104.

THE COURT: Yes, sir. Don't talk so loud that they can hear you.

JUROR: Mr. Emery took pictures of my daughter's wedding.

THE COURT: All right, sir. I assume that was some time ago?

JUROR: Yes.

THE COURT: Would that fact affect your ability to be fair and impartial in this case?

JUROR: No, it would not.
THE COURT: And that's the only relationship you have with him?
JUROR: That's the only relationship.
THE COURT: Okay. Thank you, sir. You can be seated.
BAILIFF: 14.
THE COURT: Come forward please, ma'am.
Yes, ma'am.
JUROR: He was a friend of my grandfather's.
THE COURT: All right. Mr. Emery was?
JUROR: Mr. Emery.
THE COURT: All right. So, he did -- and he was not personally acquainted with you or you just knew of him?
JUROR: He took pictures for me a few times.
THE COURT: All right. Would, would that fact affect your ability to be fair and impartial in this trial?
JUROR: No, sir.
THE COURT: All right. Thank you, ma'am. You can be seated.
BAILIFF: 239.
THE COURT: Yes, ma'am, who did you know?
JUROR: Ray Emery---
THE COURT: Uh-huh. (Affirmative).
JUROR: ---was actually a nephew of my uncle's by marriage. He also---

THE COURT: Oh, okay. An in-law, an in-law.
JUROR: Well.
THE COURT: Kind of.
JUROR: Yeah, kind of.
THE COURT: I understand.
JUROR: And he has taken some pictures at family gatherings for us.
THE COURT: All right. Would that fact affect your ability to be fair and impartial in this trial?
JUROR: Yes, sir, I believe it would.
THE COURT: Okay. Ma'am, I'm gonna excuse you.
JUROR: Okay.
THE COURT: All right. The juror's excused.
BAILIFF: 176.
MR. ALLEN: What was the number?
THE COURT: 239.
Yes, ma'am, who did you know?
JUROR: Mr. Emery.
THE COURT: All right.
JUROR: He photographed my son and daughter-in-law's wedding pictures.
THE COURT: Uh-huh. (Affirmative).
JUROR: And then he also took pictures for their high school.
THE COURT: All right. Now, ma'am, would the fact that

you had had some business dealings I guess with him in the past, would that affect your ability to be fair and impartial in this trial?

JUROR: I think so, yes, sir.

THE COURT: All right, ma'am. I'm gonna excuse you then.

The juror will be excused.

(The following takes place within the hearing of the entire jury panel.)

THE COURT: Anyone else?

(No response.)

THE COURT: Did you get her number?

Ma'am, your number was?

JUROR: 176.

BAILIFF: 176.

THE COURT: Thank you, ma'am.

(Whereupon, the following takes place out of the hearing of the entire jury panel.)

OFFICER: Your Honor, it appears that a juror left out and she just has come back in. A woman in white on the second row.

THE COURT: Who was that?

OFFICER: It's the lady in the front of the second row.

THE COURT: He says some juror stepped out and stepped back in and has missed some of the questions.

SOLICITOR GOWDY: The bailiff did. I just assumed she was sick. The bailiff took a woman out, and I didn't know what was going on.

THE COURT: Well, see, I haven't -- I have no idea what questions she's missed.

OFFICER: She left after, after you asked if anyone has a family member whose been convicted of a violent crime.

THE COURT: Okay. Yeah, I'll just -- we'll just pick it up here and when we finish I may have to catch her up.

SOLICITOR GOWDY: I figured the bailiff would only take them out if they were on the verge of death.

THE COURT: Well, I don't know. We'll, we'll check on her when we get done.

Thank you, Floyd.

(The following takes place within the hearing of the entire jury panel.)

THE COURT: Is there any member of the jury panel who is acquainted with or have some social relationship with any members of the Ray or Ann Emery family including Charles Donald Emery known as Chuck Emery, Tammy Waley, and Crystal Cook, if that's true, please stand.

(Juror responds.)

THE COURT: Sir, I'm gonna ask you to come forward and meet with me at the bench.

JUROR: Sir, can I come forward also?

THE COURT: Yes, you may.

(Whereupon, the following takes place outside the hearing of the entire jury panel.)

BAILIFF: Juror Number 7.

THE COURT: Yes, sir, let me---

JUROR: I, I've worked with the brother-in-law.

THE COURT: A brother-in-law?

JUROR: In the last four years.

THE COURT: Okay. Would that affect your ability to be fair and impartial in this trial?

JUROR: Yes.

THE COURT: Okay. I'm gonna excuse you from the jury. The juror's excused.

BAILIFF: 108.

THE COURT: Yes, ma'am.

JUROR: I just wanted it to be known I believe, if memory is correct, that I went to church with the lady that has the cane.

THE COURT: Okay. I don't know who that is. I know it's one of the family.

JUROR: Yeah, she's in the family.

THE COURT: Would that affect your impartiality?

JUROR: No.

THE COURT: Okay. Thank you very much, ma'am.

BAILIFF: 183.

THE COURT: Yes, ma'am.

JUROR: I believe that I've met Tammy Waley on occasion.

THE COURT: All right.

JUROR: I did want to be forthcoming.

THE COURT: Okay. But now would that affect your impartiality?

JUROR: Oh, no, sir.

THE COURT: Thank you.

BAILIFF: 58.

JUROR: I wanted to be sure of the question first.

Did you mean any of those family members names you just mentioned?

THE COURT: Well, are there other family members that you might know?

JUROR: A first cousin of them is a close, close member of my church.

THE COURT: All right. Would that fact affect your ability to be fair and impartial in this case?

JUROR: I'm afraid it would.

THE COURT: Okay. I'm gonna excuse you, ma'am.

MR. ALLEN: Was the last one 158?

THE COURT: The last one was 158?

SOLICITOR GOWDY: 58.

THE COURT: It was 58.

BAILIFF: 58, judge.

THE COURT: Ma'am, your number?

JUROR: 58.

THE COURT: Thank you.

(Whereupon, the following takes place within the hearing of the entire jury panel.)

THE COURT: All right. Does any member of the jury panel know of any reason whatsoever why he or she could not serve as a juror in this case with particular emphasis being placed upon your, on your ability to be both fair and impartial to the State and to the defense, if that's true, please stand.

(No response.)

THE COURT: I now want to address two very important legal principles in bringing these charges. The State has the burden of proving the guilt in this case beyond a reasonable doubt. There is no burden whatsoever on an accused to prove or disprove anything. In fact, the defendant has a constitutional right to remain silent, and the assertion of the right to remain silent can not, under any circumstances, be held against a defendant.

Ladies and gentlemen, the defendant, in all cases that come before this Court, are presumed to be innocent. It is a cardinal and fundamental principle of law that a defendant will always be presumed to be innocent of the crimes for

which the charge has been, for which he has been indicted and this presumption of innocence is an important and a substantial right to which each defendant who comes into this Court is entitled.

For those of you who are selected to serve on this jury, your oath would require you to accept the law as I instruct you including the burden of proof and the presumption of innocence.

In the State of South Carolina, when the State seeks the death penalty for the charge of murder, the law provides for what is called a bifurcated trial. The word bifurcated is kind of a fancy legal word meaning that the trial will be divided into two different steps or phases.

The first trial will be a trial -- the jury is only concerned, during that trial, with the guilt or innocence of the defendant. So, the only issue to be decided in the first phase is whether the defendant is guilty or not guilty of the offense or the offenses for which he has been charged and indicted including the charge of murder.

If the jury finds the defendant not guilty of the murder, we do not proceed to the second phase of the trial. That would end the case. And if and only if the jury finds the defendant guilty of murder do we then go on to the second phase of the trial.

The second phase is sometimes described or called the

sentencing phase and the only issue to be determined is what punishment is appropriate. The choice would be life imprisonment or the death penalty if we get to the second phase of the trial. We simply discuss penalty now, as a convenient means of explaining the process to you, and please do not draw any reference or any, any preference about the penalty. It is the only convenient time, now is the only convenient time that I can discuss this particular matter with you.

The law in South Carolina provides that the State can not seek the death penalty in every murder case. That is not permitted. The State can only seek the death penalty in a case where there is a murder and the murder is accompanied by at least one aggravating circumstance.

The term aggravating circumstance is a term of art in the law, and aggravating circumstances are specifically identified in the Code of Laws for the State of South Carolina. The State then could only seek the death penalty in a case where there is a murder and the murder is accompanied by at least one aggravating circumstance identified in the law. By the term aggravate, we mean to make worse or to exacerbate the circumstance.

Under the law, if we go to the second phase of the trial, or the sentencing phase, the jury is required to consider any mitigating circumstance of any nature

whatsoever. Mitigating means to lessen, to reduce fault, and culpability, or to reduce the punishment. If we reach the second phase of the trial or the sentencing phase, the jury, after considering all of the evidence, could impose the death penalty only if the jury unanimously finds the existence of an aggravating circumstance.

In the event the jury, under the law, unanimously determines that the death penalty is appropriate, it is required that each member of the jury sign his or her name to the verdict form. The jury further has the authority to sentence the defendant to life imprisonment.

I reiterate to you that we reach the second or sentencing phase of the trial only if the defendant is found guilty of the murder in the first part of the trial. If the defendant is not convicted of the murder, that would conclude the trial. I speak to you about the death penalty only because it would be an issue if you first found the defendant guilty of the crime of murder.

Because of that possibility, we will take the time to question you individually, privately, and under, under oath. We will spend a couple of days going through this process. Thus far I have only asked you questions regarding your general eligibility to serve on the jury. When we question you individually, and I will do some questionings and, and also the attorneys, we will be discussing specific

questions, for example, whether you are related or acquainted with witnesses in the case. We will anticipate that you will have been exposed to some publicity about the case. That is expected and please do not worry about it.

When you are questioned, we want to know what you recall from those press, the press or other information about the case, and importantly, whether you have already formed an opinion about the facts of the case and whether or not you could serve as a fair and impartial juror in the case.

For those of you who will serve in this case, you must accept and apply the law as I give it to you. You -- it would further be part of your oath to find the truth from the evidence presented in the courtroom, and you are not permitted to be swayed or influenced by anything occurring outside of the courtroom such as publicity regarding the case.

Ladies and gentlemen, I will question you regarding your view on the death penalty. Please understand that when we question you about these things, there is no right or wrong answers. I trust you understand that we must have a full and an honest disclosure from you to be able to select a fair and impartial jury in this case.

In questioning each of you individually, here is what we will do. Your names will be randomly selected by the

clerk in groups or panels of five individuals. We will be doing panels of five jurors every hour once we start that process. To keep you from waiting in the courtroom too long, so we will assign a time for each panel to return to the courthouse to go through this questioning or examination concerning this matter.

We will ask you for your patience and cooperation in this process. We will proceed in that fashion until such time as we have selected a jury. It customarily, customarily takes, in a case such as this, several, a, a day or two for this process to be completed.

Now, once a jury has been selected, that jury will be sequestered. Therefore, the Court has decided that the jury, which is ultimately selected in this case, will be sequestered until such time as the trial is over. What that means to you, to you would be that if you're selected as a member of the jury panel, you'll report to the courthouse for jury selection, and if you're put on the jury, you will stay with us until the trial is concluded.

This means that you'll spend the night in a hotel. You'll be fed at local restaurants at the county's expense. During the sequestration, your activities and who you can talk to will be somewhat controlled.

Don't be alarmed by that. This is a process that has been followed in the State of South Carolina for many years.

We have experienced people from the State Law Enforcement Division who will be handling that part of the process so that it will not be too big of a burden upon you. However, until the jury is selected, you will not be sequestered.

What that means that, from this moment on, as I indicated when you left the courthouse earlier, do not read any news accounts, nor watch or listen to any television or radio accounts. Do not allow your prospective jurors or fellow jurors to discuss this case with you. Do not allow anyone to discuss this case with you including members of your own family.

If anyone contacts you or tries to contact you about the case, please get the name of that individual who contacts you, report that information immediately to the Clerk's Office or to my office. I can not over emphasize the importance of the instruction that I just gave to you. Do not speak to anyone about this case or about any potential issue in the case. Do not expose yourself to any publicity about this case.

I recognize that some of you, again, may have already gathered some information about this case, and we'll talk about that when we question you privately and individually in Court. But from this moment on, do not discuss the case with anyone. Do not expose yourself to any publicity about this case. Part of my instruction to you, of course,

includes the admonition, admonition not to undertake any investigation as to the law, the facts, or the location of the alleged offense.

I, I know we live in an electronic and an Internet age. So, my instruction includes any efforts by you to do any searches of information from that source or any other source.

Now, the clerk is going to randomly select jurors, jurors in panels. We will be assigning times to each panel of five with the hope that we can complete each panel within one hours time. The times for these panels will be given to you once you're assigned to a panel. You will also be given a phone number to call in. You should call in several hours before that panel is due to be called to determine whether or not we're on time and what time you actually will be needed. But we'll try to stay on that schedule as close as possible as we go through this process.

Now, ladies and gentlemen, the law requires that I administer, administer an additional oath to you at this time regarding the obligations and your obligation to honor the instructions that I have just given to you.

So, I will ask, at this time, the prospective jury panel to please stand and raise your right hand.

(Jurors comply.)

THE COURT: Will you faithfully comply with the

instructions the Court has given you including your duty not to expose yourself to any further information about this case from the press, any source, or any other person?

If you agree to be bound by this oath, please state I will at this time.

(Whereupon, all jurors respond in the affirmative.)

THE COURT: You can be seated.

(Jurors comply.)

THE COURT: Now, if there was any member of the prospective jury panel who either failed or refused to take the oath just administered by this Court, I'd ask that you now please stand.

(No response.)

THE COURT: The record will reflect that all remaining jurors have been sworn to the instructions that I have given you.

Now, ladies and gentlemen, we want to thank you for your patience in this case. It's a very important matter. I hope you understand. We are doing our best to work with you in good faith and in a professional manner. We'll do our best to put you at ease during the trial. I assure you that you will be treated with courtesy and respect.

I've tried to arrange for the scheduling of jury panels, again, so as to minimize the inconvenience to you. You will return to the courthouse at set times. We will

inform you, when you are assigned to a jury panel, where to report and you will be kept in a separate room until you are brought into the courtroom for examination.

We expect that you will be here, when you report for this questioning, for periods of time of no more than two hours. And again, I have elected not to sequester you and I'm confident that you will honor the oath that we have administered to you.

In the mean time, should you have any questions concerning this case, we'll ask that you tell one of the bailiffs or the clerk of court.

At this time I'm going to allow you a brief recess. Again, the same instructions apply as it did during our previous recesses. We're gonna take a break for about 15 minutes while we work up the panels and be in a position to assign you to a time to be back.

So, I'll ask you to be back in your seats at 25 minutes after 3:00. Again, do not discuss the case with anyone. Do not allow anyone to discuss it in your presence. If anyone violates those instructions and the instructions that I have given to you, please report that upon your return to the courtroom. I can assure you I take that as a very serious matter and I will treat it as such.

Be back in your seats at 25 minutes after 3:00.

At this point in time we'll take a short recess.

I'd ask that the attorneys and participants in the trial remain seated.

Thank you very much.

(Whereupon, the following takes place outside the presence of the jury.)

THE COURT: Any of those who are with the Solicitor's Office and participants, if you need to go to a restroom, the bailiffs will show you to a jury room if you need to. Just let one of the bailiffs know that. They'll show you where you can go.

(Pause.)

MR. RECKENBEIL: Judge, can we approach a second?

THE COURT: Please do.

(Whereupon, a bench conference was held at this time followed by a short recess.)

THE COURT: All right. Ladies and gentlemen, let me explain a little bit about what's going on at the present time. Your names are in a computer, in the computer here and the computer is randomly selecting names to go on these panels of jurors that will be coming back. We're going to set them up with, with, with times to be here. So, we'll be calling out your names.

It will be your responsibility to take down the time that you're suppose to be here. So, you need to get out a pencil, piece of paper, something to write it down, please

do so. We'll also be giving you a telephone number to call in and check on the status, how it's going. So, be prepared to take this information down as we go so that you'll know when you're expected to be back for your individual discussion with us.

So, if you need to grab something to make a note on, please do.

(Pause.)

THE COURT: All right. Ladies and gentlemen, if I can have your attention. I'm going to, I'm going to call several names and people that I'm calling today will need to stay with us. We'll begin this process this afternoon for these individuals. After that the clerk is going to call out the names of the subsequent panels, assign you a time to be here.

Do they have the phone number to call in?

CLERK: It's on the jury information pamphlet.

THE COURT: All right.

CLERK: They need to call the 596 number.

THE COURT: Beg your pardon?

CLERK: Call the 596 number.

THE COURT: All right. You should have a juror information pamphlet that was given to you. Check to be sure you still have it. There should be some phone numbers on that. The 596 number is the number that you will call in

to get updated information concerning your panels.

I'd suggest, suggest that you call that number, if you're on any of the panels for tomorrow, call that after six o'clock tonight. I doubt they'll be any information there for you. There's a possibility there would be.

So, do you have, have -- does everyone have a jury information pamphlet with the telephone numbers on it?

If anyone doesn't, please stand.

(Jurors respond.)

THE COURT: Anyone else need the pamphlets?

(No response.)

THE COURT: All right. I'm gonna change what I told you about that. Don't call in after 6:00 today. Nine o'clock, be here on time. If you're on a subsequent panel, you can call that number after 8:30 in the morning, 596 number.

All right. The people who are on the first two panels, Panel Number One, Juror Number 209, Richard K. Pack.

Juror Number 204, Neil E. Nichols.

Juror Number 142, Janet G. Hill.

Juror Number 207, Lettie D. O'Neal.

Juror Number 226, Ronald J. Rogers.

That's the first panel.

The second panel that will be staying today, Number 202, Claire E. Myers.

Number 132, Rickie Hardy, Junior.

Number 104, Lynn E. Gilmer.

Number 135, Bradson T. Harrison.

All right. Those individuals will be staying with us today.

BAILIFF: If they come down, Your Honor, we'll put them down in the jury assembly room.

THE COURT: All right. If those jurors will please stand and go with the bailiff here. Come forward please, the ones I just called.

(Jurors comply.)

THE COURT: All right. Now, the clerk will be calling out the names of the subsequent panels. Write down your time and your date.

Mr. Clerk.

CLERK: Tuesday morning, nine o'clock, a.m., Juror Number 124, Kyra M. Gregory.

236, Jennifer A. Scoggins.

61, Marvin L. Clements.

163, Beth W. Kitchens.

Number 3, Kenneth R. Akins, II.

That is Tuesday, nine o'clock, Panel Number Three.

Panel Number Four, ten o'clock.

BAILIFF: If they'll come on down, sir, we'll go ahead and start sending them on down.

CLERK: They're in the morning.

THE COURT: They're for tomorrow.

BAILIFF: But I can tell them where to come back to.

THE COURT: All right. If those people on that first panel will stand. Everybody got their names. Should have five people all up. Follow Mr. Scruggs.

They'll show you where you'll be reporting tomorrow. Nine o'clock.

All right. Call the second panel.

CLERK: All right. Juror Number 251, Susan J. Steiner.

43, Marva M. Bunche.

155.

THE COURT: When your name is called, come forward.

CLERK: Contessa M. Jones.

18, Melissa A. Ballard.

241, William E. Shields.

Tuesday, ten o'clock.

THE COURT: Tuesday, ten o'clock.

CLERK: Tuesday, eleven o'clock.

219, James R. Register.

267, Justin A. Turner.

136, Joshua E. Hayes.

23, Marcella E. Belzer.

101, Benjamin H. Fricks.

Tuesday, eleven o'clock.

Tuesday, twelve o'clock.
187, Anne B. McKinney.
177, Curtis G. Marshall.
108, Sharon B. Glenn.
178, Dorothy W. Martin.
113, Gardenia Goodwin.
Tuesday, twelve o'clock.
THE COURT: Go to two o'clock.
CLERK: Two o'clock.
Tuesday, two o'clock.
Chandis B. Digby, 81.
46, Shoshannah E. Burnett.
71, Hillary K. Crowe.
77, George T. Denny.
204, Kelly N. Norfolk.
Three o'clock, Tuesday.
289, Troy D. Williams.
183, Brooke J. McCombs.
186, Tony D. McDowell.
269.
THE COURT: Come forward please. Let's go.
CLERK: Tiny M. Twitty.
201, Toria A., Toria C. Murray.
That's Tuesday at three o'clock.
Tuesday, four o'clock.

248, Tony M. Solesbee.
105, Andrew W. Gilpin.
109, Linda M. Glugover.
32, James E. Bohart.
Number 8, Evonia Anderson.
Tuesday, four o'clock.
Tuesday, five o'clock.
211, Gregory M. Pappas, Junior.
139, Lee W. Hembree.
149, Dora F. Jackson.
131, William B. Hardin.
210, Tina M. Painter.
Wednesday, nine o'clock a.m.
Juror Number 259, Delores M. Thomas.
Number 167, Annette C. Ledford.
36, Daniel W. Brackett.
198, Bennie W. Morris.
130, Anita Hammerbeck.
That's Wednesday, nine o'clock a.m.
Wednesday at ten o'clock.
Juror 55, Mary H. Cartee.
Juror 66, Geraldine S. Cohen.
111, Thomas H. Goeden.
112, Anne J. Goff.
138, Fred D. Heatherly, Junior.

Wednesday at ten o'clock.
Wednesday at eleven o'clock a.m.
Juror Number 274, Randall D. Wallace.
197, Phyllis G. Moore.
179, Nader E. Marzouka.
156, January L. Jones.
222, Linda F. Rice.
Wednesday, twelve o'clock noon.
Juror 14, Deanna B. Odom.
181, Marty R. McAbee.
225, Yvonne V. Roebuck.
161, Leona B. Kennedy.
147, Amanda Q. Hovis.
Wednesday, two o'clock.
158, Kenneth S. Katrosh or Katrosh. Excuse me.
295, Donald L. Witherstine.
243, Jeffrey W. Siggins.
271, Jack R. Vaughn.
173, Elaine B. Lister.
That's for Wednesday at two o'clock.
BAILIFF: These are two o'clock right here.
CLERK: Wednesday, three o'clock p.m.
196, Charles M. Mobley.
249, Tammy M. McSwain.
229, James E. Rush.

159, Diane S. Keenan.
116, Heather B. Gossett.
Wednesday, three o'clock.
Wednesday, four o'clock p.m.
Juror Number 6, William A. Altman.
Juror 127, Cindy A. Hall.
212, Chasity M. Parr.
298, Kathy M. Woodham.
91, Janis Emplit.
That's Wednesday four o'clock.
Wednesday at 5:00.
Juror Number, 288, Jerry E. Williams, Junior.
65, Cheryl A. Clutter.
146, Carolyn L. Holmes.
169, Linda R. Lee.
118, Jesse T. Green.
BAILIFF: Five o'clock Wednesday afternoon come back.
THE COURT: All right. Those of you whose names were not called, you have the telephone number. You should call in Wednesday morning after 8:30 to the 596 number. If we have need to assign additional panels, your name will be assigned to an additional panel at that time.
Does everybody have a pamphlet with the phone number?
(Jurors respond affirmatively.)
THE COURT: All right. We're going to excuse you at

this time. The bailiff will need to pick up your badge as you start out. Again, call in Wednesday after 8:30 in the morning to the 596, 596 number on the pamphlet and we'll have additional instructions should we need you.

Thank you very much.

(The following takes place outside the presence of the entire jury panel.)

THE COURT: All right. This morning, before we began this process, I met with the attorneys in this, my office. At that time I went over with them several documents. I have been submitted lists of potential witnesses from both the State and the defense. I have placed all of those names in alphabetical order on a sheet. That sheet will be provided to the individual panels prior to their entry into the courtroom for examination. They'll be asked to go over that sheet, to familiarize themselves with the potential witnesses listed thereon.

Also I submitted to counsel, at that time, a sheet, a paper indicating three types of jurors that I would ask the jury members to review prior to the, entering the courtroom.

Have -- the State had an opportunity to review that sheet?

SOLICITOR GOWDY: Yes, sir, Your Honor.

THE COURT: Is there any objection to my submitting that to the jury members before they come in?

SOLICITOR GOWDY: No, sir, Your Honor.

THE COURT: Has the defense had an opportunity to review that sheet?

MR. ALLEN: I have, Your Honor.

THE COURT: Any objection from the defense to that sheet?

MR. ALLEN: No real objection. I'm not sure if I agree with that there's only those three kinds of jurors.

THE COURT: Well, I'm gonna allow you also to ask questions yourselves.

MR. ALLEN: Thank you.

THE COURT: But I have some questions that I'm going to ask that will be keyed to those particular types of jurors, and I'll refer to them. And so, I will make the list of witnesses to be submitted to the jury panels as well as the key to the three types of jurors on it a Court Exhibit. And that will be part of the record.

MR. ALLEN: Yes, sir, that's fine.

(Whereupon, the copies of the witness lists were marked as Court's Exhibit No. 1. The document concerning the types of jurors was marked as Court's Exhibit No. 2. The above exhibits were for identification purposes only at this time.)

THE COURT: All right. Anything else from the State before we begin, begin individual discussions with jurors?

SOLICITOR GOWDY: No, sir, Your Honor. Unless the Court had a preference with respect to whether the State always went first, always went second, or swapped with respect to, to who goes fist, and we'll do whatever you want us to do.

THE COURT: Defense have a preference in that regard?

MR. ALLEN: I don't mind going first.

THE COURT: All right.

MR. ALLEN: The statute gives me---

THE COURT: Any objection?

SOLICITOR GOWDY: No, sir.

THE COURT: All right. We'll allow you to do that.

MR. ALLEN: Thank you.

THE COURT: Anything else, gentlemen, before we begin?

I'm gonna take a short break. We've been going a little while. And so, I'm gonna take a little break, very short, about ten minutes, and then we'll get started with these particular individuals.

MR. ALLEN: Thank you.

THE COURT: Anything further before we take our break?

SOLICITOR GOWDY: No, sir.

MR. ALLEN: No, Your Honor.

THE COURT: We'll be using this courtroom for the initial juror interviews, and we're gonna have to use the jury box closest to the court reporter. I realize there's

another counsel table over here. If you would like to use that for the defense. I don't know your preference as to how you'd like to locate that. During the break, if you'll decide.

But we do have another counsel table over here and -- I'm sure we can get this young lady to move. And you're welcome to use that table. But we'll be using the jury box closest to the court reporter to take down the information.

MR. ALLEN: Yes, sir, Your Honor. I mean we're gonna actually use---

THE COURT: The witness box.

MR. ALLEN: Witness box to this lower level?

THE COURT: Over here, yes, sir.

MR. ALLEN: I think we would like to move so we can have---

THE COURT: All right. So, we'll take about a ten to fifteen minute break. Let me know when you're ready.

MR. ALLEN: Thank you.

(Whereupon, a short recess was taken at this time.)

THE COURT: All right. For the record, I'll have the jury list, one jury list placed in the record as Court's Exhibit No. 1, and the other witness list -- I said jury list. I mean witness list. Another witness list will be marked also as Court's Exhibits No. 1 for use by the juror, jurors. The document indicating the three types of jurors

that I asked them to review will be marked as Court's Exhibit No. 2.

All right. Mr. Humphries, if you'll step around please, sir.

BAILIFF: Yes, sir.

THE COURT: I'll ask that you have the jurors review this list of witnesses, and this one, which is the three types of jurors. We're gonna start with Mr. Pack on the first panel. Have him review that. Once he's completed reviewing those documents, if you'll then pass it to Mr. Nichols for his review, and then Mr. Pack can be brought in.

BAILIFF: Okay.

(Pause.)

RICHARD K. PACK, having been previously sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q Take the stand please, sir. You can be seated.

Mr. Pack, first of all, I want to thank you very much for being with us today. I want to remind you that you have been placed under oath concerning the answers to our questions, and you remain under oath at this time.

Do you understand that, sir?

A Yes, I do.

Q All right. Mr. Pack, we recognize that it's an inconvenience for you to be here today, and this might be a very uncomfortable setting for you. You're not use to being in this position in a courtroom. So, I want to give you some idea of what's gonna happen so maybe you'll feel a little more comfortable about what we're doing here.

What's gonna happen is I'm gonna go over some questions with you concerning some of the issues that are, that are involved in this case, and then the attorneys will be allowed to ask some follow-up questions of you as well.

I want to tell you the questions that we're about to ask you, there are no right answers and there are no wrong answers. What we are simply trying to do is to gather information. We're not here trying to change your opinions or views. We are simply trying to determine what your opinions and views might be toward the, toward the matters involved in this case.

Do you understand what I just went over with you, sir?

A Yes, sir, I do.

Q All right, sir. Now, since we talked a little earlier today, has anybody contacted you about this case or talked to you about this case or have you gathered any information from any other source about this case?

A None whatsoever.

Q All right, sir. Now, have you ever participated in or

been, responded to any blog or any Internet site concerning the death penalty?
A No, sir.
Q Have you ever participated in any demonstration concerning the imposition of the death penalty?
A No, sir.
Q Have you ever attended or been to any rally or meeting where the focus was on the issue of the death penalty?
A I have not.
Q Can you put aside anything that you may have seen or heard previously, previous to this matter and decide this case based upon what you would hear in the courtroom?
Can you do that?
A Yes, I believe I can. Yes, sir, I can.
Q Now, while you were in the room and just shortly ago I gave, I gave you or had the bailiff go over with you a list of individuals who had been listed as potential witnesses in this case.
Did you have a chance to review that list?
A I did.
Q All right, sir. And I'm not gonna ask you, at this point in time, to, to name any names cause I don't want you to name any names.
But having read the list, could you tell me please whether you have had any social, business, or personal

connection with any of the individuals who are listed as potential witnesses in the case?

A No, sir, I have not.

Q All right, sir. Are you related in any fashion, either now or previously, by blood or marriage to any individual that was named as a potential witness in the case?

A No.

Q Now, I'm going to go over a set of questions with you that might be more personal questions about your opinions on certain topics. Again, obviously I'm not trying to invade your privacy by asking these questions. We're just trying to find out how you might feel about some of the matters or, and some of your opinions will be important to us.

I believe and I think certainly you're secure enough in your opinions that you're not going to feel threatened by the questions that I'm about to ask. I want you to understand, again, that we are not trying to get you to change any of your feelings or opinions about any of the matters we're asking about. We're just trying to identify your opinions as best we can.

So, do you understand the process again?

A Yes, sir, I do.

Q All right. One of the things we want to ask you about is the penalty, the death penalty specifically, because that might be an issue in this trial. But understand that the

trial has not yet begun. We haven't started the trial. So, it's really premature to ask about the penalty because guilt has not been determined at this point in time. And as I indicated in my previous discussion with you, the defendant is presumed to be innocent of the charges which are brought against him.

So, the fact that we're talking about the penalty at this stage doesn't indicate anything about him. It is simply the only time that we have to talk with you about that issue before the trial begins.

Do you understand that as well?

A I do.

Q Now, if you were a juror in any criminal case, and I'm not speaking about this case in particular because that wouldn't be proper and that's not what we're trying to do, but if you were a juror in any criminal case, would you be willing to listen to the law as it was instructed to you by the judge?

A Yes, sir.

Q Would you be willing to accept the law and apply it to the facts of the case as you find them to be?

A Yes.

Q Even though you might not like the law, you might even disagree with the law, would you still be willing to follow the law as given to you by the Court if you were instructed

to do that by the Court?
A I would.
Q Now, if you were a juror in this case, State versus Torres, would you be able and willing to set aside any information or knowledge that you might have about the case from any source at all, anything that you might of heard or read or seen about this case outside of the courtroom, or even during the trial, if any information should occur to you in that regard, and decide the case strictly and purely upon what you hear in the courtroom?
Could you do that?
A Yes, sir.
Q Now, sir, as I mentioned to you before, a criminal defendant is presumed to be innocent, and, therefore, he doesn't have to prove his innocence.
Do you understand that concept?
A I do.
Q The State has the burden of proving the defendant guilty beyond a reasonable doubt.
Do you understand that concept as well?
A Yes, sir, I do.
Q Now, if you were sitting as a juror in any criminal case, once again, not this case in particular, but in any criminal case in general, would you be willing to listen to the law and evidence presented to you, and based on those

things, what those things were, and based upon the circumstances, could you find a person not guilty as charged?

A I could.

Q In other words, I, I guess what I'm asking you is do you think that just because someone has been accused of a crime that they must automatically be guilty of that crime?

A No, sir.

Q Now, if the evidence convinced you, beyond a reasonable doubt, that the person was guilty, would you be able to find someone guilty of a crime?

A Yes.

Q If the evidence did not convince you, beyond a reasonable doubt, that someone is guilty, then would you be able to find that same person not guilty?

A Yes, sir.

Q So, you would be able to make up your mind depending upon the strength of the evidence and what the testimony or evidence showed and find a person either guilty or not guilty?

Is that a correct statement of your position?

A It is, yes, sir.

Q Now, let's talk a little bit about the penalty because, again, I told you this is the only opportunity we'll have to do that before the trial actually begins.

Most of the time, in a criminal case, the judge has the duty of deciding the penalty and the jury doesn't have to concern itself with penalties. But in one particular type of case the jury does have to decide the penalty its going to impose. That type of case is one where the defendant, defendant has been accused of murder and the State is seeking to impose the death penalty.

Do you understand that, sir?

A I do.

Q Under those circumstances, if a jury convicts a defendant of the crime of murder, so that guilt has been determined, now that same jury comes back, in a separate sentencing procedure, proceeding and listens to additional evidence and testimony.

Do you understand that from what I had told you earlier?

A Yes, I do.

Q In that separate sentencing procedure, procedure, the only determination to be made by the jury is what type of sentence is going, is going to be handed out. They're only two choices. One is life imprisonment. The other is the death penalty.

Do you understand that situation?

A I do.

Q Now, I want you to put yourself in that situation

theoretically as a juror in a case in which the State is seeking to impose the death penalty. Imagine that you and the other jurors have convicted a defendant of murder, and you are now going to come back into the courtroom to decide the punishment, either life imprisonment or the death penalty.

Do you understand what I've asked you and where I've asked you to put yourself?

A I do.

Q While you were in the jury room, you had a chance, I'm sure, to look over a sheet of paper that I asked the bailiff to deliver describing jurors who were placed in that same situation that I've asked you to place yourself.

Do you remember that sheet of paper I had him show you?

A Yes, sir, I remember.

Q And, and do you remember there were three types of jurors described on that piece of paper?

The first type of juror that I asked you to put yourself in that position, you would be on the jury, you just convicted a defendant of murder, and now you come back to the separate penalty phase and decide what you're going to give.

The first type of juror is the type of juror who, before he ever comes back out into the courtroom for that second penalty phase, already knows how he's going to vote.

He's going to vote for the death penalty every time because he believes that's the most appropriate penalty for someone who has been convicted of murder.

The second type of juror also has in, his mind made up. He knows how he's going to vote before he hears a word. He is going to vote for life in prison because he doesn't think the State should ever take the life of a person in response to a crime regardless of what the crime is. So, he knows already that he's going to vote for life imprisonment every time.

The third type of juror I indicated was someone who doesn't know what he's going to do yet. He doesn't have his mind made up whether he's going to vote for life imprisonment or the death penalty. That juror will have to wait and listen to the evidence and testimony and then decide what to do.

Do you understand those three types of jurors that I described to you?

A Yes, sir.

Q Now, which one of those jurors do you believe best describes you in that situation?

A I believe that the third one would.

Q Now, under those circumstances, keeping in mind that a defendant is already been found guilty of murder, and the issue of guilt is no longer a concern, would you be willing

to listen to the facts and the evidence, and if the evidence justified it, would you be willing to sentence to, someone to death?

A Yes, sir.

Q And if you thought the facts and evidence did not justify a death penalty, or for any other reason, would you be willing to sentence someone to life in prison?

A Yes.

Q So, you could sentence someone to either life or you could sentence someone to death depending on the facts and circumstances shown to you in the second phase of the trial?

A Yes, sir.

Q Now, finally, if you were asked to serve as a juror in this case, you would be housed in a local motel for the duration of the trial, which would last about a week once we start the actual trial of the case. And obviously all of the cost will be paid for by the county. So, those costs would not be a concern to you. However, it would keep you away from your family, and your employment for that period of time, for about the one week period. I know that would be an inconvenience for you, and it would, as it would be for anyone who is asked to endure that type of service.

Other than the inconvenience, would that pose a serious risk or danger to your health or well being?

A No, sir.

Q Would it, that pose a risk or serious danger to the health or well being of anyone who depends upon you?
A No, sir.
Q I want to thank you very much for your answers to my questions, the things that I've gone over. The attorneys may have some questions of you at this point in time. I believe the defense is going to go first.
Mr. Allen.
MR. ALLEN: Thank you, Your Honor.
EXAMINATION
BY MR. ALLEN:
Q Mr. Pack, as I said earlier, my name is Clay Allen and I, along with Mr. Reckenbeil and Mrs. Hodges are defending Tony Torres.
Okay. I know it's been a long day, and I want to take a few more minutes of your time if you don't mind.
Have you heard or read anything about this particular case or---
A Yes.
Q Okay. Can you tell us what it is that you've heard or you've read?
A I've read the story that was in the Spartanburg Herald-Journal yesterday evening.
Q Okay. That would be yesterday's Sunday paper?
A Yes, sir.

Q Okay.
A Actually we were out of town for three days. I -- it was -- I, I think that was -- it was yesterday's paper. It was one that I saw last night and I assumed it to be yesterday's paper.
Q Okay. Was it the -- you actually read the newspaper and not on-line?
A That's correct.
Q Okay. Was it the -- was it an article that was on the first page of the newspaper?
A It was.
Q Pretty big, pretty big headlines?
A Lower right-hand corner, probably one column wide, yes.
Q All right.
A But it was, it was bold print and it was on the front page, yes.
Q Did, did you read the whole article, sir?
A I did.
Q The continuation of the article into the interior pages---
A Yes, sir.
Q ---or the interior page I think.
Did you happen to see anything else in connection with this case like on the news or anything?
A No.

Q Okay. Can you tell me about your feelings from having read that article yesterday?
A Yes, I, I can.
Q Okay.
A I remember reading that Mr. Torres had been convicted of a number of other crimes since the Year 2000. That's the thing that I remember most.
Q Yes, sir.
Okay. And can you, can you tell me why is it that that stands out in your mind the most, sir?
A Sure. Anyone who has -- to me, anyone who has been convicted of a number of crimes, has established a pattern for social deviance if they're criminal cases.
Q Okay.
A And so, that's something that just stood out to me.
Q Okay. And -- well, how does that make you feel right now as a potential juror in this case?
A It, it makes me feel like I am going to have to be very careful about my deliberations with regard to the evidence that's presented here.
Q Okay. And when you say be very careful -- and I know I keep asking these same words over or throwing these words back at you.
A I know.
Q I don't mean to be. But I'm just trying to make sure I

get a clear understanding of what it is, of how, how you feel.

A Well, I feel somewhat negative.

Q You feel somewhat?

A Negative.

Q Negative?

A About the, Mr. Torres having read the article.

Q Okay.

A But at the same time, I would like to believe that if a member of my family were in the same position, that whoever were in my position would be willing to listen to the facts of the case --

Q Okay.

A -- in, in order to make a decision.

Q All right. All right. I, I, I appreciate your comments, sir.

When you say that you feel somewhat negative towards Mr. Torres, I mean are you looking -- and I don't want to put words in your mouth. So, if you disagree with anything I say, please let me know.

But are you looking at Mr. Torres or the defense team in trying to prove anything to you, for example?

A No, sir, I am well aware that one of the foundations of this process---

Q Uh-huh. (Affirmative).

A ---is that he is innocent until these people prove him to be guilty.
Q Okay.
A And I would approach the case with that in mind.
Q Okay. Thank you.
One second.
(Pause.)
Q And, of course, do you understand that what's in the newspaper is not evidence in this courtroom?
A I do.
Q Okay. And that anything that the news article said would have to be --
A Disregarded.
Q -- disregarded?
A Yeah.
Q Do you feel like you could do that even though those facts stand out in, in your mind most?
A Yes, I do.
Q Okay. Now, I noticed in your answers to the questionnaire -- oh, before I leave the news business, do you recall reading anything about this case back in May of last year when --
A No.
Q -- this, this case---
A No, I don't.

Q Having read the news article, I mean it might of brought back memories and it didn't?
A No, it didn't.
Q Okay. Or you didn't see anything on the news shows about this case back in May of '07?
A I, I can't tell you whether I did or not. But it didn't bring anything back to mind at all.
Q Must not have stayed---
A No.
Q Must not of been in your mind then?
A No, my, my wife said I can't believe you don't remember this. But other than that, no.
Q Okay. But was there anything else that your wife said about this case?
A No, sir.
Q Okay. She knew obviously you were coming down here to be a juror today, right?
A She did.
Q Okay. Now, I noticed, in the answers to your questionnaire, and I don't mean to get too personal, but unfortunately we do have to ask some of these questions, that, that, that you were under a physician's care for some sort of a, the -- was it a heart problem?
A I had a sinus, persistent sinus infection, yes, and have an appointment Thursday morning with a specialist. If

that's---
Q Okay.
A That's the issue.
Q But you're not under any kind of medication?
A I'm sorry. Yes, I, I do take heart medication for an arrhythmia that I have had.
Q I'm not familiar with, with that condition, but I mean does it, does the medication affect you, in any way, as far as in your mind or your emotions or anything like that---
A No, sir.
Q ---that you can tell?
A No, it doesn't.
Q All right. Sir, I want to thank you for your answers so far, and I want to reiterate what His Honor has already told you that there is no right or wrong answers in anything we ask. I'm not asking you to say anything or, other than how you really feel or what's the truth as it relates to you.

Okay?
A All right.
Q And, and I do appreciate your answering my questions along these lines.

But as you know, Tony has pled not guilty and we have to go through the first phase of the trial, which is the phase where the State, as you indicated, has to put up their

evidence to, in their attempt to prove him guilty beyond a reasonable doubt. And even though I've got to talk to you about your views on the penalty phase, I don't want to leave you with the impression that we're conceding anything on, on the first part.

You understand that?

A Yes, sir.

Q Okay. But I want to take you forward a little bit and suppose that, if you were selected for the jury, that you and your other 11 jurors has found an individual guilty of murder, and that you have found him guilty beyond a reasonable doubt. Now, I want you to understand what I mean when I say the word murder. I'm talking, in general, about a willful or intentional killing of another person with malice aforethought, that the action was wrongful.

It was unlawful. There was no self-defense. There was no accident. A person was not insane. You know, the defendant, for example, was not insane. It was no provocation, was not provoked.

In other words, there's just no legal excuse of this person, for, for doing it. And that by your, the jury's finding of guilt, guilty of murder, they're saying that there's no question that he did it, and there's no question but that he intended to do it, and that he is responsible for it.

You understand what I'm trying to get to?
A Yes, sir, I, I think premeditation is the word that enters my mind.
Is that the picture that you're painting?
Q That's the picture I'm painting, yes, sir. Malice aforethought is the way the law defines it.
My question to you is---
SOLICITOR GOWDY: Your Honor, I hate, I hate to interrupt. But from a legal stand point, there's a very big difference in premeditation and malice aforethought, and I don't want to leave this juror with the wrong impression.
THE COURT: Mr. Juror, the solicitor's making the point, under South Carolina law, that what is required is malice aforethought for someone to be guilty of the crime of murder along with the other, other elements, the wrongful, the unlawful taking of someone's life. Now, that means that phrase -- malice aforethought simply means a depraved heart, someone who is bent on mischief or doing a bad or evil deed, and that only has to exist a, for any period of time, no matter how brief, before the killing takes place. Premeditation, quite often, in, in most legal means, phrases, means that someone may of thought about it or planned it for a long period of time. And under South Carolina law, the test is malice aforethought. Not necessarily premeditation. You probably heard that on TV or

in books you've read or something of that nature.

And is that a correct statement of the law, Mr. Allen?

MR. ALLEN: Yes, Your Honor. I was trying---

THE COURT: Okay.

MR. ALLEN: ---to get to that.

THE COURT: So, I wanted to make you aware that South Carolina, to find someone guilty of murder, simply means that you found that they unlawfully or wrongfully took the life of another person with malice aforethought. That means a depraved heart or a heart bent, bent on mischief for any period, ever so brief, before the killing occurred.

You understand, sir?

WITNESS: Yes, I do and thank you for clearing that up.

THE COURT: Okay. You may proceed, Mr. Allen.

MR. ALLEN: Thank you.

Q And along with, again, what the judge, the judge has told you about malice aforethought, and the distinction between that and premeditation, and we're also to the point where the jury is found the individual did not act in self-defense, like I said, was not insane, was no accident. There was no legal provocation which would reduce something down to, for example, to a, to a manslaughter. It was murder.

Okay?

A Yes, sir.

Q And my question is that, under this type of scenario, do you have in your mind a, what would be the only appropriate punishment or do you have in your mind what would be the only appropriate punishment?
A No, I don't.
Q Okay. You could, for something, for that type of murder, you could see yourself voting for life imprisonment?
A Yes, frankly I feel like any of us are capable of anything at any moment. That's why I appreciate the differentiation between premeditation and malice aforethought.
Q Okay. So, it would -- so, if I understand you correctly, then a, you would think or that you could think that, depending upon all the facts and circumstances, but for the, for the type of crime I've tried to explain and define to you, that life without the possibility of parole could be the appropriate punishment?
A Yes, sir.
Q Now, in cases such as these, there is more to it. Okay. I want to talk again about the same type of murder that I mentioned to you before.

Suppose that you and the other 11 jurors have unanimously agreed that an individual is guilty beyond a reasonable doubt of murder. Again, as we have explained it to you. Again, no self-defense, no accident, but an

unlawful intentional killing of another person with malice aforethought. And let's say that the State can also prove that that murder was done, for example, in the course of an armed robbery or a burglary in someone else's home or that two people were killed at pretty much the same time, in the same act, or that murder was committed while that person was also committing what's called a criminal sexual conduct.

Do you know what I mean by that?

A Yes, sir.

Q Okay. Do you think that the death penalty is the only appropriate punishment for that type of guilty murder?

A No. And that I back up to the statement that I made a moment ago.

Q Okay.

A I, I feel like when somebody is doing something wrong, that they don't necessarily intend to kill someone, but for a multitude of different reasons would be capable of it---

Q Okay.

A ---at any fleeting moment---

Q But if you understand, sir, that when we're talking about murder, that's an intentional killing of another individual.

A I, I do understand that it's intentional at the moment that it's done, yes, sir.

Q Okay. And you could see yourself voting for life

without the possibility of parole under that second scenario?
A Yes, sir, based on the evidence presented.
Q Okay. When you say based on the evidence presented, what do you have in mind?
What, what are you talking about?
A Well, I'm just -- like I said, if an individual intended to commit a crime, a burglary, a robbery, a sexual act, and began with no intentions of murder, and then, for whatever reason, fear of being caught, whatever, on an impulse, committed murder, I, I feel like that I could, could conceivably vote for life imprisonment as opposed to the death penalty. Whereas if he had premeditated a murder, if he intended to do it, if he had thought about it for, for a period of time in advance, I would, I think I would vote for the death penalty in that situation.
Q Okay. When you say thought about it for a time in advance, do you have any particular time in, in mind or --?
A Not really.
SOLICITOR GOWDY: Your Honor?
THE COURT: Just one second, sir. I have an objection.
SOLICITOR GOWDY: Your Honor, I, I, I object. He is and has been staking out this juror for some time now.
THE COURT: The questions are becoming very specific about factual situations as well as aggravating

circumstances and I'm gonna sustain the objection.

Let's move on.

MR. ALLEN: Yes, sir.

Q Would you be able to consider, in making up your mind about the appropriate penalty in a murder case, the murder case of the second type that I've explained, with those, those accompanying additional circumstances, I want to ask you if you could consider what's called mitigating circumstances. I want you to understand that when I'm saying mitigating circumstances or mitigating evidence, I'm not talking about something that would rise to the level of a defense.

You know what I mean by that?

A I'm not sure. You may need to set the whole scenario up for me again.

Q Okay. All right. A defense, roughly speaking, is a, is some facts that's a legal reason to find someone not guilty of a crime. Okay. Such as self-defense. Okay. Or insanity, something like that. If those levels are reached, that's called a defense. Some reason to find an individual not guilty of the crime. In this case, we're talking murder.

But when I'm talking about mitigation or mitigation evidence, we're not talking about an excuse for murder. But we're talking about anything, that in fairness or in mercy,

would support some sentence other than death.

Okay. It can take different forms. Background of, of the individual that was found guilty of murder or mentality or the age or things along that line. Whether or not the person had some sort of emotional mental problems.

Do you kind of get the idea of what I'm talking about?

A Yes.

Q It doesn't rise to the level of a defense to, to find someone not guilty, but just some additional information about the individual who was found guilty of murder.

Okay. Do you, do you think or can you see yourself considering that kind of evidence in determining an appropriate sentence?

A Yes.

Q Is there a kind of a murder case where you would automatically find someone or impose a death penalty?

A Yes.

Q As the only appropriate punishment?

A Yes.

Q Where you would not even consider life?

A Yes.

Q Can you tell me about that?

A Well, that would be the one that we had discussed that involved premeditation. If someone went home and decided that they were gonna kill somebody, they had planned, and

they then executed, in great detail, the killing of another human being for their own enjoyment.

Q Okay. And, again, if, if I understand you correctly, then that, in a case such as that, you would not even consider the additional information such as mitigation evidence?

A That's correct.

Q I mean that's not important to you on that kind of case?

A That's correct.

MR. ALLEN: One second please, Your Honor.

THE COURT: Yes, sir.

(Pause.)

Q I want to thank you, sir, for your responses, and, of course, a lot of what we're asking you are just matters of opinions. Specifically your personal opinion. I want to thank you for sharing that with us.

Of course, there are many different opinions as I guess you know, right?

A Sure.

Q And, of course, everyone has the right to have their opinion respected.

Would you agree with that?

A Yes.

Q Okay. And if you were selected for the jury, then you

and the other jurors would come together and you would share your opinions as to how you view the facts of the case and the evidence, right?

A Yes.

Q And you could discuss that with respect to other person's opinions like you would like your opinion heard and respected by the other jurors, right?

A Exactly, yes.

Q Okay. Thank you, sir. I have no other questions.

THE COURT: Mr. Gowdy.

SOLICITOR GOWDY: Your Honor, may it please the Court.

EXAMINATION

BY SOLICITOR GOWDY:

Q Good evening, Mr. Pack.

I want to thank you for your thoughtful answers not only to the defense attorney but also to the Court and the questionnaire that you filled out for us, which was very helpful. I will be much briefer.

If I understood you correctly, you would be able to put aside whatever you may or may not have heard about Mr. Torres in the guilt phase and give a fair verdict based on only the evidence that you hear in this courtroom?

A That's correct.

Q And in the penalty phase, you would listen to what the defense said, if anything, and listen to what the

prosecution said and you would decide, based on that, whether or not the proper verdict was life or death?
A Yes.
Q You could give both verdicts?
You could give life if you thought that was right?
A Right.
Q You could give death if you thought that was right?
A Yes.
Q And you would have to hear the evidence and do what you thought, in your judgment, was the correct verdict?
A Yes.
Q Thank you.
THE COURT: Anything further from the defense?
MR. ALLEN: No, Your Honor.
THE COURT: All right. Mr. Pack, at this point in time we're going to excuse you. I would like to be sure we have a way to get in touch with you from the Clerk's Office.
Do you have a number that you can be reached?
Is it correct on your answers, the information you've given us already?
WITNESS: I'm sure it is, yes, sir.
THE COURT: Okay. Any other numbers that you could be reached at or any way we could get in touch with you?
WITNESS: My cell number if you would need it.
THE COURT: All right, sir. I'm gonna tell you now

that you have not been selected to serve on the jury at this point in time. We're still in the qualification process. We will be in touch with you, in the not too distant future, to let you know when to report back here if that's necessary.

Do you understand that, sir?

WITNESS: I do.

THE COURT: And I will tell you that if you come back to the courthouse for jury selection, which will occur at another time, you will need to be prepared to stay for the duration of the trial.

Do you understand that?

Bring with you the things that you'll need to be able to do that.

WITNESS: Yes, sir.

THE COURT: You understand that as well?

WITNESS: I do, yes, sir.

THE COURT: All right, sir. Thank you very much. You're free to go at this time.

WITNESS: I do need to ask a question.

THE COURT: Yes, sir.

WITNESS: Since you will be contacting me, does that mean that I need to stay around the house or can I go to work or not?

THE COURT: Well, do you, do we have a work number for

you?

We just will need to know how to get in touch with you.

WITNESS: Yes, you do.

THE COURT: Okay, sir.

WITNESS: You do indeed have a work number and I'll make sure you have my cell number.

THE COURT: All right. Thank you very much.

WITNESS: Thank you.

(The following takes place outside the presence of the juror.)

THE COURT: Gentlemen, I intend to go through the first panel, and then we'll discuss the ones who are qualified and who are not qualified at that point in time and give you a chance to argue that.

Yes, Mr. Solicitor.

SOLICITOR GOWDY: Yes, sir, Your Honor, and I don't want to and don't think I should have to interrupt defense counsel when they're voir diring the jurors. But he asked hypotheticals, which I, I suspect he knows he can not do. He used the specific aggravating circumstances which are at issue in this case which he knows he can not do. He, he gave a, an incorrect definition of murder. It is not an intentional killing. It is an unlawful killing. And he kept using the phrase types of murder.

There are not any types of murder in South Carolina.

It is murder. I understand some lead way needs to be given. But to use the specific aggravating circumstances in a hypothetical to a juror is just wrong.

THE COURT: All right. Mr. Allen, I'll be glad to hear from you on that.

MR. ALLEN: Your Honor, it's been my experience in a lot of these, or not a lot of these, but in other cases where I've seen voir dire, that many times jurors are thinking in terms of manslaughter when we're asking them about murder. They're thinking in terms of manslaughter, self-defense. I can't tell you the number of times I've heard others and myself ask, having ask jurors can they consider life in a murder case, and, of course, they say yes. And given -- ask them to give an example and the first example comes back as, you know, well, in the case of self-defense.

I'm tot trying to insinuate that there are types of murder. But I'm, I'm trying to get it clear as to what it is we're trying to talk about so that they do not mistakenly think we're talking about a murder one or murder two or whatever they've heard it on television or for, or any other type of homicide.

I can try to avoid using the word types of murder. But what I'm trying to get to them is I'm trying to, to explain what murder is, and taking out certain things that it is not

involving such a self-defense and insanity and accident so that we have a clear understanding of how the juror really feels about murder. And that's what I'm intending to do.

And furthermore, I'm also trying to explain to them aggravating circumstances and, by, by adding certain things. And now, granted, these are part of the aggravating circumstances they put us on notice for. And I'm not trying to get them to, to consider. But I -- but we do need to know how they feel about these certain forms of or how they feel about aggravated forms of murder. And when I say aggravated, I'm talking, in South Carolina, death penalty qualified.

And I believe I have the right to, to ask them about how they feel. I know about murder and their propensity as to whether or not they believe the death penalty is the only appropriate punishment. But also how they feel about whether or not the death penalty is the only appropriate punishment for death penalty qualified murders in the State of South Carolina. I believe Morgan versus Illinois gives us this lead way.

THE COURT: Which case was that?

MR. ALLEN: That would be United States Supreme Court case of, excuse me, Illinois versus Morgan. That if the juror is substantially impaired in his or her ability to meaningfully consider or give effect to -- that goes more to

the mitigating factors.

THE COURT: Yes, sir, that case had to do with mitigation. I don't think that case had to do with the aggravating circumstances.

MR. ALLEN: Yes, sir, but I believe that -- one second.

THE COURT: Yes, sir.

(Pause.)

MR. ALLEN: Morgan dealt with, as the Court has corrected me, on mitigation factors, and, and I think they're talking about whether or not we have a right to inquire about certain specific factors in the defendant's particular case so that we know whether or not the juror can meaningfully consider the defendant's case. It would stand to reason we should be able to also know whether or not a juror believes that in, automatically, in that, whether or not the death penalty is the only appropriate punishment if certain aggravating factors were existing or---

THE COURT: Well, my understanding of the law in this state is that, that, that in order to get to the question of the death penalty or not, the State has a duty of proving an aggravating circumstance to go along with the murder.

SOLICITOR GOWDY: Yes, sir.

THE COURT: And, and so, I don't see how going into the individual aggravating circumstances is any different than going into the individual mitigating circumstances. The

true inquiry here is whether or not a jury can set aside any beliefs or anything that he has outside of the courtroom and whether he can follow the instructions of the Court and follow the law in regard to these cases.

I don't know though that that requires an examination of each juror as to their specific belief as to each specific aggravating circumstance or each specific, specific mitigating circumstance. I haven't seen a case that indicates you have a right to go into that specifically, and especially asking questions that apply, what appears to be, specifically to this case.

Now, if you have something, I'll be glad to listen to it. I mean you're not allowed to stake out a juror on, on specific issues involved in this case. It's the way I understand generally the rules work.

MR. ALLEN: But -- yes, Your Honor. I mean I understand we're not allowed to stake out a juror on particular facts. I'm trying to keep it as general as possible, but at the same time---

THE COURT: Well, I think though that your questions are getting to the point where it seemed to me that that might be where we were heading.

MR. ALLEN: Well, I'm having a difficult -- I mean it's a difficult---

THE COURT: Of course, I didn't break in either. I

allowed the State to object when they wished to object, and he did, and I, of course, sustained one of the objections that occurred.

MR. ALLEN: But, I mean -- yes, Your Honor, I understand that. And while I'm not trying to stake out the facts of this particular case, but I think that we are entitled to know whether or not the jury -- and I think---

THE COURT: Well, I think, you know, when I, when I discussed it with the jury earlier, I indicated that, that, of course, mitigating circumstances are circumstances that tend to lessen the severity of the offense for which someone has been -- and, of course, aggravating circumstances would be the opposite. If there were circumstances that made it appear worse than just a murder. You could ask them if that would be a factor they can consider.

But then to start specifically asking about specific aggravating circumstances that apply to this case, appears to me we're staking out a juror.

Is that the argument that you're making?

SOLICITOR GOWDY: Your Honor, Morgan, Morgan versus Illinois, as the Court cited, does deal with mitigating circumstances. And even that case teaches that you have to bundle the mitigators together. You can't go item by item and say would you consider this specific one. It only stands to reason that you would not be able to do that with

aggravators. And even if you could, to use the four aggravators that exist in this case, is a, is a striking example of, of staking out a juror. To use burglary, armed robbery, and CSC, which are four of the six alleged in this case, it is staking out and you can't do it with mitigators. You certainly can't do it with aggravators.

And with respect to types of murder, Your Honor, I will concede there are types of homicide. There are not types of murder. And if he wants to make the point that somebody who kills in accident won't get the death penalty, if he feels the need to do that, then types of homicide or types of killing, but there aren't types of murder. And to suggest that there are is an incorrect statement of the law.

This juror was confused about premeditation, and I don't blame him for being confused. But I, I just---

THE COURT: Well, of course, again, the issue I think, Mr. Allen, is whether or not he can take the law as given to him by the Court, which, of course, I will instruct concerning the issues of, of murder and the aggravating circumstances at the appropriate time.

MR. ALLEN: Yes, sir.

THE COURT: I've not done that at this point in time obviously because they haven't been selected to be on the jury and that's not the appropriate time to do that. And so, the question, again, the general purpose here is to

determine if someone can follow their oath as a juror, apply the law as given by the Court, determine the facts from the evidence in the case, and have an open mind as to the verdict both in the guilt phase and the penalty phase.

MR. ALLEN: I guess my concern, Your Honor, is that even -- and as the Court's aware, that there's been a good bit reported on this case, and some of the---

THE COURT: Well, I didn't limit -- we're not talking about you going into the reports and what effect. I don't think he's objecting to that.

SOLICITOR GOWDY: No, sir.

MR. ALLEN: But some of those reports talk about the very aggravators, aggravating circumstances that the State's alleged. You know, the murder of two people in their home. I think reports last night did talk about the fact that he was charged with criminal sexual conduct, you know, and that type of thing.

Now -- and I believe that Morgan and other United States Supreme Court cases talk about that. We can ask -- and I don't mind bundling them together. I'm not trying to stake out to find out if one particular thing is worse than the other for this witness. I'm trying to get him to understand what aggravating circumstances so that we can find out if he can truly and fairly consider both penalties.

If, for example, he thinks, any witness thinks well, in

a double homicide, they automatically have to give the death penalty, and we're not allowed to ask or to throw that out as one of the mitigating or one of the aggravating circumstances---

THE COURT: Well, I, I am -- I'm just -- we need to cut this off or we'll be talking about this the rest of the evening. I will tell you that it's the Court's position that you should not use specific instances of both aggravators or mitigators. They should be talked about in general terms. I think that follows not only the letter of Morgan as far as the mitigators, but the spirit of Morgan as far as the aggravators.

So, I'm going to -- there's not an objection on the floor at this point in time. But I will tell you I will entertain objections, if you go beyond that, asking specific questions about specific aggravators or mitigators. That's what I believe is the spirit of that decision and, and that's the way we'll go. And we're not going to allow you to stake out a witness on particular issues involved in this case. I won't let you go there.

And, of course, I don't know what your questions are gonna be on the next one. He can raise whatever objections he wishes to as they, as we go along. But that's the position of the Court in regard to the matter.

MR. ALLEN: Yes, sir.

THE COURT: All right. Bring in Mr. Nichols.

(The following takes place within the presence of the juror.)

NEIL E. NICHOLS, having been previously sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right, sir. Your name is Neil E. Nichols, is that correct?

A That's correct, judge.

Q All right. Mr. Nichols, I'm gonna remind you you were placed under oath some, excuse me, some time ago to answer my questions truthfully, honestly, and completely. And I'm just reminding you you're still under oath for purposes of our discussion at this time.

Now, sir, I want to go over just a little bit about what this phase is about and, and what we're going to go over with you at this time. It is not our purpose, at this point in time, to try to, in any way, make you change your opinions about any matters. It's simply a, a process by which we are going to attempt to discover your opinions on certain things.

I will tell you now that there are no right answers and there are no wrong answers to what I'm going to go over with you at this point in time. So, we're simply here to gather

information about you and the opinions that you might have that would be relevant to this case.

Do you understand what this is about?

A I do, Your Honor.

Q Now, sir, in, in -- I don't want you to feel uncomfortable, and certainly we're not trying, in any way, to change the opinions you may already have in connection with this matter.

Now, since we talked earlier, while you were in the courtroom, has anyone talked to you about any matter in this case or have you gathered any information outside of the courtroom concerning this case?

A I have not, Your Honor.

Q All right. Now, sir, have you ever participated or responded to any blog or any other Internet location concerning issues involving the death penalty or death penalty cases?

A No, sir.

Q Have you ever participated in any type of demonstration or other political activity concerning the imposing of a death penalty in any case?

A No, sir.

Q Are you able to put aside anything that you may have heard or read or seen previously and decide this case based upon what you would hear in this courtroom?

In other words, the evidence and the law as given to you by the Court.
A I can, yes, sir.
Q Now, sir, while you were waiting, you had a chance to look over a list of potential witnesses in this case. I'm going to ask you some questions about that list of potential witnesses. I'm not gonna ask you to identify any of those individually. I don't want you to do that at this time. But I do generally want to ask you about your knowledge of or your relationship to any of those people listed as witnesses.
Do you understand that?
A Yes, sir.
Q And did you have an opportunity to review that list?
A I did, yes, sir.
Q All right. Now, sir, having read the list, can you tell me whether or not you have any social, business, or personal connection with anyone's name that you read listed on that list as potential witnesses in this case?
A I do not.
Q All right, sir. Are you related, in any manner, either by marriage or formerly related by marriage or blood, to any individual that was listed as a potential witness in this case?
A No, sir, Your Honor.

Q I'm going to ask you now some more personal questions about your views, questions concerning certain topics. And again, I'm not attempting to invade your privacy. We're just trying to find out your opinions concerning some things and matters that might be involved in the trial of this case.

It's my belief certainly that you're secure enough in your own personal beliefs not to feel threatened by these questions, and certainly I want you to understand that we're not trying to get you to change your opinions on any of these subjects. We're just trying to understand your opinions.

Do you understand that?

A I do, yes, sir.

Q All right, sir. Now, sir, one of the things we want to ask your opinion about is the penalties that might be involved in this case, and, specifically, the death penalty. We've already talked about that when the jury was in here in the, the full body because this might be any issue that could come up in the trial.

Understand the trial has not yet begun. So, it's, it's, it's somewhat premature to talk about the penalty. However, this is the only opportunity that we'll have to talk to you about this before the case actually begins.

Do you understand that, sir?

A Yes, sir.
Q Now, Mr. Torres is presumed to be innocent of the charges against him, and the fact that we're talking about the penalty at this early stage doesn't indicate anything about him. It's just necessary that we do this prior to the selection of a jury.
Do you understand that as well, sir?
A Yes, sir.
Q Now, if you were a juror in any criminal case, and right now I'm talking about this case, I'm talking about any particular case, because it wouldn't be proper for me to talk about this particular case, but if you were a juror in any criminal case, would you be willing to listen to the law as you were instructed by the judge?
A Yes, sir.
Q Would you be willing to accept the law, as instructed by the judge, and apply it to the facts as you find them to be?
A Yes, sir.
Q Even though you may not like the law and you might even disagree with the law as given by the Court, would you be willing to follow the law if you were instructed to do that by the Court?
A Yes, sir.
Q Now, sir, if you were a juror in this case, The State

versus Torres, would you be willing and able to set aside any information or any knowledge that you might have about this case which was gathered previously by you from any source at all, anything you might of heard, read, or seen about this case outside of the courtroom, would you be willing to set that information aside if you were selected as a jury, juror in this case?

A I would.

Q And then would you be willing to decide the case purely upon the evidence that you hear in the courtroom?

And evidence is the sworn testimony of witnesses who will testify during the trial and whatever comes in through that testimony.

A I will.

Q Now, as I've mentioned to you on a couple of occasions now, a criminal defendant is presumed to be innocent, and, therefore, he does not have to prove himself innocent of any crime.

Do you understand that?

A Yes, sir.

Q The State has the burden of proving a defendant guilty beyond a reasonable doubt.

Do you understand that concept as well?

A Yes, sir.

Q Now, if you were sitting as a juror in any criminal

case, again, I'm not talking about this one, but in any criminal case, would you be willing to listen to the law and evidence presented to you, and based upon what those things were, and based upon the circumstances, could you find a person not guilty as charged?

A Yes, sir.

Q On -- in other words, do you think that just because someone is accused of a crime that they must automatically be guilty of that crime?

A No, sir.

Q Now, if the evidence, evidence convinced you, beyond a reasonable doubt, that the person was guilty, would you be able to find someone guilty of a crime?

A Yes, sir.

Q If the evidence did not convince you, beyond a reasonable doubt, that someone is guilty, then would you also be willing to find that person not guilty?

A I could, yes.

Q Now, you're telling me then that you would be able to make up your mind depending upon the strength of the evidence, and what the testimony and the evidence showed and find a person either guilty or not guilty, is that correct?

A That's correct, yes, sir.

Q Now, let's talk about the penalty that might be imposed for just a minute.

Most of the time, in a criminal case, I will tell you that the judge decides the penalty to be imposed upon any defendant who is found guilty of that crime. The jury generally does not decide penalties in a criminal case, but in one particular type of case, that is a case where murder has been alleged and the State has sought the death penalty, then the jury has to decide the penalty that's going to be imposed in that type of case.

Do you understand that concept, sir?

A Yes, sir.

Q Under those circumstances, if a jury convicts a defendant of the crime of murder so that guilt has been determined, that same jury has to come back in a separate sentencing proceeding and listen to additional evidence and testimony.

Do you understand that that's what would occur?

A Yes, sir.

Q Sir?

A Yes, sir.

Q All right. Now, in the separate sentencing proceeding, the only determination to be made by the jury is the type of sentence that's going to be implied, applied or handed out. They're only two choices in that particular case. One is life imprisonment. The other one is the death penalty.

Do you understand that situation?

A Yes, sir.
Q Now, I want you to put yourself in that situation theoretically. As a juror in that case in which the State, State is seeking to impose the death penalty, and imagine that you and the other jurors sitting on the case have convicted a defendant of murder. You're now going to come back and decide the penalty to be imposed, either life imprisonment or death.

Now, do you understand the situation that you're in?
A Yes, sir, I do.
Q Now, I believe I gave you a sheet in the jury room and gave you a chance to look at the three types of jurors that could, could be in that situation, is that correct?
A That's correct, yes, sir.
Q The first juror was someone who, when they came back into that jury room, has already decided that if someone is convicted of murder, that they have already decided the penalty that they're going to give and that would be the death penalty. That's the first type of juror and that's the most appropriate penalty that that juror believes exists.

The second type of juror that we've described is someone who's also made their mind up in how they're going to vote. That person has decided that they will vote for life imprisonment because that juror doesn't believe that

the State has the right to ever take a life of a person held responsible for a crime regardless of what the crime is. So, he knows that he's going to vote for life imprisonment every time.

The third type of juror doesn't know what he's going to do yet. He doesn't -- he hasn't made his mind up as to whether he is going to vote for life imprisonment or vote for death. He will have to wait and listen to the evidence during the penalty phase of the trial and the testimony and then decide what penalty is appropriate.

Now, do you understand the three types of jurors---

A I do, yes, sir.

Q ---that I described to you?

A I do.

Q Now, of those three types of jurors, which one do you think best described you if you were in that situation?

A Number three.

Q Now, under those circumstances, keeping in mind the defendant is already been found guilty of murder and that issue of guilt is no longer a concern, would you then be willing to listen to the facts and the evidence, and if the evidence justified it, would you be willing to sentence someone to death in that situation?

A I would.

Q And if you thought the evidence and the facts did not

justify a death penalty for any other reason, would you be willing to sentence someone to life in prison?

A Yes, sir, I would.

Q So, you would sentence someone to life or you could sentence someone to death depending on the facts and circumstances shown during that phase of the trial, is that correct?

A That's correct, yes, sir.

Q Finally, if you were asked to serve as a juror in this case, you would be housed at a local hotel for the duration of the trial. We expect the trial phase of the case to probably take about a week in length of time. During that period of time, all the costs and expenses will be paid by the State. You would not have to pay for any of your living expenses or cost during that time. However, that would keep you away from home and your family and friends and I know that would be an inconvenience to you and as it would be to anyone who would be put in that situation.

The question I have for you, if you were put in that situation, would that situation impose a serious risk of danger to your health or well being?

A No, sir, it would not.

Q And would it put anyone who's dependent upon you at risk to their well being if you were required to be sequestered for that period of time?

A No, sir.
Q Now, I want to thank you for the answers to my questions. We're going to allow the attorneys to ask some questions about the case as well of you. I believe the defense will be going first.
Mr. Allen.
MR. ALLEN: Thank you, Your Honor.
EXAMINATION
BY MR. ALLEN:
Q Good evening, Mr. Nichols. I'm -- again, I'm Clay Allen, and I, along with Mr. Reckenbeil and Mrs. Hodges, represent Tony Torres in this case.
A Right.
Q I know it's been a long day. But I've got to ask you a few questions about your feelings. And, again, let me remind you that there's no right or wrong answers. Just how you feel about what we're about ready to ask you about.
Okay?
A Yes, I understand.
Q Okay. Sir, if my notes are correct, did you indicate earlier that you had heard or read something about this case?
A Yes, sir, I have. In the newspaper.
Q Okay. And do you recall when that was?
A I guess it was Sunday's paper.

Q Sunday's paper?
A Uh-huh. (Affirmative).
Q Okay. Do you -- what do you recall about what you read?
A Seems like the defendant and, and the victim's son or stepson got in an argument, and he was gonna take out revenge, and they, they found the, the couple murdered.
Q Okay.
A But I think the son said that they, they'd got in an argument. Then I think he changed his mind and said no, they, they, they hadn't got in an argument. They were still speaking or something to that effect.
Q Okay. And that's about all that you remember about that?
A Well, basically I guess that was, yes, sir.
Q Okay. And it was just from the newspaper, sir?
A Yes, sir.
Q Okay. You didn't see any news programs or---
A No.
Q Okay. How does that article or how did that article make you feel, if anything, about what we're doing today or about my client?
A Well, of course, I felt, I felt sorry for the victims, you know.
Q Yes, sir.

A And not knowing the, the, the defendant, really I just really didn't, just didn't have any feeling for him just to tell you the truth not knowing him---
Q Sure.
A ---or anything about him.
Q Did you, did you know Mr. or Mrs. Emery?
A No, I did not.
Q Okay. Did you know anybody?
A No, nobody connected with me.
Q All right. I guess what I'm asking is based on what you've, well everything that -- well, do you have any notions or any preconceptions about this case at this time?
A No, sir, I don't.
Q And you don't feel that anything you've read or been exposed to will affect you at all as a juror sitting on this case?
A I don't think so, no, sir.
Q Okay. And, of course, you understand that what was in the newspaper is, is not evidence?
A That's correct.
Q All right. And if you're selected as a juror, that your decision would be based solely on what you hear or see in this, in this courtroom?
A Right.
Q Okay. And you can do that?

A Yes, sir.
Q Now, I want to ask you -- and again, as the judge has indicated, as the judge has indicated, this is our only opportunity to ask you questions prior to the selection of the jury. And so, we have to ask you about your feelings about the death penalty, life imprisonment---
A Sure.
Q ---even before we get there. Sort of putting the, the cart before the horse.
You understand that?
A I do.
Q And so, even though I'm going to ask you some questions alone these lines, you do understand that my client has pled not guilty?
A Sure.
Q Okay. Now, I want to take you again to the point where you and, if you're selected as a juror, and the other jurors have unanimously found the individual guilty of murder, and by that I'm talking about a willful killing of another person with malice aforethought. More specifically, I'm, I'm saying that the jurors have found, found, you know, there was no self-defense. There was no accident. There was no -- you know, the person was not insane. There was no legal provocation. In other words, there was no legal excuse for it, and that's what you and the other 11 jurors

have found beyond a reasonable doubt.

Do you follow where I'm at?

A I understand, yes, sir.

Q Okay. There was no question that this person did it or that he's responsible for it.

You get me?

A I do.

Q Okay. And I guess my question is do you feel that there's any particular or do you feel that the death penalty would be the only appropriate punishment in a case like that?

A Well, if that's the State Law.

Q Okay. I'm not sure if I understand.

A Well, I mean if that's the law.

Q Well, do you understand that the law never requires that the death penalty be given?

A No, I don't understand what you're saying.

Q Okay. I guess what I'm saying is jurors always have a choice between either death penalty or life in prison in a case where it, where it gets to the jury---

A Uh-huh. (Affirmative).

Q ---to make that decision.

Do you follow what I'm saying?

A I think so, yes, sir.

Q Okay. In other words, that even if a case may qualify

as a death penalty case, the death penalty does not have to be given by the jury.

You follow what I'm saying?

A I think so, yes, sir.

Q And the law would always be satisfied with a sentence of life imprisonment.

Do you agree with that?

A Well, I---

THE COURT: All right. Mr. Allen, that's, that's asking the witness to make a conclusion as to what the law states.

A Yeah.

THE COURT: And he's not been instructed concerning the law. I'll ask you to rephrase that question, and I think what he indicated was that he would follow the law based on that question, which that's what I understood his previous answer to be. He said if that was the law---

MR. ALLEN: Yes, sir.

THE COURT: ---he would follow it. I'm assuming he means that was, he would be following the law. But then -- now you've asked him a question as to what the law is or whether he understands the law and he's never been instructed on the law.

MR. ALLEN: That's true.

THE COURT: I'm gonna, I'm gonna ask that you rephrase

the question.

MR. ALLEN: Yes, sir.

THE COURT: I don't think the witness is in a position to answer that since he's not---

MR. ALLEN: Okay.

THE COURT: ---since he's not been instructed on the law at this point in time.

Q Well, let me get back to your answer to my question about when you said if that's what the law---

A Right.

Q ---says.

What did you mean by that?

A Well, if the law warrants the death penalty I would have no problem imposing the death penalty.

Q Okay. If the law warrants the death penalty.

A Right.

Q And I hate to keep throwing the words that you say back at you, but I'm not sure if I understand what you mean by when you say if the, if the law warrants.

Can you explain that to me a little bit better?

A Well, I think you, you made the first statement that it wasn't insanity and, and you named off two or three other conditions that he hadn't met --

Q Uh-huh. (Affirmative).

A -- then would I be comfortable with the death penalty.

I think that might of been your original question.
Is that -- am I correct?
Q Well, my original question is, is that if the jury finds the individual guilty of murder---
A Right.
Q ---and again understanding that means that there's no self-defense, there's no accident, there's no legal provocation, there's no insanity, that they find this individual has committed the crime of murder, the willful killing of another individual with malice aforethought.
A Yes, sir.
Q Okay. My question is, in your mind, is the death penalty the only appropriate punishment for that guilty murder?
A Well, if he didn't qualify for any of the others, you know, if insanity wasn't part of it and---
Q Okay.
A ---malice and, and aforethought, and I wouldn't have no problem with the death penalty, no, sir.
Q Well, my question goes more to in your mind is there only one appropriate punishment for that guilty murder?
A I really don't think I know enough of the facts---
Q Okay.
A ---to answer that question.
MR. ALLEN: Okay. One second please, Your Honor.

THE COURT: Yes, sir.

(Pause.)

Q What I want to take you now to is, again, I want to talk about murder, that an individual's been found guilty of murder like we were just talking about where the self-defense, the accident, insanity, all that does not apply.

Okay?

A (Witness nods affirmatively.)

Q But before the State can request a death penalty, they're gonna have to prove, beyond a reasonable doubt, an aggravating circumstance.

You know what I mean by that?

A I, I think so, yes, sir.

Q Okay. What do you think I'm talking about?

A Something that provoked him into doing what he, what he done I guess.

Q Well, no, I'm talking about some other fact which, by the law, would authorize the State's requesting it, and if I can give, give you some examples on a number of those type of facts be such as that the murder occurred during the commission of the crime of kidnapping or burglary or more than one person was killed at one particular course of conduct or that the killing was done by poisoning or other factors like that.

Do you follow what I'm getting at?
A I think so.
Q Okay. In a case like that, do you have a view as to whether or not the death penalty would be the only appropriate punishment?
A No, not really.
Q Okay. Can you explain that a little bit for me?
A There again, I just don't have the facts.
Q Okay. Right. And you're willing to listen to all the facts?
A I hope so, yes, sir.
Q I hope so.
Would you be able to consider facts that we call mitigating facts or mitigating evidence?
Do you know what I mean by that?
A I think you better explain that to me.
Q Okay. I guess one way to look at it is that mitigation or mitigating evidence is not a defense. A defense would be some evidence which sets forth a reason as to why someone should be found not guilty. For example, self-defense is a defense. Puts forth a reason as to why someone should be found not guilty of murder.
Do you follow what I'm saying?
A (Witness nods affirmatively.)
Q But mitigation is, is different. It's not a defense,

and it's not justification. But rather it's just something that serves to, it explains the, why there should be some sentence other than the death penalty.

Kind of get an idea?

It can include things such as an individual's background or other factors about the case, any number of things?

A I think I, I think I understand you.

Q Okay. How do you feel about considering mitigating circumstances in determining an appropriate sentence?

A Well, I just have to go back and I just, I just need the facts.

Q Okay.

A And what they are, you know.

Q It's awfully hard to talk about these things about, I mean in, in generalities, isn't it?

A Yes, sir, it is for me.

Q All right. And I understand that and I appreciate your working with us on, on that.

But I guess what I'm asking specifically is would you be willing to consider this type of evidence called mitigating evidence in determining an appropriate sentence?

A Well, I'll consider it.

Q Okay. Could you see yourself voting for a sentence of life imprisonment for a case of murder which has certain

aggravating circumstances?
A I don't know. Probably not. I don't know.
Q Why is that?
A There again, I hate to keep bringing it up, but it just depends on the facts.
Q It just depends on the facts?
A Yes, sir.
Q If I understood you correctly that you said you could not, that you could not really see yourself voting for life imprisonment on a murder case where someone's been convicted of murder with certain, with the aggravating circumstances?
Is that what I -- is, is that your position?
A It would probably be hard, yes, sir.
Q Yes, sir.
And in a case like that, when mitigating circumstances or mitigating evidence wouldn't really be a consideration for you?
A There again, it just depends, depends on the facts.
Q Can you give me an example of a case of murder in which you would automatically hold, and in other words, always think that death, the death penalty is the appropriate punishment of where you would not consider any other factors of the case or any other mitigation?
SOLICITOR GOWDY: Your Honor, I'm gonna object to the specific nature of the questioning and the fact that it

calls for a hypothetical answer.

THE COURT: Sustained.

Q Do you understand that a juror is never required to vote for the death penalty?

A Yes, sir.

Q Okay. In other words, that even if the State proves an individual committed murder and they proved an aggravating circumstance, that, that the, the jury or a juror is always free not to vote for the death penalty?

A Yes, sir.

Q Okay. Now, as I said earlier, of course, there was no right or wrong answer to this case. We're just trying to find out how you really feel.

Many people have different opinions about all sorts of things, but you would want your opinion respected, of course, right?

A Sure.

Q And would you be willing to respect other people's opinions even if they may differ from yours?

A Yes, sir.

Q Okay. Thank you. No other questions.

THE COURT: Mr. Gowdy, your witness.

SOLICITOR GOWDY: Your Honor, may it please the Court.

THE COURT: Yes, sir.

EXAMINATION

BY SOLICITOR GOWDY:

Q Good evening, Mr. Nichols.

A Good evening.

Q My name is Trey Gowdy, and I am part of the prosecution team, and we want to, first of all, thank you for the thoroughness of your answers not only to Your Honor and to the defense counsel, but also on the questionnaire that you completed, which was very helpful.

If I understood your answers correctly, you are the type of juror that needs to wait until all of the evidence is in and you've heard both sides before you'll be able to say whether or not a person is guilty or not guilty?

A That's correct.

Q And if they are guilty, and if there is an aggravating circumstance, and all that means is that something that, that makes a murder case worse than any other murder case, it's aggravated, if it's an aggravated murder, you would still have an open mind and listen to whatever the State had and whatever, if anything the defense had, and you would give consideration to both life and death?

Is that fair?

A That's correct.

Q And if you thought life was the correct verdict, you would vote for life?

A Yes, sir, probably.

Q I mean you said it would probably be hard, and I appreciate your candor.

But you could vote for life if you thought that that was the right verdict?

A Yes, sir.

Q And correspondingly, you would vote for death if you thought that was the right verdict?

A That's correct.

Q And you won't know until you hear the case?

A Correct.

Q Fair?

A Right.

Q All right. I want to ask you two quick questions based on the answers you gave on your questionnaire.

A Okay.

Q I think you have served on juries previously?

A That's correct.

Q And one of those cases was a not guilty verdict if I read your questionnaire correctly?

A Right.

Q Did I read it right?

A Yeah.

Q Can you just tell me a little bit about your prior experience as juror?

A It was on a rape case. It must of been, might of been

20 years ago, 25 years ago.
Q Yes, sir.
A A, a black man raped a white woman, and the black man was on trial, and we found him innocent.
Q Found him not guilty?
A That's correct.
Q Which proves that if the State doesn't meet its burden of proof, proof, you are willing to vote not guilty?
A Yes, sir.
Q Okay. And there was one other I think, and I don't -- again, I don't mean to pry into anyone's personal life. I, I have to ask the question because it's in your questionnaire.

One of your family members, I believe a cousin or a second cousin, was charged with homicide?
A That's correct.
Q Is there any -- was that in Spartanburg or in another county?
A Spartanburg.
Q Was there anything about the investigation or the prosecution that left you with a, with a sour taste in your mouth, in your mouth for either the DA's office or the local Sheriff's Department?
A No.
Q Did it go to a jury trial?

A That I don't know.
Q Were you especially close to this particular family member?
A About as far as cousins go, you know.
Q Okay. But you don't have any qualms with the way the system---
A No.
Q ---may of---
A No.
Q All right. And finally, in conclusion, the judge started off by asking you what type of juror you were and you said juror number three, that you could and would listen to both sides, and can't be asked to make up your mind until you know everything there is to know.

Is that fair?

A That's correct.
Q Is that still your prospective or position as to what kind of juror you are?
A Right.
Q Thank you.

THE COURT: Anything further from the defense?

MR. ALLEN: No, Your Honor.

THE COURT: All right. Mr. Nichols, I will tell you, at this point in time you're not on the jury at this point in time. We are still in the qualification process for the

jury.

I will ask if the information that you placed on the juror questionnaire is correct as to how we can get in touch with you, and let you know if we need you in the future?

Is that correct?

WITNESS: It is, yes, sir.

THE COURT: I will tell you that if you're asked to come back to the courthouse, we will go through a jury selection process at that time. However, you should come back prepared to stay with us. I've indicated that the jury will be sequestered at that time. You'll be staying in a hotel if you're selected on the jury. So, you need to bring with you appropriate changes of clothes and things of that nature. But the clerk will advise you as to that situation should we ask you to come back.

Do you understand that as well, sir?

WITNESS: I do.

THE COURT: All right. And I want to thank you very much for your cooperation today and at this point in time you're free to, to go.

Thank you, sir.

WITNESS: Thank you.

(The following takes place outside the presence of the juror.)

THE COURT: Mr. Gowdy -- wait a second.

(Whereupon, a bench conference was held at this time.)

THE COURT: All right. Bring in Juror Janet G. Hill, Number 142.

JANET G. HILL, having been previously sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right. Your name is Janet G. Hill, is that right, ma'am?

A That's correct.

Q I know it's hard to see me over this, but -- you're fine. I just want to be sure that you know where I am and you can see me.

All right, ma'am. Thank you very much for your willingness to be with us today, and I told you already I understand that it's an inconvenience to you. We don't want you to feel uncomfortable at this time, but I do want to let you know that what we're going to do is I'm gonna ask you some questions. The attorneys will be given an opportunity to ask you some questions and some follow-ups to what I've asked you.

I will tell you there are no right answers and there are no wrong answers to what we're going over with you at this time. We're simply here to gather some information about you and your opinions concerning this case and what

your opinions are in generally, general.

The first question I'm gonna ask, has anyone talked to you about this case since we began the jury selection process today?

A No.

Q And have you tried to gather any information outside of the courtroom concerning---

A No, sir.

Q ---this case?

A No, sir.

Q All right. Now, ma'am, have you ever participated in any type of Internet site or what they call blogs, things of that nature, that had to do with your opinion or position concerning the death penalty in general?

A No, sir.

Q Now, ma'am, have you ever been attended or responded or been involved in any type of demonstration or political activity either for or against the imposition of the death penalty?

A No, sir.

Q Now, ma'am, can you put aside anything that you may have heard outside of the courtroom or read previously about this case or seen previously about this case, and the, decide the case based upon what you would hear in the courtroom, the evidence and testimony of witnesses, and the

charge concerning the law?
Could you do that?
A Yes, sir.
Q Now, ma'am, while you were waiting to come into the courtroom, I provided you with a list of potential witnesses, a rather lengthy list, list.
Have you had an opportunity to look over that list?
A Yes, sir, I did.
Q All right. I'm gonna ask you some questions about those names. I don't want you to identify anybody on that list by name. I'm gonna ask you some general questions about that list at this time.
First of all, do you have any social, business, or personal connection with any of the individuals that were listed on that list as potential witnesses?
A No, sir.
Q Are you related, either by blood or marriage, or have you ever been related by blood or marriage to the, any of the individuals who are listed as potential witnesses on the list that was provided to you?
A Not to my knowledge.
Q Okay. Now, ma'am, I'm going to ask you some questions, some questions at this time that are a little more personal in nature. The questions I'm gonna ask you will be about your opinions on certain subjects. Obviously we're not

trying to invade your privacy. We are just trying to find out how you feel on certain matters. I believe you're probably an individual who is secure enough in your opinions that you could talk to me about that without feeling threatened. I don't want you to feel threatened in any way. Again, there is no particular right answer or wrong answer to any of the questions that I'm about to ask you.

Do you understand that, ma'am?

A I understand.

Q And do you feel comfortable going forward and answering my questions about that?

A Yes, sir.

Q All right. Now, ma'am, one of the things I want to ask you about is about the penalty phase of the trial, the death penalty specifically. That's an issue that might come up in this trial.

I've explained there's two phases to the trial. We won't get to that issue unless the defendant were found guilty of a murder in the first phase of the trial. It's a little premature for us to even talk about it, but this is the only chance we'll have to talk to you about this before the jury's selected and the trial begins.

Do you understand that, ma'am?

A Yes, sir.

Q All right. Now, I will tell you that Mr. Torres has

pled not guilty to the charge, and he's presumed to be innocent of the charges against him. So, the fact that we're talking about the penalty at this phase should, in no way, reflect upon him or his defense to the, the first phase of the trial or the murder phase of the trial, the guilt or innocence phase.

Do you understand that, ma'am?

A Yes, sir.

Q All right. Now, ma'am, if you were a juror in any criminal case, and I'm not talking about this case in particular, I'm talking about any criminal case because it wouldn't be proper to talk specifically about this case, but if you were a juror, would you be willing to listen to the law as it was instructed to you by the judge?

A Yes, sir.

Q And would you be willing to accept and apply that law to the facts in the case as you, as a juror, find them to be?

A Yes, sir.

Q Now, ma'am, even though you might not like the law I instruct you and even though you might disagree with the law I instruct you, would you still be willing to follow the law as instructed by the Court?

A Yes, sir.

Q Now, ma'am, if you were a juror in this case, State

versus Torres, would you be willing and able to set aside any knowledge or information that you might have, have heard about this case from any source outside of the courtroom?

A Yes, sir.

Q And ma'am -- excuse me. And then in that respect, would you be willing to decide the case purely upon what you hear in the courtroom?

Could you do that?

A Yes, sir.

Q Now, as I mentioned to you before, in a criminal case in this state, no matter what the seriousness of a crime, every criminal defendant is presumed to be innocent. Therefore, there is no responsibility or burden upon a defendant to prove himself innocent of any crime.

Do you understand that, ma'am?

A Yes, sir.

Q And are you willing to accept that?

A Yes, sir.

Q Now, ma'am, the State has the burden of proving the defendant guilty beyond a reasonable doubt.

Do you understand that also?

A Yes, sir.

Q Now, ma'am, if you were sitting as a juror in any criminal case, once again not this particular case, but in any criminal case in general, would you be willing to listen

to the law and evidence presented to you, and based upon those things, what those things were, and based upon the circumstances, could you find the person not guilty as charged?

You want me to rephrase that question?

A Yes, sir.

Q I see you've got a little confused look.

All right. If you were sitting on a jury in any criminal case, would you be willing to listen to the law and the evidence presented to you, and depending on what those things were, based on the circumstances in the case, could you find a person not guilty of the crime charged depending on what the, facts and circumstances?

A Right.

Q In other words, could you find a person not guilty if the facts and circumstances justified that verdict or do you believe that everyone was charged with a crime is guilty of that crime?

A No, sir.

Q So---

A But if, if, if what I hear in a particular case to me follows the law that's been put before me---

Q Uh-huh. (Affirmative.)

A ---and what I hear in the courtroom, yes.

Q You could find someone not guilty?

A Yes, if the facts didn't convince me.
Q I understand. Thank you, ma'am.
Now, by the same token, if the, if the evidence did prove the defendant's guilt beyond a reasonable doubt, would you be able to find someone guilty of a crime as charged?
A Yes, sir.
Q All right. Now -- so, I take it, ma'am, that your position, I just want to be sure I'm clear on this, is that you'd be able to make up your mind, depending upon the strength of the evidence you've heard, and what the testimony was, or what the evidence showed, and find the person either guilty or not guilty based on how you find the evidence and the law to be, is that correct?
A That's correct.
Q Now, ma'am, I want to talk to you a little bit about the death penalty in particular. Most of the time, in criminal cases, I will tell you the judge decides the penalty to be imposed in those cases. There is one particular kind of case where that's not the case and that's where someone is charged with murder and the State decides to seek the death penalty in that particular case. I explained that to you earlier when you were here with the, the full jury.
And under those circumstances, if a jury convicts a person of the crime of murder so that guilt has been

determined, that that same jury comes back, in a separate sentencing proceeding, and listens to additional evidence and testimony.

You understand that's the procedure that would be followed?

A Yes, sir.

Q All right, ma'am. In that separate sentencing proceeding, the only determination to be made by a jury is the type of sentence that's going to be handed out or, or handed down. There are only two choices. Again, life in prison, imprisonment and the other is the death penalty.

Do you understand that situation?

A Yes, sir.

Q Now, I want you to put yourself in that situation theoretically. That you are serving on a jury in a case in which the State has alleged murder and chosen to seek the death penalty and you and your other jurors have convicted the person of the murder and you're now coming back into the courtroom to decide the punishment. Either life imprisonment or death.

Do you understand the position that you're in?

A Yes.

Q All right. Now, ma'am, when you were in the jury room I had a piece of paper presented to you in which three different jurors were described and I'll go over those with

you again. The first type of juror, in that situation that I've described to you, is, again, a person who has just been convicted of the murder. You're coming out for the penalty phase, and that first juror is a person who already knows how he's going to vote. He's going to vote for the death penalty every time because he believes that's the most appropriate, anytime someone has been convicted of murder, that's the most appropriate penalty.

The second type of juror or, also has that juror's mind made up. That person already knows how they're going to vote, and that is for life imprisonment because that juror doesn't think the State should ever take the life of a person, excuse me, who's responsible for the crime regardless of what the crime is. So, he, that person knows he's going to vote for life imprisonment.

Now, the third type of juror that was described on that paper is the person who does not know what they're going to do when they come back in the courtroom for the sentencing phase. They haven't made up, that juror hasn't made up his mind as to whether he's going to vote for life imprisonment or for the death penalty. That juror will have to wait and listen to the evidence and testimony and then make a decision.

Now, you understand the three types of jurors I just described?

One has his mind made up that the death penalty's the only possible verdict. One that life imprisonment is the only possible verdict. And one is going to decide the, the, the issue based on the evidence presented during the sentencing phase.

Now, do you understand those three types of jurors?

A Yes, sir.

Q Now, ma'am, which of those three types of jurors would best describe you if you were coming back in for the sentencing phase?

A Well, I want to back up just a little bit.

When you said---

Q Yes, ma'am.

A ---in the sentencing phase, you've already determined---

Q That the person is---

A ---guilty or not guilty?

A The person is guilty of murder and you're coming back for the second trial where the sentencing is being decided. That is either life imprisonment or death.

A So, there's more evidence to be presented---

Q There will be more---

A ---more evidence---

Q Yes, ma'am.

A ---in the sentencing phase?

Q Yes, ma'am, in the sentencing phase, they'll be more evidence presented on the issue of the appropriate penalty. Not on the issue of guilt or innocence. That's already been decided.
A Okay.
Q So, the question then is the -- there will be more evidence presented during the sentencing phase on the question of the appropriate penalty. Either life or death. And as I indicated to you, there's three possible jurors or I've given you those three choices. Someone who's already made up their mind that everyone who's convicted of murder should be sentenced to death, and, therefore, there's, they already made up their mind.

The other person who doesn't believe the State ever had the right to take someone's life, and has already made up their mind that they're going to vote for life imprisonment.

The third juror is willing to come back into the, to the sentencing phase, listen to the evidence that's presented, and then make a decision as to what the most appropriate sentence would be. Either life or death.

Of those three types of jurors, which would best describe you if you were coming back in to listen to the sentencing phase?
A Three.
Q The most, the last one?

A The last one. The third one.
Q Okay. Now, ma'am -- now, ma'am, if you thought that the facts did not justify a death penalty sentence or, for any other reason, would you be willing to sentence someone to life imprisonment?
A Yes.
Q And if you believe that the facts and circumstances require or would the facts and circumstances justify the imposing of a death sentence, would you be willing to vote for a death sentence?
A Yes, sir.
Q Now -- so, I take it then that it would depend upon the facts and circumstances that you heard during the sentencing phase of the trial for you to decide whether or not you would vote for life imprisonment or for the death penalty, is that correct?
A That's correct.
Q Now, ma'am, finally, if you were chosen to serve as a juror in this case, I've already indicated the jury will be sequestered. We expect the trial portion of this case to take about a week. That means, for that week, you would be kept with the jury at all times. You would -- it would obviously limit who you could communicate with and who you could talk with.
My question to you is would that cause for you that --

I know it would be inconvenience, an inconvenience to you. But would that pose for you any serious risk of danger to your health or well being to be with the jury for that period of time?

A No, sir.

Q And, ma'am, would it pose any danger or risk to the health or well being of anyone who depends on you if you were asked to serve on a jury for that period of time?

A Not that I'm aware of, no, sir.

Q All right. Now, ladies and -- I'm gonna -- ma'am, I'm gonna allow the attorneys to ask some questions at this time. I'll allow the defense to go first.

Mr. Allen.

MR. ALLEN: Thank you, Your Honor.

EXAMINATION

BY MR. ALLEN:

Q Mrs. Hill, I want to thank you for your service. I'm Clay Allen. I'm one of the attorneys representing Tony Torres along with Mr. Reckenbeil and Mrs. Hodges. We're representing Mr. Torres in this case and although -- well, let me just ask you.

Have you heard or read anything about this case at all?

A No, sir.

Q Okay. And so, you've come into this court --

A Blind.

Q Blind. That's a good word.
A Yes, sir.
Q And other than what you've heard as far as any indictments, that's the only thing you know about this case---
A Yes, sir.
Q ---at this point?
A That's correct.
Q That's correct.
And while you -- if you're selected as a juror, you would be asked to sit and listen to evidence and ultimately make a decision in this case, right?
A (Witness nods affirmatively.)
Q And you understand the State would have to prove its charge beyond a reasonable doubt or any charge beyond a reasonable doubt?
A Yes, sir.
Q Okay. And you're willing to sit there and listen to the evidence and make that determination?
A Yes, sir.
Q Okay. And you understand that no one whose charged with a crime is ever required to prove his innocence?
A Yes, sir.
Q Because we start off with that presumption, right?
A That's correct.

Q Okay. And you're willing to apply that to Mr. Torres?
A Yes, sir.
Q Now, of course, as His Honor indicated in cases like this, we have to talk about the death penalty and life in prison and your feelings on these things.
Okay?
A (Witness nods affirmatively.)
Q I do want you to keep in mind that Mr. Torres is pled not guilty to these charges. When I ask you these questions about the penalty, I'm not insinuating how I believe the jury's verdicts should be.
You understand that?
A Yes, sir.
Q Is that fair enough?
A Fair enough.
Q Okay. And also there's no right or wrong answers. Just how you truly feel.
Okay?
A (Witness nods affirmatively.)
Q How do you feel about the death penalty?
A I would much rather see that than my tax dollars to support the life imprisonment. I think our tax dollars could be better spent somewhere else.
Q Okay. Why, why is that?
A If someone has been found guilty beyond a reasonable

doubt and that's sufficient evidence, I don't feel that my tax dollars need to go to feed, clothe, and provide shelter, or anything for them. I have family that, you know, that needs clothes, needs food.

Q Yes, ma'am.

A And I would much rather my dollars to go to work helping something like that than --.

Q Okay. And I appreciate you sharing that with me.

A You're welcome.

Q When we, we talk about the case of murder---

A Uh-huh. (Affirmative).

Q ---I want to take you to the point that if you were a member of the jury and you and the other 11 jurors found, beyond a reasonable doubt, that an individual was guilty of murder.

A Uh-huh. (Affirmative).

Q And by that, we're talking about a willful killing of another person with malice aforethought. It's not self-defense. It's not accident. There's no insanity. But rather it is a -- it's not provoked nor with any kind of legal provocation.

SOLICITOR BARNETTE: Your Honor, I'm gonna object at this point. He's going through every condition he can go through trying to stake this juror out from that standpoint. I think he's done it for three -- this is the third time

going through each situation concerning that.

MR. ALLEN: I'm simply trying to explain what I'm talking about, Your Honor. I think this juror has a right to know.

THE COURT: I'll allow you to continue to ask the question. But I also hope you're mindful of my previous discussions.

MR. ALLEN: Yes, sir.

Q In other words, that you and the other jurors have found no question that an individual committed the murder and that he's or that he's responsible for it.

Do you follow what I'm saying?

A Uh-huh. (Affirmative).

Q Now, do you feel as if the death penalty should be the only or is the only appropriate punishment in a case like that?

A Yes, sir.

Q Okay. And I detect that you're pretty definite about that?

A With all the classifications that I'm understanding---

Q Yes, ma'am.

A Yes, sir.

Q Okay. And why is that?

A I think if it, if it was an accident---

Q Yes, ma'am.

A ---or something where death was, that you were still found to be responsible for it, I would have a hard time with the death penalty under those circumstances.
Q Yes, ma'am.
A But just a cold blooded murder, there's no doubt in my mind.
Q Okay. And that you wouldn't be interested or rather I should say that any other evidence of mitigation would not be important to you?
A No, sir, because at that point I would have no reasonable doubt.
Q Okay. So, is it fair to say, what I'm, I'm, I think I'm hearing from you and I want to make sure I understand, is that if you have no reasonable doubt than an individual committed murder --
A Uh-huh. (Affirmative).
Q -- that you would impose the death penalty in all of those cases?
A Yes, sir.
Q Now, you would not consider life imprisonment?
A No, sir.
Q Not for a murder?
A Not for one of the clarifications that I gave, no, sir.
Q Okay. Now, in a case in which the State seeks the death penalty, of course, there's more to it. They would

present evidence of what we call aggravation.
A Uh-huh. (Affirmative).
Q This is after the individuals has been found guilty of murder.
A Uh-huh. (Affirmative).
Q I'm talking about beyond a reasonable doubt.
You follow what I'm saying?
A No.
Q Okay. An aggravating, aggravating circumstances is something that qualifies this case for murder, for the death penalty. They include a number of things. They include such things as a killing by poison. They include such things as a murder committed during the course of an armed robbery, a burglary, two or more persons committed during the course of one act, the, in cases like that where it -- I guess what I'm asking is in cases like that, you would not change your opinion about the death penalty from what you've earlier said?
A No, sir.
Q And in case, in cases such as that where the aggravating circumstances have been proven, you would not consider any other mitigating factors?
A No, sir.
Q Not, not at all?
A No, sir.

Q Okay. And of course, in your mind, the death penalty is the only appropriate penalty in that, in, in, in those kind of cases?
A Yes, sir.
Q Okay. And I detect that you're pretty definite about it?
Now, I'm not trying to talk you---
A I just want to make sure I'm leading to believe that I, I believe in the death penalty.
Q Yes, ma'am.
A But I also believe that a person has a right to a fair -- and if, if there's no reasonable doubt that anything else could be introduced, I have no problem. A hundred percent say the death penalty.
Q And when you---
A I wouldn't feel guilty at all.
Q Okay. When you say you have no reasonable doubt that anything else can be introduced, are you talking about no reasonable doubt as to the, whether or not the person committed the crime of murder?
A Correct.
Q Okay. But you're not talking about mitigating---
A No.
Q ---factors?
Okay. Cause that's not important to you once the jury

has found the person guilty of murder, right?
A Right.
Q Okay. Now, not that I'm trying to talk you out of, out of or into anything, but, of course, there's nothing I can say that would talk you out of your opinion, right?
A Correct.
Q I mean you've held that opinion apparently for some time?
A Yes, sir.
Q Okay. And there's nothing the solicitor can do to talk you out of that opinion either?
A No, sir.
Q Okay. Or even anyone else in this courtroom if they had a mind to?
A (Witness nods negatively.)
Q Okay. Thank you very much, ma'am.

SOLICITOR BARNETTE: May it please the Court, Your Honor?

THE COURT: Mr. Barnette.

SOLICITOR BARNETTE: Thank you, Your Honor.

EXAMINATION

BY SOLICITOR BARNETTE:

Q Mrs. Hill, I just wanted to make one thing -- you kept saying about clarifying.
A Yes, sir.

Q Is the condition he was giving, is what you was supplied to make your opinion on?
A I just -- I wanted to make sure that I wasn't answering not truthfully as to what I have, what I have in my mind.
Q I understand.
But like I said, if you had different circumstances that you was looking in in a case, different types of evidence---
A Yes.
Q ---would you consider that evidence?
A Yes, sir.
Q And in looking at that, is there a -- would you find somebody guilty of life without parole in this situation if you, if you felt like it was warranted?
A Yes, sir.
Q And the situation where is the death penalty automatic for you?
A No, I'll give you a for instance, and I'm just, I'm just -- if there was a teenager that goes out and goes to a party and has a alcoholic drink and gets on the interstate and they hit somebody and they've killed them, they could be found guilty of murder, but I would -- I couldn't do the death penalty in something like that. But when someone, in cold blood, calculated, premeditated, and they're just malicious, I have no problem with the death penalty at all.

Q So, what you're telling us is you would look at the facts of the case?
A Yes. And to me there's, there's clarifying there.
Q Uh-huh. (Affirmative).
And like you said, just cause they're found guilty of murder don't mean you're automatically go the death penalty?
A No.
Q You would look at the circumstances---
A Yes, sir.
Q ---involved in it?
A Yes, sir.
Q Just like you was talking about the car situation and---
A Right.
Q ---everything?
A I guess that's how I was trying to give you an example cause I'm not sure if that would be murder or if it would be considered something else.
Q Let me ask you a question.
Would the circumstances in the case override any feelings you have about tax dollars or anything like that?
A No.
Q I know you mentioned about tax dollars and everything.
A Well, it's just -- it, it infuriates me that we can support someone that, that is maliciously taking another

person's life and to have to support them. And I know that there's -- I mean if you're gonna do the prison, I think it's got to be run somehow, and I mean I know that. The money has to come from somewhere. It just -- I would rather just see it be spent somewhere else and the tax dollars is not the issue there.

Q It's not the issue to you?

A No, sir.

Q Would the facts of the case be the issue for you?

A Yes, sir.

Q And that's what would decide what you would do on a case?

A Yes, sir.

Q So, would you automatically, just cause somebody's found guilty of murder, give the death penalty?

A No, sir.

Q Would you consider life without the possibility of parole in that situation?

A Yes, sir.

SOLICITOR BARNETTE: Thank you, Your Honor.

Thank you, Mrs. Hill. Appreciate it.

THE COURT: Mr. Allen.

MR. ALLEN: Just a few clarifying.

THE COURT: Let's, let's get our questions asked during the time. I'll let you do that. But we, we have people

waiting.

MR. ALLEN: Yes, sir.

THE COURT: So, we need to ask the questions we intend to ask when given the opportunity. I'll give you a chance to follow up.

MR. ALLEN: Okay.

EXAMINATION

BY MR. ALLEN:

Q Just to follow-up your views when the solicitor was talking to you.

A Uh-huh. (Affirmative).

Q You indicated that it was, if some, if it was just malicious that you would give the death penalty in all cases, is that correct?

A I would feel that it would be warranted, yes, sir.

Q Okay. So -- and when you was talking about looking at the evidence, are you, are you talking specifically about when you look at the evidence and making the determination of the guilt?

A That's hard for me to answer cause I, I've never been through this process.

Q I understand.

A I don't know what evidence will be presented when.

Q Yes, ma'am.

A But I know that you can't help, but as you're listening

to evidence, you're, you're forming an opinion as the evidence is presented.

Q Yes, ma'am.

A And if your responsibility is beyond a reasonable doubt, to me means I have to be a hundred percent when I find guilty or not guilty, and I guess at that point I would be willing to listen after that as to someone's thoughts or opinions whether it should not be and could be persuaded otherwise.

Q Uh-huh. (Affirmative).

A But my initial is going to be the death penalty. But it's not to say I could not be swayed from that.

Q So, if you found that an individual's committed murder---

A Yes, sir.

Q ---beyond a reasonable doubt---

A Yes, sir.

Q ---I mean you, you're thinking death penalty?

A Yes, sir.

Q And you would require someone else to prove, to prove as to why it should not be imposed?

Is that what you're saying?

A If that's any evidence that could sway me that comes up, after that point, that could sway me, I'm, I'm certainly not so bullheaded that I wouldn't listen.

Q Okay. But if you found the individual's committed a killing with malice aforethought---

A Uh-huh. (Affirmative).

Q ---then you would be looking at death penalty only?

A Depends on what evidence is presented.

MR. ALLEN: Okay. One second please, Your Honor.

(Pause.)

Q When you're -- after an individual's been, been found guilty, I want to see if I understand you, and you're looking at the, the additional evidence on the sentence, are you, are you looking for proof as to why the individual should not be put to death?

A I don't know. I don't know what I'd be looking for.

Q Okay. Thank you.

SOLICITOR BARNETTE: Have no further questions, Your Honor.

THE COURT: Thank you.

All right, ma'am. Mrs. Hill, let me explain to you. You have not been selected to be on the jury. We're in the qualification process still at this time.

I want to ask you, the information that you provided to the clerk, is that the appropriate place to get in touch with you?

WITNESS: Yes, sir.

THE COURT: Have you provided both work and home

numbers?

WITNESS: I believe so.

THE COURT: All right. I want to be sure. If there's any other contact information, we need to get it at this time.

Is there anything else you need to give us?

You want to look at your form?

WITNESS: Yes, sir.

THE COURT: Let her look at her form please.

You can just remain seated. They'll bring it to you.

(Pause.)

THE COURT: All right. Now, ma'am, if you're asked to come back at a later time, you'll need to be, when you come back at that time, be prepared to bring with you the things that you might need to be sequestered, again, for about one weeks time. In other words, bring your bags packed in case you were selected on the jury because you'd go directly into the sequestration process. You wouldn't be allowed to go back home.

Do you understand that?

WITNESS: I understand.

THE COURT: The clerk will explain that to you if you get a call, and we'll let you know about that when the time comes.

Okay, ma'am?

WITNESS: So, the only thing, I just have to wait for a call?

THE COURT: You'll be -- we'll be back in touch with you, ma'am.

WITNESS: Okay.

THE COURT: And let you know when to be back here if we need you.

WITNESS: All right.

THE COURT: All right.

WITNESS: Thank you.

THE COURT: The contact information is accurate?

WITNESS: Yes, sir.

THE COURT: All right. Thank you, ma'am. You're free to go at this time.

THE COURT: Mr. Humphries, Panel Number Two, ask them to be here at nine o'clock in the morning. We're going to release them at this time.

BAILIFF: Okay.

THE COURT: I want the next one, Lettie O'Neal.

LETTIE O'NEAL, having been previously sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right, ma'am. Your name is Lettie O'Neal, is that right?

A Yes, sir.
Q Mrs. O'Neal, first of all, again, I want to thank you very much for your participating in the process. I understand it's been a long day. It has been for all of us.
A Yes.
Q I do want to tell you, at this point in time, we're going to go over some matters with you at this time, ask you some questions. I don't want you to feel uncomfortable about this.
A Okay.
Q There are no right answers. There are no wrong answers here. We are simply trying to get your opinion and your, get your thoughts concerning the matters that are gonna come up in this case. We're certainly not here trying to change any of your opinions. We're simply here to gather them.
You understand that, ma'am?
A Yes, sir.
Q I'm gonna ask you some questions initially. I will allow the attorney to follow-up concerning the questions I'm going to ask you. And so, we'll go about it in that fashion.
A Okay.
Q You understand what we're doing at this point in time?
A I think so.
Q All right. All right. Now, ma'am, has anyone tried to

talk with you about anything concerning this case or tried to gather or have you tried to gather any information since we began the jury selection process?

A No, sir.

Q All right. Now, have you ever participated in any type of Internet activities or chat room discussions or anything of that nature involving issues concerning the death penalty?

A No, sir.

Q Have you ever participated in any political activity, demonstrations, or anything of that nature in connection with issues involving the imposing or the existence of the death penalty?

A No, sir.

Q Now, ma'am, can you, yourself, put aside anything that you may of heard outside of this courtroom and decide the case based on the information that you gathered during the trial of this case?

In other words, can you put, put -- I don't know what you've heard outside the courtroom about this issue or about this case.

But can you put that information aside and decide the case solely upon the information that you get during the trial of this case?

A Okay. Yes.

Q You can do that?
A Yes.
Q All right. Now, ma'am, while you were in the jury room we gave you a list of witnesses.
A Yes, sir.
Q Do you recall that?
A Yes.
Q I don't want you to identify any of those people by name at this point in time.
A Okay. But I am going to ask you some questions about that witness, that, that witness list.
Did you have an opportunity to look at it?
A Yes, sir.
Q Now, ma'am, do you have any social, any type of business or personal connections with anyone named on that list?
A Well, two names stood out. I don't really know if they're them or not. You know, cause like David Jones---
Q Now, I asked you not to tell me---
A I'm sorry.
Q ---anybody's name on that list.
A I'm sorry. Okay. Two names.
Q Two names stuck out that you might have some connection, but you're not sure?
A No, I'm not sure if those are the individuals or not,

those people.
Q All right. Now, ma'am, about those two, two names and, again, don't give me the names.
A Okay.
Q What type of connection would you have had with those, those individuals?
Just somebody that you heard their name or seen them or is that someone you think you may of had some more, more serious dealings with?
A Well, maybe both are more dealings.
Q All right.
A I know them.
Q Do you think that that's somebody that you see on some type of regular basis?
A No. No, sir.
Q Is it someone that you would call a close friend?
A No, it's been a long time since I've seen any of those two people.
Q I'm not sure I understood what you said.
What did you say?
A It's been a long time since I had any contact with those two people.
Q All right. If either of those people were to appear as witnesses in the case, would the fact that they testified in the case, in any way, affect your ability to be fair and

impartial to both the defense and the State?
A No, sir.
Q So, they wouldn't sway you one way or the other just because---
A No, sir.
Q ---of who they were?
A Right.
Q Okay. Now, ma'am, do you think that you are related by blood or marriage to anyone who might be on that list?
A No, sir.
Q Or have you ever been related by blood marriage cause that can change?
A Right.
Q All right. Is -- that's still not the case?
A No, sir, it's not.
Q All right. Now, ma'am, I'm going to ask some more personal questions about some opinions and topics that you might have concerning this particular case. And again, we're not trying to invade your privacy. You seem to be someone who is, is well settled enough in your opinions that we can talk about these things without you feeling threatened.

I take it you don't feel threatened at this time, is that correct?
A No, sir, I don't.

Q All right.
A Just a little nervous, but not threatened.
Q I understand that.
Okay. If you have any feelings being uncomfortable about what I'm asking you, you let know that.
A Okay.
Q And we'll try to -- I'll be glad to try to explain it, try to make you feel more comfortable about the questions we're asking you.
Okay, ma'am?
A Okay.
Q All right. Now, one of the things I want to ask you about is the death penalty, the death penalty specifically because it might be an issue that comes up in this trial. I explained earlier that there will be two phases in this trial, a, a phase concerning guilt or innocence on the charges. And that if the defendant were found guilty of the murder, then we would have a separate trial, a separate phase of the trial concerning the proper penalty to be imposed.
A Okay.
Q Now, ma'am, we're talking about the penalty at this stage not because of any, try to shift, shed any bad light on the defendant or anything. This is the only opportunity we'll have to talk about that before the trial begins and

the jury's been selected.
A Okay.
Q So, I hope you understand that, that, that, because we're talking about it now should not be any reflection upon the defendant or his case. This is our opportunity to discuss it.
Do you understand that?
A Yes, sir.
Q All right, ma'am. Now, if you were a juror in any criminal case, and I'm not talking about this case, case specifically, I'm just talking about any criminal case, would you be willing to listen to the law as instructed to you by the judge?
A Yes.
Q And, ma'am, would you be willing to accept the law as instructed to you by the judge and apply it to the facts that you might find to exist?
A Yes.
Q Now, ma'am, even though you might not like the law, and even though you might disagree with the law as given to you by the Court during the trial, would you still be willing to apply the law as instructed by the Court?
A No.
Q So, you would not be willing to accept the law if you disagreed with the law?

A It all depends on what the situation is.
Q Well, I'll ask you the question again to be sure I'm---
A All right.
Q ---I'm understanding you.
Even though you might disagree with the law, even though you might think the law is wrong---
A Right
Q ---if you were instructed by the judge that this is the law---
A Okay.
Q ---would you be willing to accept the law and apply it as instructed by the Court?
A Because okay. Yes, I would.
Q All right. Now, I'm not asking you to change your opinion.
A Right.
Q I'm just saying---
A I'm listening---
Q ---as a juror---
A I understand.
Q ---and assuming your responsibility as a juror is to apply the law as instructed by the Court, are you willing to do that?
A Yes, I am.
Q And put aside your personal feelings---

A Yes, I will.
Q ---about the law?
A Yeah.
Q Now, ma'am, if you were a juror in this particular case, would you be willing to set aside any information you may have gathered outside of the Court, case from any source at all, anything that you might have heard, read, or seen about this case outside the courtroom, and any information that you might hear during the trial outside of the courtroom, and decide the case purely upon what you hear in the courtroom?

Would you be willing to do that?

A Yes.
Q Would you be able to do that?
A I think so.
Q Now, ma'am, as I mentioned to you before when we talked in the, when the whole jury was here, a criminal defendant is always presumed to be innocent. The criminal defendant never has to prove their innocence in a court.

Do you understand that concept?

A Yes, sir.
Q So, they're always presumed to be innocent.
A Yes, sir.
Q Now, the State has the burden of proving the defendant guilty beyond a reasonable doubt.

Do you understand that concept?
A Yes, I do.
Q So, it's the State's duty to prove its case?
A Right.
Q Not the defendant's duty to prove innocence?
A Right.
Q Do you understand that?
A Yes.
Q Now, if you were sitting on, as a juror in a criminal case, once again, not this case, but some criminal case, would you be willing to listen to the law and the evidence presented to you, and based upon what those things were, and based upon the circumstances, could you find a person not guilty of a crime charged?
A Yes.
Q And the same question, if you were sitting as a juror in a criminal case, would you be willing to listen to the law and the evidence presented to you, and based upon what those things showed you, what they were, could you find a person guilty of a crime charged?
A Yes.
Q In other words, do you think that because someone is accused of a crime that they're automatically guilty?
A No.
Q Would you be able to make up your mind as to guilt or

innocence of a defendant based upon the strength of the evidence, what the testimony or evidence showed, and could you find a person either guilty or not guilty depending upon what the evidence showed and what the law as charged to you as?

A Yes.

Q Now, let's talk a little bit about the penalty phase of this trial. I told you it's gonna be decided as to two different trials. One as to guilt of the crimes charged. And if the defendant were found guilty of murder at that stage, we would enter into what is called the penalty phase, and that's where, where you determine whether or not someone, the jury would determine whether or not someone received a life sentence without parole or someone received the death penalty.

A Okay.

Q Do you understand that, ma'am?

A Yes, sir.

Q All right. Now, I want to caution you and tell you that, again, because we're talking about the penalty phase of this trial, it's the only time we have a chance to do that. Shouldn't reflect negatively on the defendant. We just have to discuss these things now before the case begins.

Do you understand that, ma'am?

A Okay.
Q Now, generally, in a criminal case, the judge decides the penalty that a defendant should receive. There's an exception to that where the State is prosecuting someone for murder, and they are also seeking the death penalty, and that's where the jury then decides the appropriate penalty.
Do you understand that, ma'am?
A Yes, sir.
Q Now, under the circumstances, if a jury, juror, jury convicts a defendant of the crime of murder, and that guilt has been determined, that same jury comes back in a separate proceeding and decides, after hearing additional evidence, what the appropriate penalty should be. Now, in that separate sentencing proceeding, the only determination made by the jury is the type of sentence, what it's going to be, what's going to be handed out. They're only two choices again, life imprisonment and the death penalty.
Now, do you understand that situation, ma'am?
A Uh-huh. (Affirmative).
Q Now, I want to put, I want you to put yourself in a situation. That is, as a juror in which the State is seeking to, a conviction for murder, and is also seeking to impose the death penalty for that murder. And imagine that you and your fellow jurors have found the defendant guilty of the murder. You're now coming back to the courtroom to

decide or hear the evidence concerning what's the appropriate penalty and decide what is the appropriate penalty.

Do you understand that, ma'am?

A Yes, sir.

Q So, you understand what situation you're in?

A Uh-huh. (Affirmative).

Q Now, previously I gave you a, a document back in the jury room which described three types of jurors.

A Right.

Q Do you remember that document?

A Yes, sir.

Q All right. The first -- and do you remember, do you remember reading that sheet and what it had on it?

A Yes, sir.

Q All right. The first type of juror described in that sheet is someone who is coming back into that jury room and they are already convinced, before they come into the jury room, that they are going to decide the penalty phase by awarding the death penalty because that juror believes that when someone's convicted of a murder that's the only appropriate sentence.

A Right.

Q The second type of juror is the type of juror who is also already made up their mind as they come back into that

jury room. That's someone who does not believe the State has the right to seek the death penalty against any individual no matter what the seriousness of the crime is. So, that individual is already made up their mind to decide that the person would get a life sentence.

Now, the third type of juror I described in that paper that I had you read is someone who has not made up his mind one way or the other as to whether or not the person should receive the death penalty or receive a life sentence. That juror is willing to listen to the evidence presented during the sentencing phase and then decide as to what the appropriate penalty would be based on the testimony and evidence presented during the sentencing phase.

Now, do you understand those three types of jurors?

A Yes, sir.

Q Now, given those three different scenarios, which of those three jurors best describes how you would feel in that situation?

A The second one.

Q The second one.

Someone who could not give a life sentence?

A Right.

Q No matter what the appropriateness of the sentence was?

A Yes.

Q All right. And you have a belief that under no

circumstances should the State impose the death penalty, is that correct?

A True.

THE COURT: All right. Now, does the defense wish to ask any questions of this witness?

MRS. HODGES: Just a few, Your Honor.

THE COURT: All right. You may proceed.

EXAMINATION

BY MRS. HODGES:

Q Mrs. O'Neal, I'm Kathleen Hodges, and along with Clay Allen and John Reckenbeil, we represent Tony Torres.

You had indicated, when the judge was asking you questions, that you could, even though you might disagree with the law, that you could listen to what the law is and follow the law as the judge instructed you.

Is -- did I hear that response correctly?

A Yes, you did.

Q Okay. And the, the thing that, that the judge is talking to you about was when somebody's convicted of murder, and then the sentencing phase comes into play. They're both aggravating circumstances that the State presents, and there may or may not be some mitigating circumstances that the defense presents. But the defense has an opportunity to present some mitigating circumstances.

But basically, when there's a murder has -- when

somebody's convicted of murder, the only time that the jury can get to the point of determining whether a death or life sentence is appropriate, which sentence is appropriate, is if the jury is able to find that there's been an aggravating circumstance. Something that makes this murder worse than any other kind of general, you know, what you normally hear about the kind of murders.

A Right.

Q Would you be able to listen to what the State's evidence is in terms of those aggravating circumstances and consider that in making your decision?

A Listen to what the State---

Q Yeah, listen to what the State says. And if, if they say that this is, you know, particularly bad murder because it happened in a certain way or if it happened, you know, with certain, certain things that make it a worse murder, would you be able to, be able to actually hear what the State's telling you and, and listening to that, to that evidence?

A I don't think I could.

Q You don't think you could?

A Uh-huh. (Affirmative).

Q Is there any, any, any circumstances you could actually consider the possibility of giving somebody death?

A No.

Q Okay. Is that based on -- you had mentioned that you have, have beliefs about sitting in judgment on people.

Is, is, is that---

A I just don't believe in the death penalty.

Q Okay.

All right. Bear with me just a minute, judge.

THE COURT: Yes, ma'am.

(Pause.)

MRS. HODGES: Thank you, judge.

THE COURT: State wish to ask any questions?

SOLICITOR BARNETTE: No questions, Your Honor.

THE COURT: All right, ma'am. At this point in time, that completes our questioning. We're not selecting the jury today. We're still going through the qualification process.

WITNESS: Okay.

THE COURT: Your contact information you've given to the State, is it correct?

WITNESS: Correct.

THE COURT: All right. We'll be calling you at a later time if you are to come back to the courthouse for further jury selection.

WITNESS: Okay.

THE COURT: But at this point in time you're free to go. My instructions still apply though as to the contact

and discussion that you should have concerning this case. You should have none.

Do you understand that, ma'am?

WITNESS: Yes, sir.

THE COURT: And gather no information outside of the courtroom.

WITNESS: Okay.

THE COURT: All right. Thank you. You're free to go.

WITNESS: Thank you.

SOLICITOR BARNETTE: Your Honor, may I step out for a second?

THE COURT: Sure.

MR. RECKENBEIL: Judge, may I as well?

THE COURT: Sure.

All right. Could you bring the last juror in from that panel?

RONALD J. ROGERS, having been previously sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right, sir. Your name is Ronald J. Rogers, is that right, sir?

A Yes, sir.

Q Mr. Rogers, I want to thank you for your patience.

We've had a rather long day today, haven't we?

A Yeah, like they say, the wheels of justice turning slowly.

Q That's true and that's what this is all about. So, we're, we're doing that.

Now, sir, first of all, I want to thank you for your cooperation today, and your willingness to cooperate with this process. And at this point in time I'm going to go over some matters and some questions that apply specifically to you. I will tell you that I ask you some questions. The attorneys will be allowed to ask some follow-up questions, and we're simply here to gather some information.

I'll tell you now there are no right answers. There are no wrong answers to these questions. We're here to gather your views and opinions concerning certain matters that will be involved in this case.

I hope you do not feel threatened by what we're doing or uncomfortable with answering the questions. If, at any time you feel that way, you let me know and we'll try to, try to straighten that situation out for you.

Do you understand that, sir?

A Yes, sir.

Q All right. Thank you.

Now, first of all, since we began this jury selection process, have you discussed the case with anyone or gathered any information outside of the courthouse?

A No, sir.
Q All right, sir. Now, have you ever participated in any type of Internet site or blog or any other chat room or something of that nature that would have to do with the issue of the death penalty?
A No, sir, only thing I do is play Pogo.
Q Okay. All right, sir. And have you ever participated in any demonstration or other political activity that would have anything to do with the issue of the imposition of the death penalty?
A No, sir.
Q Now, do you have the ability to put aside anything that you may have seen or heard outside of the courtroom and decide a case strictly upon the evidence presented during the trial and the law and the information you gather inside the courtroom?
A Yes, sir.
Q Now, sir, while you were waiting to come into the courtroom, there was a list of witnesses handed to you. You had a chance to look at over that rather lengthy list. But you had a chance to look over that. I'm not going to ask you and I don't want you to identify any of those witnesses by name here today. What I am going to ask is some general questions. And if you have a response, I'll follow-up to those, those questions.

First of all, do you, after reading the list, do you have any social, business, or other personal connections with anyone's name who is listed on that list?

A No, sir.

Q Do you believe that you are related or ever, have ever been related by blood or marriage to any of the individuals whose names appeared on that list?

A No, sir.

Q So far as you know, you have no connection with any of those particular individuals?

A Right.

Q Is that right?

A That's right.

Q All right. Now, sir, I'm going to ask you some questions that are a little more personal in nature that have to do with your opinions on certain topics, and I, again, I'm not attempting to invade your privacy. We're trying to feel, find out how you feel. I believe you appear to be someone who's secure enough in your own opinions that we can discuss this without there being a problem.

But, again, I'm gonna tell you, if you have a problem, you let me know and we'll discuss that. I'm going to ask your opinions about several things. One of which will be the death penalty. Obviously that's what this case is about in part and because that might be an issue in the case.

I want you to understand, however, the trial is not yet begun. The fact that we're discussing the penalty at this point in time should not have any adverse reflection upon the defendant or the defendant's case. This is simply the only opportunity we have to discuss the entire case and we're discussing all aspects of the case at this time.

As I've told you---

A I understand.

Q ---a defendant is always presumed to be innocent and he has no obligation to prove himself innocent of any crime. The State has the burden of proof in the case.

Do you understand that, sir?

A I do.

Q All right. Now, if you were a juror in any criminal case, and I'm not speaking about this particular case, but if you were a juror in any particular case, would you be willing to listen to the law as instructed to you by the judge?

A Yes, sir.

Q Now, would you be willing to accept the law as instructed to you by the Court and apply it to the facts as you, the jury, found them to be?

A Yeah.

Q Now, even though you might disagree with the law or not like what the law says, would you still be willing to follow

the law as you were instructed by the Court?
A Yes, sir.
Q Now, if you were a juror in this case, would you be able and willing to put aside any information or knowledge that you might have gathered about this case from any other source at all, anything you may of heard, read, or seen about this case outside the courtroom, would you be willing to set that aside in reaching a decision in this case?
A Yes, sir.
Q So, you would be willing to decide the case purely upon the evidence that you hear in the courtroom during the trial?
A Yes, sir.
Q Now, I mentioned to you previously that a defendant is not required to prove himself innocent. He is presumed to be innocent.

Do you understand that---
A I do.
Q ---that concept?

Sir?
A Yes, sir.
Q Also, the State has the burden of proving the defendant guilty beyond a reasonable doubt.

Do you understand that concept?
A Yes, sir.

Q Now, if you were sitting on a jury in a criminal case, and again, I'm not talking about this one in particular, would you be willing to listen to the law and the evidence presented to you, and based upon what those things were and based upon the circumstances, could you find a person not guilty of a crime that that person was charged with?
A Yes, sir.
Q By the same token, if you listened to that same evidence, and if the facts and circumstances were such, could you find a person guilty of a crime charged?
A Yes, sir.
Q In other words, you don't think because someone has been charged with a crime that they're automatically guilty?
A No.
Q And also I think it would then be your position that you will make up your mind based on the strength of the evidence and what the testimony or evidence shows and you could find someone either guilty or not guilty?
A Yes, sir.
Q Now, let's talk a little bit about this penalty phase. I told you we would do that. And generally in, as I've explained, generally the judge imposes the penalty. The exception to that particular rule is where the case is a murder case and the State has sought the death penalty. In that case, the jury, in a separate proceeding after the

guilt phase has ended, would decide the proper penalty.

Do you understand how that would work?

A I do.

Q Now, under these circumstances, under those circumstances, if a jury convicts a defendant of the crime of murder, so, and guilt has been determined, that same jury comes back, and in a separate sentencing phase, decides the, the penalty. The only two choices are life in prison or the death penalty.

Do you understand that?

A I do.

Q All right. Now, in that separate proceeding, the only determination made by the jury is the type of sentence that would be handed out or given to the defendant. And again, there's only those two choices. I want you to put yourself theoretically in the position where or a situation where you have been selected on a jury in a murder case where the death penalty is being sought. You and your fellow jurors have already determined the defendant guilty of the murder. You're about to reenter the courtroom for the purposes of the sentencing phase of the trial.

Do you understand the position that you're in?

A Yes, sir.

Q I put a sheet of paper back in the, in the jury room for you to look at that had to do with three possible

jurors, three, three possible types of jurors. You may remember that paper.

Do you?

A Yes, sir.

Q All right, sir. Now, there are three types of jurors. The first type of juror who would be entering that courtroom for the sentencing phase is someone who believes, that when a defendant has been convicted of a murder, there's only one appropriate sentence and that sentence is the death penalty. That's the first type.

The second type of juror, that's the person who's reentering that room, believes that under no circumstances someone should ever be put to death because they don't believe the State has the right to do that no matter what the crime or the seriousness of the crime that's been charged.

The third juror is someone who would enter that room and be willing to listen to all of the evidence, both the evidence for the State and the evidence presented by a defendant, and make a determination, based upon that evidence, as to whether or not it is appropriate for the defendant to be given a life sentence or it's appropriate for the defendant to be given a death sentence.

Do you understand the three types of jurors I've described?

A I do.
Q Now, of those three, which of those three would best describe yourself?
A I think myself as number three.
Q All right, sir. So, you believe that you would be willing to come back into the jury room, follow the law, listen to the evidence, the facts and circumstances presented, and then make a decision as to the appropriateness of the sentence to be given?
A Yes, sir.
Q Is that correct?
A Yes, sir.
Q Now, sir, if you were in that situation, and if you came back into the jury room and the issue of guilt was no longer a concern, and you listened to the facts and the evidence in this case, and you believed the evidence justified it, would you be willing to sentence someone to death?
A I would.
Q And if you came back into that room and listened to the sentencing phase, and thought about the facts and the evidence, and it was your belief that they did not justify a sentence of death, would you be willing to sentence someone to life imprisonment?
A I would.

Q So, you could sentence someone to either life or death depending on the evidence presented and your view of the evidence and the law charged by the Court?
A Yes, sir.
Q Now, I'm -- finally I'm going to point out to you that the jury in this case will be sequestered. Once the jury is selected, I expect the trial of the case to take about a week, give or take a day or two. I don't know which way it would go one way or the other. During that week, during your sequestration, you'd be required to be in a hotel and under observation. Wouldn't be allowed to communicate with anyone except on a very limited basis.
Do you understand that?
A I do.
Q Now, sir, would that particular situation impose any risk of danger to your health or well being?
A No, sir.
Q And if you were placed in that situation, would it place anyone who's dependent upon you at any risk of danger to themselves or their well being?
A No, sir.
Q So, you could do that if it was required of you?
A I could, yes, sir.
Q All right. At this time I'm going to ask you to respond to questions asked by the attorneys. The defense

will go first.

Mrs. Hodges, looks like you're rising.

MRS. HODGES: Thank you, Your Honor.

EXAMINATION

BY MRS. HODGES:

Q Mr. Rogers, I'm Kathy Hodges, and along with John Reckenbeil and Clay Allen, I'm representing Mr. Torres.

A couple things I had noticed on your jury questionnaire.

You had mentioned that you're actually under a doctor's care currently?

A Who, me?

Q Yes, sir.

A Yes, ma'am.

Q Okay. And I, I hate, hate to pry into personal business.

A It's no -- I don't mind.

Q Is it something that I can ask you about?

A Yeah, you can ask it.

Q Okay. What, what are you under care for?

A Well, I don't know the -- I can't remember the name of it. But---

Q Okay.

A I make too much blood. I got to go to phlebotomy ever so often.

Q Okay. Okay. And is that something that, that they do on a, on a regular schedule or---
A Just I, I go have my blood checked and if I need it then they do it.
Q Okay. And anything right as of today that you, that you foresee as being a problem the next couple of weeks?
A No, cause I just went last week and had one done.
Q Okay.
A I told the doctor that I had to come to jury duty and so he put it up.
Q Okay. You had mentioned that, that you're disabled. Is that, that the nature of your disability is your---
A Yes, sir.
Q ---blood condition?
A No, no, no. It's, it's my legs. I had an accident and crushed my knee and my lower leg.
Q Okay.
A I got plates up in there. I, I can't walk very much.
Q Okay. But any, any -- that wouldn't prevent of your ability then---
A Oh, no.
Q ---to sit in the courtroom and listen to the evidence---
A No.
Q ---and that sort thing?

Okay. And your daughter had worked for Harrison, the Harrison White Smith Firm?
A She did. She was working -- at the time I got the questionnaire she was working for them. But---
Q Okay.
A ---she has since went back to her old job at a doctor's office.
Q What was she doing with them?
A She was a -- I guess you call a legal secretary for, for Mr. Harrison.
Q Okay. Have you heard anything about this case other than what's been talked about in the courtroom today?
A No, ma'am, the only -- I got, I got that summons, you know. It had the letter, the letter, had, had his name on it, and I didn't even recognize the name.
Q Okay. All right. And didn't read anything in the newspaper or on TV or anything like that?
A No, I don't, I don't take the paper or nothing.
Q Okay.
A I don't get to watch the news very much.
Q So, you---
A Bill O'Reilly is about all I watch.
Q I'm sorry?
A I said Bill O'Reilly, I watch him.
Q Okay. So, basically whatever you've heard about the

case is just basically what you've heard in the courtroom today?

A Basically it has been, yes.

Q Okay. Based on what you've heard, have you formed an opinion on, on this case based on what you've heard in the courtroom today?

A No, ma'am.

Q Okay. Obviously the reason why we're doing kind of the individual voir dire because this case is a little bit different than---

A Oh, I understand.

Q ---most cases. And the, and the judge kind of put the, the question to you a little bit. I just want to talk to you a little more about that.

Mr. Torres is charged with murder, and murder basically deals with somebody who is basically been found guilty of willfully killing another human being with malice aforethought. It does not require premeditation. But basically there, there has to be, you know, malice aforethought and it can be kind of formed in an instant, and this is the type of case where there's basically no sort of evidence of self-defense or some sort of legal provocation.

So, basically it's a killing and, and, and then there's no question about the fact that, that somebody is responsible for, for killing that other human being.

Are we on the same page?
A Yes, ma'am.
Q Okay. In that type of case, do you have an opinion that the death penalty is the only appropriate response, only appropriate penalty for that kind of crime?
A No.
Q Okay. The reason why the, the judge talked to you about the two different types of, of phases of the trial, if you will, you have both the actual guilt or innocence as to the crime itself, and then the State has an opportunity to, because they filed notice to seek the death penalty, they have an opportunity to present what they call aggravating circumstances. Something that makes the case kind of more severe than, than some, you know, which you might consider in those other murder cases.

If the State's able to prove to you an aggravating circumstance, that somebody's done this murder, but it's a much more serious murder than in comparison with other murders, would you consider the death penalty, at that point, to be the only appropriate penalty?
A I probably would.
Q Okay. And you say you probably would.
A Yeah.
Q Tell me a little bit more about what you mean by that.
A Well, it depends, it depends on the evidence, you know,

and---
Q Okay. What do you mean by, by it depends on, on the evidence?
What---
A Well, if it's overwhelming and a lot of it and --.
Q Okay. And are you talking just in terms of the, the, that the circumstances of aggravation or overwhelming or are you talking about---
A Yeah, I guess I am.
Q Okay. Would you require the defense to present evidence to you to, to lessen that aggravation in order to consider life?
A Yeah, if they had it, I'd, I'd definitely want it.
Q Okay. Is it something that, that you would, that, that you would require the defense to do or would you be able to consider it so that if the State only presents aggravating circumstances, and there's no mitigating circumstances, you know, would you be able to consider a life sentence at that point?
A Yeah.
Q Okay. Because, because I'm a little confused because I kind of got the impression from you, you said, you indicated that you'd want the defense to present you mitigating circumstances.
A Well, I'd want all the evidence that I could get, you

know.
Q Okay.
A Both sides you know.
Q All right. Would you then be able to, to take, from what the State gives you in terms of aggravating circumstances, and listen to any mitigating circumstances and would you be able to return a life verdict?
A Well, I'd have -- I guess I'd just have to wait on that I guess.
Q Okay. Well, do you have an idea -- I mean does, does one have to weigh more than the other?

Is it -- I mean do the mitigating circumstances have to be more than the aggravating circumstances or, or what do you mean?

I'm just trying to understand what you mean by weighing it out.
A Well, the prosecution would have to have a good bit of evidence, you know, a lot.
Q Okay. You understand that, that a jury's never required to give a death sentence?
A Uh-huh. (Affirmative).
Q I mean---
A Yes.
Q Okay. I guess, I mean I'm still trying to struggle with, with what you mean by a, by a lot.

A Well, I don't know. I, I would just listen to both sides and just have to figure out, you know, take into consideration everything.
Q Uh-huh. (Affirmative).
A All the, the evidence on both sides and --.
Q Okay.
All right. Could I have just a moment, Your Honor?
THE COURT: Yes, ma'am.
(Pause.)
Q Let me ask you this, Mr. Rogers.
How -- what is -- do you have an opinion about the death penalty as relates to murder cases?
A No, ma'am, I don't.
Q Never thought about it, talked about it, discussed it with anybody?
A No, it -- if, if, if the evidence solidly shows it and proves it, then I'd, I'd be for the death penalty.
Q Okay. Okay. And if, if the evidence solid proves -- I guess my question is is what, what is it that you're looking to have solidly proven to you?
A Well, I don't know. I'd have to hear it.
Q I mean are you talking about just the crime itself or are you talking about something else?
A I'm talking about the crime or maybe what led up to the crime or, you know, everything.

Q Okay. Okay. Nothing further. Thank you, Mr. Rogers.

THE COURT: State's questions, Mrs. Crick.

SOLICITOR CRICK: Thank you, Your Honor.

THE COURT: Yes, ma'am.

EXAMINATION

BY SOLICITOR CRICK:

Q Mr. Rogers, just by the luck of the draw you happen to be the last juror in here tonight. So, I apologize for that.

A Yeah, that's my luck.

Q Well, we're glad you're here and I appreciate it. I'm gonna make it very short and sweet.

If I'm understanding what your answers were to both Judge Couch and Mrs. Hodges, what you're saying is if you were in a penalty phase, you would be able to listen to what the State said and also, if the defense had any evidence, you'd be able to listen to that.

A (Witness nods affirmatively.)

Q And make a decision based on the evidence that you hear.

A Uh-huh. (Affirmative).

Q Is that---

A That's right.

Q ---correct, what you said?

And also that you could impose either a life sentence

or a death sentence, but it all would depend on the totality of what you hear in the case?
A Yes.
SOLICITOR CRICK: Okay. Your Honor, just one second.
(Pause.)
SOLICITOR CRICK: I think that's it, Your Honor.
THE COURT: Any follow-up questions from the defense?
MRS. HODGES: No, sir. Thank you.
THE COURT: All right. Mr. Rogers, I want to be sure we have your contact information correct.
Do we have your contact information on---
WITNESS: Yes, sir.
THE COURT: Do you have both, all your numbers where you can be reached?
WITNESS: Yes, sir.
THE COURT: What we're gonna do, you're not on the jury yet. Obviously we're still going through the qualification process.
WITNESS: Yes.
THE COURT: And that may go on for a day or so.
WITNESS: All right.
THE COURT: We'll be in touch with you to let you know when you need to be back if you're to come back to the jury for the jury selection. I will tell you, if you come back then and you're selected to serve on a jury, you'll be

staying with us.

WITNESS: Yeah, I understand.

THE COURT: So, you'll need to bring with you whatever you're gonna need for that stay of about a week I was telling you about. So, be prepared to stay if that were to occur if you're asked to come back.

Okay, sir?

WITNESS: Okay.

THE COURT: My instructions still hold as far as not to discuss the case with anyone, not to gather any information until such time as the case has been ended.

You understand that, sir?

WITNESS: I understand.

THE COURT: All right, sir. You're free to go. Thank you, sir.

WITNESS: Thank you.

(The following takes place outside the presence of the juror.)

THE COURT: All right. Let's go over this panel as to the State's position in regard to the jurors we've heard thus far.

SOLICITOR GOWDY: Your Honor, would you like us to take them individually or would you like for me to take them up like---

THE COURT: In the order that we heard them.

SOLICITOR GOWDY: Sir?
THE COURT: In the order we heard them.
SOLICITOR GOWDY: Judge?
THE COURT: Number 1 was Mr. Richard Pack.
SOLICITOR GOWDY: Yes, sir, I, I think that, without question, he's the quintessential type three juror. He's qualified.
THE COURT: Defense position as to Juror Pack?
MR. ALLEN: No objection---
THE COURT: All right.
MR. ALLEN: ---as to qualification.
THE COURT: Court finds him qualified.
Mr. Nichols, State's position?
SOLICITOR GOWDY: Your Honor, with respect to Mr. Nichols, I counted seven different times where he answered it would defend on the facts. The fact that a juror says probably this or probably that does not mean they're disqualified. That's a fact of life. People have thoughts and feelings. Seven different times he said it would depend on the facts and he could give life or death. So, he's qualified.
THE COURT: All right. Hear from the defense.
MR. ALLEN: Your Honor, I'm -- I, I believe that the notations I've got indicate that he would find it hard to vote for life. Even though he, he would say he could give a

life sentence, he would always -- I mean he seemed that he would follow-up that up with a, a yes, sir, or probably. Because he finds it hard to vote for life in the way I view the evidence, I would object to his qualifications because I believe that his beliefs or attitudes on capital punishment or life would prevent him or substantially impair his ability to perform his duties as a juror in accordance with our statute concerning 16-3-20(E), and, of course, Supreme Court, United States Supreme Court case of Morgan versus Illinois, and that his service on the jury would violate Mr. Torres Sixth, Eighth, and Fourteenth Amendment rights under the United States Constitution and the South Carolina Constitution Article 1, Section 3, 14, and 15, and I would ask that he be excluded as a juror.

THE COURT: All right. My findings concerning Mr. Nichols, he did indicate that he could decide the case based on the law and the evidence. I recall he was the juror also who had participated in a previous trial where a defendant was found not guilty in a case, which indicates to me a willingness to apply the law. I do realize that, while he may appear to favor the death penalty in certain cases, I do believe that he would follow his directions of the Court as to the law and would dis, faithfully discharge his oath. Therefore, I will find him qualified.

Mrs. Janet Hill, for the State.

SOLICITOR GOWDY: Your Honor, with respect to Juror Number 3, while her answers on paper would appear to be qualified, I think, in all candor, the totality of her responses to the Court and the defense counsel make it tougher for me to argue that she is qualified in all frankness.

THE COURT: The defense.

MR. ALLEN: Your Honor, I don't -- I move that she be disqualified as a juror. I mean she---

THE COURT: Well, based on my review of her answers I would find that she is disqualified.

MR. ALLEN: Thank you.

THE COURT: Mrs. Lettie O'Neal.

SOLICITOR GOWDY: Your Honor, Your Honor, with respect to Juror Number 207, extraordinarily candid, extraordinarily forthright. She doesn't believe in the death penalty. She's disqualified.

THE COURT: Defense.

MR. ALLEN: I can not, in good faith, argue against.

THE COURT: I find her to be disqualified as well based on her unwillingness to consider any other verdict than life.

Mr. Ronald Rogers, for the State.

SOLICITOR GOWDY: Your Honor?

THE COURT: 226.

SOLICITOR GOWDY: Juror 226, another prototypical type three. He has to hear it. I, I, I quit counting at five where he said I just have to hear everything, and I think that's exactly what you want in a qualified juror. He could give life or death, and I think he's a type three.

THE COURT: Hear from the defense.

MR. ALLEN: May I consult?

THE COURT: Yes, sir.

(Pause.)

MR. ALLEN: Your Honor, our recollection, recollection of his testimony or his voir dire indicates that he would require us to put evidence forth and this would indicate that he would essentially be sort of shifting the burden on us to prove why the death penalty would not be appropriate, and we would ask that, because of his feelings of, to require us to put forth evidence and to show, to show why it would not be appropriate, that he would be disqualified under the United States Constitution.

THE COURT: I don't, I don't recall his testimony in that fashion. I know that he indicated that -- I think the questions were asked as to whether or not he would want to require the defendant and I'm not sure he understood the importance of the word require in that situation. But he, he -- I think what he said was that he would like to have all the information that was available. And if the defense

has anything, he'd certainly want to hear it, which doesn't indicate to me a burden shifting, and certainly he's not been, at this point in time, charged with that particular situation. I'm not sure he understood that.

I do find, however, that he was very clear that he would decide the case based on the law and the evidence. He just expressed to me, from what I heard, a desire to hear all the facts before he made the decision. And if the defense had anything, he wanted to hear it. And that's the way I took his answer in that, in that regard.

So, I'm gonna find Mr. Rogers to be qualified to serve.

All right. We'll start again at nine o'clock in the morning. Obviously we're -- it's taking quite some time to go through these jurors. If there's any way we can streamline the process, let's attempt to do so. Otherwise we may be here for an extremely long period of time. Of course, we'll be here for the time that it takes. But if we can move it along a little quicker, the Court would appreciate it so that we can get the, get the jury qualified and proceed with our work.

At any rate, nine o'clock in the morning.

Thank you very much.

MR. ALLEN: Yes, sir, Your Honor.

THE COURT: Defendant remains in custody obviously.

(Whereupon, Court was in recess for the evening.)

Tuesday, October 14th, 2008.

THE COURT: All right. State ready to proceed?

SOLICITOR GOWDY: Yes, sir, Your Honor.

THE COURT: Defense ready to proceed?

MR. ALLEN: Yes, Your Honor.

May I take up a matter before we bring in the first witness---

THE COURT: Yes, sir.

MR. ALLEN: ---in the hopes that resolution of this matter will speed the process along?

THE COURT: Yes, sir.

MR. ALLEN: As the Court knows, yesterday, in at least the first three jurors that were questioned, that I or was asking specifically about certain aggravating circumstances.

THE COURT: Yes, sir.

MR. ALLEN: And I would like to let the Court know that even though I acknowledge that there are cases that say that I can not stake out a juror and go into the facts of this case, I don't, I, I don't believe, and I'm asking the Court's permission to talk about broad categories of cases, and broad categories of the case would include aggravating circumstances which may even apply to this case.

The way I look at it, Your Honor, is simply that some jurors may have certain hidden biases or, or prejudices

about a certain case and then may actually feel as if they will automatically give the death penalty in certain types of cases. For example, if this case involved the death of a small child or the murder of a police officer in the execution of his duties, it would -- I mean basically be unfair to put a juror who would automatically give the death penalty in those types of cases on the jury because they would not consider any mitigating circumstances, or for that matter, any other aggravating circumstances. And that's why I believe that we, we should be allowed, in conducting our voir dire, while not going into the specific facts of this case, not talking about arguments with the son and, and proximity of locations and, and all that, we're talking about the gasoline and all that.

But talking about whether or not the juror has a view to ask for the death penalty as to a case that involves where an individual kills two or more people at one course of, during one course of conduct or whether or not a murder was committed during the course of a burglary or a criminal sexual conduct or an armed robbery, if they have the view where they would automatically vote for the death penalty in such cases, then they would not be proper jurors for this particular case. They would not be fair and impartial.

In the, in the sense, what I'm concerned about, Your Honor, is that if, if a juror holds that view and were not

allowed to ask about that type of broad category of the case, which applies to this case, I'm not denying that, and we can tell by the indictments, that these apply to these cases, but if, if we have jurors that hold the view that that's an automatic death penalty, the way they would view it, then essentially the second phase of the trial is rendered meaningless and they will not be considering any mitigating circumstances or any other aggravating circumstances that the State may offer.

That is my purpose, Your Honor, of trying to ask about that, about those aggravating circumstances. And again, I don't want to get into the specific facts of the case and I'm trying to avoid that, but I believe, and while I will acknowledge that I can not find a United States Supreme Court case or a State Supreme Court case directly on point, but I believe that under Morgan verse Illinois that we've been talking about as well as the Sixth, and Eighth, Fourteenth Amendments of the United States Constitution and the South Carolina Constitution Article 1 Sections 3, 14, and 15, that we should be allowed, in conducting a meaningful voir dire with the jurors, in an attempt to disclose such hidden biases or prejudices that they may have either for or against the death penalty.

Morgan, if I may continue briefly---

THE COURT: I'm getting it up. I'm going to be reading

it.

MR. ALLEN: Yes, sir.

MR. RECKENBEIL: Judge, you want me to wait or---

THE COURT: Pass it up.

I'll hear the State.

Are you, are you -- have you finished your argument, Mr. Allen?

MR. ALLEN: Your Honor, essentially there's language in here, and I'm looking at Page 8 of 19, the paragraph right before the Roman Numeral III, essentially the last sentence that the Petitioner was entitled, upon his request, to inquiry concerning the jurors who---

THE COURT: Now, where, where are you now?

MR. ALLEN: The Page 8 of 19 on Section D of the very last sentence before the Roman Numeral III.

THE COURT: Yes, sir, I'm there now.

MR. ALLEN: Okay. That the petitioner was entitled, upon his request, to inquiry concerning those jurors who, even prior to the State's, State's case in chief, had predetermined the determining issue of the trial. That being whether to impose the death penalty.

And what I'm concerned about is, is that even though that we know jurors talk about they can be fair and impartial and they'll listen to all the evidence, it's very hard for a lay person to understand, even with general

explanation, the bifurcated nature of this case and the types of evidence that they will hear in the penalty phase of, of the trial. And while, again, I realize we can't go into the specific types of evidence that we're, we want to present or that the State may present---

THE COURT: Well, just how far do you want to go?

MR. ALLEN: I want to ask them whether or not they believe that the death penalty is the only appropriate punishment in a case involving a murder where the aggravating circumstances will include such things as murder of two or more people during the course of a---

THE COURT: Well, again, that's getting into the specifics of the case, which have not even been proven at this point in time. There's no facts in the record.

MR. ALLEN: Well, that's---

THE COURT: And, and -- go ahead.

MR. ALLEN: I'm sorry. I'm sorry.

THE COURT: No, go ahead.

MR. ALLEN: That's my point. I don't think it's getting into the specifics of the case, but rather that we're talking about the category of the case. The category of including certain aggravating circumstances that the State, by the very indictment---

THE COURT: Well, the way I read the cases, and, and, and tell me if I'm wrong, it allows you to ask, in general,

about mitigating -- that's the case that we talked about yesterday. You can talk---

MR. ALLEN: Yes, sir.

THE COURT: ---in general about mitigating circumstances. And you can talk in general -- and I would take it, although there's not a case that I've seen, that the same would be true of aggravating circumstances. That you can talk in general about aggravating circumstances.

What you were doing yesterday, especially in the case of the first juror, you asked him basically the case as I know it from the indictments. And that's asking them to prejudge, predetermine the case and that's getting specific, on specific issues, which, again, is staking out a jury. I think that's the common phrase that's used in the cases that I've seen.

MR. ALLEN: Yes, sir.

THE COURT: And, and that's the reason I ruled in the fashion that I did.

MR. ALLEN: Yes, sir.

THE COURT: And Mr. -- I'll be glad to hear from the State on it.

SOLICITOR GOWDY: Your Honor, I would just invite the Court's attention to State versus Powers and State versus Stanko, both of which were decided after Morgan versus Illinois, and both of which our Supreme Court said you can't

ask about specific mitigators. You can't ask about specific aggravators and you can't ask, ask about specific defenses like insanity, which was the issue in Stanko.

What you can do, and what's been done in every courtroom in every capital trial in South Carolina, is you can, you can ask would you automatically vote for the death penalty in any category of case. That's a proper question. But to go through the indictments, which is what he did yesterday, I could no more go through the mitigators I suspect he's gonna use and ask would you automatically vote for life. I'm it -- of course, I can't do that and he can't go through the aggravators.

He can ask are the, would you consider mitigation and he can even bundle up the categories. I don't mind if he does that. He can't ask specific things, mitigators. But to go through the aggravators one by one, especially the ones that apply to this case, there's no case that has ever allowed that to happen.

MR. ALLEN: Maybe that's where I'm getting confused with the bundling concept. I mean if we're -- and I think that phrase is even used that you could ask circumstances of aggravation in a bundle. I mean the only way I can think of it is to give certain examples and I did yesterday give some examples, which included some aggravating circumstances that did not apply to this case.

THE COURT: I'm gonna consistently rule that you can't get into specific aggravators. You can't get into specific mitigators. The point is would they consider factors in aggravation and also would they consider factors in mitigation. But I will not allow you -- and I don't think it's proper to get into specific mitigators or specific aggravators, and, and I consistently, continue to consistently rule in that fashion.

I know yesterday we went through several of them. You were trying to get around that a little bit and kind of edge around the corners. But that's not the purpose of this.

This is to find there are those jurors, jurors who, if there's a murder, they think there ought to be the death penalty. They're those jurors who think that even, no matter what the seriousness of the crimes, there should never be a death penalty. The purpose, I think, of this procedure is to find those who are open minded, who would consider both sides, and make a decision and could vote either for life or for death.

I think that's the purpose of this procedure and not to find those who are going to vote in my favor on this case after you've outlined the facts or the mitigators or the, or the aggravators specifically and then tried to get them to basically make a prejudgment without having heard the first word of testimony or whether those facts actually get proven

in the case. And so, I think that's the purpose, in these, these cases, is to prevent that from happening.

Again, the inquiry is can we find jurors who are fair, open minded, not prejudge the case in any fashion, and who could vote for life, who could vote for death, and will consider both aggravators and mitigators. But when you start talking in terms of specifics, two deaths, other crimes being committed, things of that, and then you're getting into the specifics of the case, you're trying to pick specific jurors who will vote your way or vote some other way, and that's not the purpose of this inquiry.

So, I'm gonna continue to rule as I did yesterday that I'm not gonna allow specific questions on specific aggravators or I'm not gonna allow the State to talk about specific mitigating factors, would that, would they consider this factor or that factor. Won't let them go there either. But we're trying to find fair and open minded jurors who have not prejudged the issue of life or death.

MR. ALLEN: I understand the Court's ruling and I'll, I will certainly abide by it, but---

THE COURT: And I understand, I understand your position. I just don't see a case that says you can do that. And I too, like the solicitor, the other cases that have followed the case that you just sited indicate that they don't want you to go to specifics on, on defenses and,

and I think the same would be true on aggravating circumstances. I think it would be consistent, be a consistent ruling. I don't know -- I don't see any other case that indicates that we'll go another direction on those issues.

MR. ALLEN: Yes, sir.

THE COURT: And if you know of one, please tell me.

MR. ALLEN: I do not know of one that specifically allows us to go into aggravating, specific aggravating circumstances. But I guess what I'm trying to say is I think that---

THE COURT: You're trying to find a way to kind of get around that a little bit.

MR. ALLEN: Yes, sir.

THE COURT: I understand.

MR. ALLEN: Yes, sir. But I mean in talking about it in a, in a broad, in broad strokes, but talking about real aggravating circumstances that---

THE COURT: Well, again, that, then I think you go too far. I think you can talk about -- and, and, you know, I think you're talking about aggravating circumstances. You can even explain things that make it worse. That's the way it's explained in the, in the information I've already given them. Mitigators are things that tend to lessen the severity of the punishment that someone can get.

Aggravators tend to make it worse and would you consider both of those. That's the things you can ask about.

And then you correctly described, they're not defenses. Mitigators are not defenses. And, and aggravators don't necessarily make the crime, another crime. But they are, as far as the punishment is concerned, are factors that might tend to make a juror make the punishment worse or to make the punishment less. I think you can explain it in that fashion, would you consider factors that might mitigate the punishment.

Now, if the juror says no, if there's been a murder and I won't consider any mitigating factors, I want to know that.

MR. ALLEN: Yes, sir.

THE COURT: But when you start talking about specifics of this case, then you're asking jurors to, to basically prejudge a case that they've heard, that there's nothing really been proven yet. I don't know what facts will prove or how they will find those facts if they were shown to them. That's, you know, I think that that goes too far at this stage.

MR. ALLEN: Yes, sir. Well, I mean I just respectfully disagree.

THE COURT: Oh, I know. Your, your position is on the record.

MR. ALLEN: Thank you.

THE COURT: I understand.

MR. ALLEN: Thank you, Your Honor.

THE COURT: All right. Anything further from the defense before we begin?

MR. ALLEN: No, sir.

THE COURT: All right. All right. We're starting with Panel Number 2.

Bring in Mr., Mrs., Mrs. Claire Myers please.

BAILIFF: Yes, sir.

CLAIRE MYERS, having been previously sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q You are Claire Myers, is that right?

A Yes, sir.

Q All right.

A That's correct.

Q Mrs. Myers, I will remind you that yesterday you were placed under oath to answer my questions truthfully, accurately, and completely. I'm telling you that just to remind you that you remain under oath at this time.

A Yes, sir.

Q Are you aware of that, ma'am?

A Yes, sir.

Q All right. Ma'am, we're, we're, we're in a situation today, what we're doing today is going through some matters with you that have to do with your personal beliefs. I will tell you now that I understand this may be an inconvenience and this situation might be a little uncomfortable for you. You've not been in this situation before.

What's going to happen is I'm going to ask you some questions and go over some matters with you. When I finished, I'm going to allow the attorneys some time to go over their questions with you. I will tell you now there's no right answers and there's no wrong answers to what I'm going to ask you. We're simply here to gather some information. We're not trying to change your opinions or your positions---

A Okay.

Q ---on matters. We're trying to find out what they are.

A Okay.

Q If, at anytime during the questioning, you feel uncomfortable with what we're doing or that you feel like that someone is, is trying to force you to change an opinion or something like, like that, please let me know---

A Okay.

Q ---and we'll be glad to see what we can do about that.

A Okay.

Q The first question I'm gonna have, since we started

going over matters with you yesterday, has anybody contacted you about this case?

Have you heard or read or seen anything about this case since that time?

A No, sir, not since that time.

Q Now, have you discussed the case with anyone at this time?

A No, sir.

Q Thank you, ma'am.

Now, have you ever been, participated in any type of Internet blog, chat room, or anything of that nature that has to do with issues concerning the death penalty?

A No, sir.

Q Have you ever participated in any political activities such as demonstrations or other rallies that would be either for or against the imposition of the death penalty?

A No, sir.

Q Now, ma'am, do you, do you or can you put aside anything you have heard, seen, or read about this case previously and decide the case based on what you actually hear in the courtroom during the trial?

Can you do that?

A Yes, sir, as I stated before, I did, the day before I came in here, at first I didn't realize it was the same case and then I remembered the last name. So, I tried to stop

listening at that point.
Q Okay.
A But I did hear some details about the case at that point and---
Q I understand. But my question to you is though -- I didn't mean to cut you off.
A Right. Right.
Q But it -- could you put aside anything that you may have seen or heard up to this point in time, and decide the case based on the evidence that's presented during the trial, the testimony of witnesses?
A Yes, sir.
Q And the evidence that's introduced during the trial?
A Yes, sir.
Q All right. Now, ma'am, while you were waiting, you had a chance to go over a list of witnesses.
A Correct.
Q All right. Now, I don't want you to identify any of those witnesses by name.
A Uh-huh. (Affirmative).
Q But I'm going to ask you generally about those and then we'll discuss it if you have any responses for me.
A Okay.
Q From that list, have you had any social, business, or personal connections with any of the potential witnesses on

that list?
A No, sir.
Q Are you related, in any way, either by blood or marriage, or have you ever been related by blood or marriage to any of the individuals you saw listed on that list?
A No, sir.
Q So, as far as you know, you have no connection with any of the people who were listed as witnesses?
A Correct.
Q All right. Now I'm going to ask you some questions about your opinions. Again, we're not trying to invade your privacy. What we're doing is just trying to see how you might feel and what your opinions are because they're important to us as to what those are. I certainly -- you appear to be an individual who is comfortable enough in your own opinions that you won't feel threatened by us asking those things.

Now, one of the things we want to talk to you about obviously in this case is your feelings concerning the death penalty because that may end up being an issue in this trial.
A Right.
Q I hope you understand though that the trial hasn't begun yet. The issue of the penalty would come up only after a question of guilt was decided in a separate

proceeding. And the fact that we're talking about this issue now should not, in any way, reflect adversely on the defense or the defendant. It's simply the only time we have to talk to you about this issue before the trial begins.

So, we're actually, I guess, putting the cart in front of the horse a little bit by talking about this. But I hope you understand why we're doing that.

Now---

A I'm going to get my glasses out. Excuse me.

Q Sure. That's quite all right.

All right. Thank you. Now, if you were a juror in a criminal case, and I'm not talking specifically about this case, I'm talking in general about a criminal case, would you be willing to listen to and follow the law as instructed by the judge?

A Yes.

Q Now, would you be willing to accept the law and apply it to the facts as you find the facts to be?

A Yes.

Q Now, ma'am, even though you might not like the law, even though you might disagree with the law as given to you by the Court, would you still be willing to follow the law as instructed by the Court?

A Yes, sir.

Q Now, ma'am, if you were a juror in this case, State

versus Torres, I've already asked you and I want to be sure, would you be willing to set aside any information, that, knowledge you may have from this, about this case from any other source, anything you've read, heard, listened to, or seen, or anything that might occur during the trial, and, again, decide the case purely upon what you hear in the courtroom?

A Yes, sir.

Q Now, I've mentioned to you before, during our discussions with the jury and, as a, as a whole, but I want to be sure you understand, a criminal defendant in this state is presumed to be innocent. That's an important rule of law. Therefore, the defendant does not have to prove his innocence in any fashion.

Do you understand that concept?

A Yes, sir.

Q Also the State has the burden of proving the defendant guilty beyond a reasonable doubt.

Do you understand that concept of the law as well?

A Yes, sir.

Q And would you be willing to follow those concepts?

A Yes, sir.

Q Now, if you were a, sitting as juror in any criminal case, would you be willing to listen to the law and evidence presented to you, and based upon those things, could you

find a person not guilty as charged if you listened to all the law and all the facts, and based on your consideration of that, could you find someone not guilty?

A Yes, sir.

Q And, ma'am, by the same token, if you listened to all of the law and all of the facts and all the circumstances during the trial, could you find someone guilty of a crime?

A Yes, sir.

Q Now, do you think that just because someone has been accused of a crime that they must be automatically guilty?

A No, sir.

Q Now, are you a person who would be able to make up your mind, depending upon the strength of the evidence and what the testimony and evidence showed, and as I indicated, find someone either guilty or not guilty?

A Yes, sir.

Q That's correct, is that right?

A Yes, sir.

Q Now, we're gonna talk about this penalty, death penalty issue a little, in a little more detail now. So, that's what I'm going to go over with you now.

In South Carolina, generally the judge decides penalties in almost all criminal cases. There's an exception to that fact when the, a, the, the charge is murder and the State seeks the death penalty for that

murder.

In that situation, as I've explained, there is a separate sentencing phase once guilt has been determined. Of course, if the defendant is found not guilty, that ends the case. So, we don't go to, go to that stage.

A Right.

Q But there's a separate phase of the trial, if the defendant is found guilty of the murder, where the penalty is decided.

A Yes, sir.

Q Do you understand that's what would happen?

A Uh-huh. (Affirmative).

Q And in this particular case, and under that, those circumstances, if the jury convicts the, a defendant of the crime of murder so that guilt is been determined, then you would come back, that same jury comes back and decides that penalty in that separate proceeding.

Now, in that separate sentencing proceeding, the only determination to be made by the jury is what sentence is to be handed out or given. There's only two choices. One is life imprisonment. The other is death, the death penalty.

Do you understand that situation?

A Yes, sir.

Q Now, I want you to put yourself in that situation theoretically---

A Okay.
Q ---as a juror in a case, in which the State is seeking to impose the death penalty, and you and your fellow jurors have already convicted a defendant of the murder, and you are about to come back into the courtroom for the purpose of handling the sentencing phase of the trial. And at that time the decision, again, is either life imprisonment or the death penalty.

Now, do you understand the situation I've put you in?
A Uh-huh. (Affirmative).
Q All right. And while you were in the jury room, I gave you a sheet of paper to go over and there were three possible jurors listed on that sheet of paper.
A Yes, sir.
Q Did you read that and understand it?
A Yes, I did.
Q Okay.
A Uh-huh. (Affirmative).
Q Now, the first type of juror in that situation is someone who is coming in, into the sentencing phase and that person's already made up their mind, and they've decided that the only proper punishment for someone in that situation would be to vote for the death penalty every time.

Now, the second type of juror that we described on that paper also knows how that juror is going to vote, and that

person believes that the State should never take a life for the commission of a crime. So, that person is going to vote for life imprisonment every time.

The third type of juror that's listed on that sheet of paper doesn't know what that juror is going to do. He doesn't have his mind made up. In other words, he will have to wait and listen to the evidence and testimony during the sentencing phase and then decide as to what would be the appropriate punishment. So, those are the three people I described on that paper.

Is that correct?

A Yes, sir.

Q Now, ma'am, of those three types of jurors---

A Uh-huh. (Affirmative).

Q ---Which one most closely described your position?

A The second juror.

Q The second juror?

A Yes, sir.

Q So, it's your belief that life imprisonment would be the only possible---

A Yes, sir.

Q ---sentence that could be given?

A Yes.

Q Now, ma'am, I'm going to ask you to answer any questions that the attorneys might have---

A Okay.
Q ---at this point in time and I'll allow the defense to go forward.
A Okay.
MRS. HODGES: Your Honor, I'll go first.
THE COURT: Yes, Mrs. Hodges.
MRS. HODGES: Thank you, Your Honor.
EXAMINATION
BY MRS. HODGES:
Q Good morning, Mrs. Myers.
A Good morning.
Q You had indicated to the judge just a few minutes ago that you could listen to the law as the, as the judge instructed you and follow the law even though you might not agree with it.
Is that, is that fair?
A Yes, ma'am.
Q Okay. And when we talk about the death penalty, you understand that no jury is ever required to return a verdict of death, right?
A Correct.
Q But could you listen to -- cause what happens in a death penalty case, and, you know, I know, I know you've probably heard it six or seven times already, but basically it's kind of in two parts. The jury finds somebody guilty

of murder first---
A Uh-huh. (Affirmative).
Q ---basically of a willful killing of another human being with malice aforethought, and the judge will define malice to you during jury instructions. But basically it's somebody kind of acting with a wicked, depraved heart.
A Uh-huh. (Affirmative).
Q You find somebody guilty of murder, and then you move into the second phase, which is the, the sentencing phase. And the State gets to produce what they call aggravating circumstances. Something that basically says that this case is worse than, tends to make the punishment worse than what it might normally be in, in just a, a, in a -- and I don't mean to ever diminish anybody's life. But just kind of a more regular murder.
A Uh-huh. (Affirmative).
Q So, you got kind of a case -- the aggravating circumstances tend to make the case worse, and I'm not asking you to, to, to tell me what a circumstance is, but can you think of a circumstance that, that might happen that tends to make the case worse where you could consider and listen to the State's evidence and consider voting for the death penalty?
A No, ma'am.
Q All right. Nothing in -- nothing that, that could,

could change your view in that, that way at all?
A I don't believe in the death penalty.
Q All right. Thank you, ma'am.
A Uh-huh. (Affirmative).
THE COURT: Thank you.
Solicitor, do you wish to ask any questions?
SOLICITOR GOWDY: Only that Bernie Dunlap is a wonderful person. So, no, no, no more questions, Your Honor.
THE COURT: All right. Ma'am, I'm going to, at this time, advise you that you are, you will be free to go. If we need you again we will be calling you and let you know that.
WITNESS: Okay.
THE COURT: My instructions continue to go as I indicated earlier. You should not discuss the case with anyone.
WITNESS: Right.
THE COURT: And it's gonna be a couple days as we go through this process.
WITNESS: Okay.
THE COURT: And if we need you further, we'll be back in touch.
WITNESS: Okay.
THE COURT: Otherwise, you can check with the Clerk's

Office.

WITNESS: Can I ask you a, a question---

THE COURT: Yes, ma'am.

WITNESS: ---real quick?

I have work on Saturday and Monday evening.

THE COURT: Uh-huh. (Affirmative).

WITNESS: And it's a different event that I'm planning.

THE COURT: Uh-huh. (Affirmative).

WITNESS: And I didn't realize that before, that this would be something where you would be staying overnight and wouldn't be able to go home.

THE COURT: Uh-huh. (Affirmative).

WITNESS: I mean I guess at, at this point that there's nothing that I, could be done about that, correct?

THE COURT: Well, ma'am, if we're, if we're in -- if you're selected and on the jury, you would be sequestered during that period of time.

WITNESS: Okay.

THE COURT: So, we would probably have to keep you during that time.

WITNESS: Okay.

THE COURT: Thank you, ma'am.

WITNESS: Thank you. Thank you.

(The following takes place outside the presence of the juror.)

MR. ALLEN: Your Honor?

THE COURT: Yes, sir.

MR. ALLEN: Could we request the Court to ask us to make our motions to strike for cause as we go so that one, so what they said, exact words, what they said, would be fresh in our minds.

THE COURT: That would be fine with me.

Solicitor.

SOLICITOR GOWDY: Whatever the Courts wants to do.

When you say strike, you mean qualify?

THE COURT: As to whether or not we find them qualified. Go ahead and take our arguments at this point in time as to each one.

SOLICITOR GOWDY: I'll do whatever the Court wants to do.

THE COURT: All right. All right. You wish to -- do you have a position concerning this juror?

SOLICITOR GOWDY: I, I think she's unqualified. She's very honest. She's also unqualified.

MR. ALLEN: I'm not arguing that, Your Honor.

THE COURT: All right. I'll find that juror disqualified.

All right. We need to bring in Ricky Hardy.

THE COURT: Okay.

RICKIE HARDY, having been previously

sworn, testified as follows:

EXAMINATION

BY THE COURT:

Q All right, sir. Your name is Rickie Hardy, is that correct?

A That's correct.

Q Now, Mr. Hardy, thank you very much for coming back this morning, and we appreciate your assistance and help so far. I want to go over some things with you.

The first thing I'm going to remind you of is that you were placed under oath yesterday---

A Yes, sir.

Q ---to tell me the truth about these matters and I'm just reminding you that you're still under oath. We're not gonna swear you again today.

A Yes, sir.

Q You understand that?

A Yes, sir.

Q All right. Now, Mr. Hardy, we're gonna go over some questions with you that have to do with your personal views about certain things, and I realize this situation might be a little uncomfortable for you. You've not been in this situation before. I'm going to ask some questions. I'll allow the attorneys, the attorneys to ask you some questions.

There are no right or wrong answers to these questions. So---
A Yes, sir.
Q ---don't feel that we're expecting or want you to answer in any particular way. We're here really just to get your views and gather some information about those opinions, and we're trying to determine what your opinions are on certain subjects.
Do you understand that?
A Yes, sir.
Q All right. Now, my first question for you, since we talked yesterday, has anybody contacted you about the case or have you heard or seen anything about the case?
A No, sir.
Q Have you been exposed to any other information about the case other than what I told you yesterday?
A No, sir.
Q All right. Now, my -- the next question I have is have you ever participated in any type of Internet site or blog or any other place where you may have discussed the issue of the imposition of the death penalty?
A No, sir.
Q Have you ever participated in any political or, or demonstration or any type of political action concerning either the imposing or the non-imposing of the death

penalty?
A No, sir.
Q Now, my next question is can you put aside anything that you might have heard about this case previously and decide this case based on the things that you will hear in the courtroom during the trial?
Could you do that?
A Yes, sir.
Q Now, you may recall, back in the jury room just a little while ago, I had available to you a list of potential witnesses.
A Yes, sir.
Q Do you remember?
A Yes, sir.
Q I don't want you to identify any of those people by name.
A Okay.
Q Okay. But I'm gonna ask you some questions generally about that list.
A Uh-huh. (Affirmative).
Q So, you have seen it and reviewed it, is that right?
A That's correct.
Q Now, as far as the people that were listed on that list, do you have any social, or business, or personal connection with any of the people listed on that list?

A No, sir.
Q All right, sir. And are you related, in any way, either by marriage or by blood, or have you formerly been related to any of the people who were listed on that list?
A No, sir.
Q So, as far as you know, you have no connection with anybody listed on that list?
A No, sir.
Q Okay. Now, I'm going to ask you some, now some questions that might be a little more personal in nature about your opinions on certain topics, and I want to assure you I'm not trying to invade your privacy by asking these questions. You seem to be a very secure individual. You would be able to state your opinions.
A Yes, sir.
Q And I want to let you know, if you feel like anyone is trying to make you change your mind on any position, let me know that fact because what we're here really just is to find out what you think on certain things.
A Yes, sir.
Q And, and we're not -- again, there's no right or wrong answers to any of the questions that I'm going to ask you.

Now, one of the things we're gonna ask you about will be the death penalty specifically, and I hope you understand, from our discussion yesterday, that this trial

will go through two phases. They'll be a phase where guilt or innocence is determined as to the charge, crimes that were charged, and then, if the defendant were found guilty of the crime of murder, the State has sought the death penalty. There would be a separate trial, using the same jury, to determine what that penalty might be.

Do you understand that?

A Yes, sir.

Q All right. And I realize that, by talking about the death penalty, we're kind of putting the cart in front of the horse because that would only come at the end of the trial. So, please don't think, because we're asking about that, that in any, in any way reflects negatively on the defendant or any defense that he might raise because, again, this is the only time we can talk about that issue before the trial begins since the same jury will be on both cases.

A Yes, sir.

Q Do you understand that?

A I understand.

Q All right. Now, if you were a juror in any criminal case, and I'm not talking specifically about this case, but if you were a juror in any criminal case, are you the kind of person who would be willing to listen to the law as it was instructed to you by the judge?

A Yes, sir.