

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County
Honorable J. Derham Cole, Circuit Court Judge

RECEIVED

Apr 05 2021

S.C. SUPREME COURT

ANDRES ANTONIO TORRES,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2020-000842

APPENDIX

ROBERT M. DUDEK
Chief Appellate Defender

ALAN WILSON
Attorney General

SUSAN B. HACKETT
Appellate Defender

W. JEFFERY YOUNG
Chief Deputy Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

DONALD J. ZELENKA
Deputy Attorney General

ATTORNEY FOR PETITIONER

MELODY J. BROWN
Senior Assistant Deputy Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

INDEX**VOLUME I**

INDEX	i
TRANSCRIPT OF PRE-TRIAL HEARING HELD JUNE 15, 2007	1
TRANSCRIPT OF PRE-TRIAL HEARING HELD DECEMBER 20, 2007	8
TRANSCRIPT OF PRE-TRIAL HEARING HELD AUGUST 18, 2008.....	37
TRANSCRIPT OF PRE-TRIAL HEARING HELD SEPTEMBER 24, 2008.....	61
TRANSCRIPT OF PRE-TRIAL HEARING HELD OCTOBER 8, 2008	78
TRANSCRIPT OF TRIAL HELD OCTOBER 13-23, 2008.....	114
ARRAIGNMENT	163
MOTION TO AMEND INDICTMENT.....	171
COURT'S RULING	171
JURY QUALIFICATION	175
INDIVIDUAL JUROR QUALIFICATION	326

VOLUME II

CONTINUED - TRANSCRIPT OF TRIAL HELD OCTOBER 13-23, 2008.....	501
INDIVIDUAL JUROR QUALIFICATION (CONTINUED)	501

VOLUME III

CONTINUED - TRANSCRIPT OF TRIAL HELD OCTOBER 13-23, 2008.....	1001
INDIVIDUAL JUROR QUALIFICATION (CONTINUED)	1001

VOLUME IV

CONTINUED - TRANSCRIPT OF TRIAL HELD OCTOBER 13-23, 2008.....	1501
INDIVIDUAL JUROR QUALIFICATION (CONTINUED)	1501

JURY SELECTION.....	1545
MOTION TO EXCLUDE THIRD PARTY GUILT EVIDENCE	1555
MOTION TO SEQUESTER ALL WITNESSES.....	1566
COURT’S RULING	1566
PROFFERED TESTIMONY	
TAMMY HUGHEY	
Direct Examination by Mr. Reckenbeil	1568
Cross-examination by Ms. Crick	1580
Re-direct Examination by Mr. Reckenbeil	1588
Re-cross Examination by Ms. Crick	1590
MANDY MCKINNISH	
Direct Examination by Mr. Reckenbeil	1592
Cross-examination by Mr. Gowdy.....	1596
<u>JACKSON V. DENNO HEARING.....</u>	1602
TESTIMONY	
REID LINDSEY	
Direct Examination by Mr. Barnette.....	1607
Cross-examination by Mrs. Hodges.....	1615
JASON BRYANT	
Direct Examination by Mr. Gowdy	1632
Cross-examination by Mr. Allen.....	1644
DEFENSE’S ARGUMENT BY MRS. HODGES.....	1665
STATE’S ARGUMENT BY MR. GOWDY	1670
REPLY ARGUMENT BY MRS. HODGES	1671
MOTION TO SUPPRESS CLOTHING EVIDENCE.....	1677
PROFFERED TESTIMONY CONTINUED	
DOMINICK BAIRD	
Direct Examination by Mr. Gowdy	1682
Cross-examination by Mr. Reckenbeil	1684

COURT’S RULING ON MOTION TO SUPPRESS CLOTHING EVIDENCE.....	1689
COURT’S RULING ON <u>JACKSON V. DENNO</u> HEARING.....	1689
COURT’S RULING ON MOTION TO EXCLUDE THIRD PARTY GUILT EVIDENCE	1690
OPENING STATEMENT BY MS. CRICK.....	1709
OPENING STATEMENT BY MRS. HODGES	1716
TESTIMONY	
DANNY JONES	
Direct Examination by Mr. Gowdy	1722
Cross-examination by Mr. Allen.....	1731
JEFF VALENTINE	
Direct Examination by Mr. Gowdy	1739
Cross-examination by Mr. Allen.....	1752
JOSEPH STEWARD	
Direct Examination by Mr. Gowdy	1763
Cross-examination by Mr. Allen.....	1767
Re-direct Examination by Mr. Gowdy.....	1771
MICHELLE BURGESS	
Direct Examination by Mr. Gowdy	1773
Cross-examination by Mr. Reckenbeil	1782
Re-direct Examination by Mr. Gowdy.....	1785
STEPHEN JONES	
Direct Examination by Mr. Barnette.....	1786
JAMES VINSON	
Direct Examination by Ms. Crick	1791
Cross-examination by Mr. Reckenbeil	1797
HENRY RICHARDSON	
Direct Examination by Mr. Gowdy	1801
Cross-examination by Mr. Reckenbeil	1812
WILLIAM GARY	
Direct Examination by Mr. Gowdy	1816
Cross-examination by Mr. Reckenbeil	1826

RANDY BOGAN

Direct Examination by Mr. Barnette.....	1827
Cross-examination by Mr. Reckenbeil	1859
Re-direct Examination by Mr. Barnette.....	1864

GREG TURNER

Direct Examination by Mr. Barnette.....	1869

CRYSTAL WILLIAMSON

Direct Examination by Ms. Crick	1871

DOCTOR JOHN DAVID WREN

Direct Examination by Mr. Gowdy	1886
Cross-examination by Mr. Reckenbeil	1915
Re-direct Examination by Mr. Gowdy.....	1915

DAVID HOGSED

Direct Examination by Mr. Barnette.....	1917
Cross-examination by Mr. Reckenbeil	1920

RANDALL JOHNSON

Direct Examination by Mr. Barnette.....	1925

HUGH MURPHY

Direct Examination by Mr. Barnette.....	1929
Cross-examination by Mr. Reckenbeil	1937

PHIL EASLER

Direct Examination by Ms. Crick	1940
Cross-examination by Mrs. Hodges.....	1961

ROGER MEANS

Direct Examination by Ms. Crick	1968
Cross-examination by Mrs. Hodges.....	1976

ROBERT TALANGES

Direct Examination by Mr. Barnette.....	1997

VOLUME V

CONTINUED - TRANSCRIPT OF TRIAL HELD OCTOBER 13-23, 2008.....	2001

TESTIMONY CONTINUED

ROBERT TALANGES (CONTINUED)

Direct Examination by Mr. Barnette (Continued)	2001
Cross-examination by Mrs. Hodges.....	2020

DOMINICK BAIRD

Direct Examination by Mr. Gowdy	2026
Cross-examination by Mrs. Hodges.....	2054

JASON BRYANT

Direct Examination by Mr. Gowdy	2063

PHILLIP CHAPPEL

Direct Examination by Mrs. Crick.....	2068
Cross-examination by Mr. Allen.....	2073

SHAWN NIX

Direct Examination by Mr. Gowdy	2075
Cross-examination by Mrs. Hodges.....	2096
Re-direct Examination by Mr. Gowdy.....	2099

ASHLEY HARRIS

Direct Examination by Ms. Crick.....	2100
Cross-examination by Mrs. Hodges.....	2112

MARGARET GREER

Direct Examination by Mr. Barnette.....	2117

JACK WESTMORELAND

Direct Examination by Mr. Barnette.....	2122

JAN BRYSON

Direct Examination by Mr. Barnette.....	2124
Cross-examination by Mrs. Hodges.....	2136

VICKI HALLMAN

Direct Examination by Mr. Barnette.....	2143
Cross-examination by Mr. Reckenbeil	2161
Re-direct Examination by Mr. Barnette.....	2163

MATT FITTS

Direct Examination by Ms. Crick	2165
Cross-examination by Mr. Allen.....	2197
Re-direct Examination by Ms. Crick	2213
Re-cross Examination by Mr. Allen	2217

THE STATE RESTS	2221
MOTION FOR A DIRECTED VERDICT	2221
COURT’S RULING	2222
COLLOQUY WITH DEFENDANT ON HIS RIGHT TO TESTIFY	2223
RENEWED MOTION TO PRESENT EVIDENCE OF THIRD-PARTY GUILT	2225
COURT’S RULING	2226
THE DEFENSE RESTS	2227
RENEWED PREVIOUS MOTIONS AND RENEWED MOTION FOR A DIRECTED VERDICT	2227
COURT’S RULING	2227
REQUEST TO CHARGE LARCENY	2228
COURT’S RULING	2231
REQUEST TO CHARGE MERE PRESENCE.....	2231
COURT’S RULING	2232
COLLOQUY WITH DEFENDANT ON HIS RIGHT TO PARTICIPATE IN CLOSING ARGUMENTS	2233
CLOSING ARGUMENT BY MR. GOWDY	2236
CLOSING ARGUMENT BY MR. RECKENBEIL.....	2247
JURY CHARGE	2257
EXCEPTIONS TO JURY CHARGE	2281
COURT’S RULING	2281
MOTION TO REMOVE JUROR.....	2292
NOTE FROM THE JURY	2292
COURT’S RULING ON MOTION TO REMOVE JUROR.....	2299

NOTE FROM THE JURY	2303
VERDICT	2307
MOTION FOR A NEW TRIAL	2310
COURT’S RULING	2310
PENALTY PHASE OF TRIAL	2315
MOTION TO EXCLUDE TESTIMONY AND VIDEO EVIDENCE REGARDING JAIL INCIDENT	2317
OPENING STATEMENT BY MR. BARNETTE	2327
OPENING STATEMENT BY MR. ALLEN	2331
MOTION TO MOVE ALL EVIDENCE FROM GUILT PHASE INTO SENTENCING PHASE	2334
COURT’S RULING	2334
TESTIMONY	
CHARLENA TINSLEY	
Direct Examination by Mr. Barnette	2335
Cross-examination by Mr. Reckenbeil	2352
Re-direct Examination by Mr. Barnette	2357
JASON BRYANT	
Direct Examination by Mr. Gowdy	2360
ASHLEY HARLEY	
Direct Examination by Ms. Crick	2362
Cross-examination by Mr. Reckenbeil	2374
PHYLLIS WHITE	
Direct Examination by Mr. Gowdy	2376
PROFFERED TESTIMONY	
ALAN FREEMAN	
Direct Examination by Mr. Gowdy	2388
Cross-examination by Mr. Reckenbeil	2390
Re-direct Examination by Mr. Gowdy	2393

COURT’S RULING ON TESTIMONY AND VIDEO EVIDENCE REGARDING JAIL INCIDENT	2396

TESTIMONY CONTINUED

ANTHONY MARTINEZ

Direct Examination by Mr. Gowdy	2398
Cross-examination by Mr. Allen.....	2410
Re-direct Examination by Mr. Gowdy.....	2418

RANDY GAULT

Direct Examination by Ms. Crick	2422

BRANDY DHERS

Direct Examination by Ms. Crick	2428
Cross-examination by Mr. Allen.....	2433

ANDREW TOMLINSON

Direct Examination by Mr. Barnette.....	2435
Cross-examination by Mr. Allen.....	2439
Re-direct Examination by Mr. Barnette.....	2443

MARK WILLIAMSON

Direct Examination by Mr. Gowdy	2444

CRYSTAL WILLIAMSON

Direct Examination by Ms. Crick	2450

DOCTOR JOHN DAVID WREN

Direct Examination by Mr. Barnette.....	2466

DOMINICK BAIRD

Direct Examination by Mr. Gowdy	2479

THE STATE RESTS	2482

RENEWED MOTION TO PRESENT EVIDENCE OF THIRD-PARTY GUILT	2487

COURT’S RULING	2488

DEFENSE TESTIMONY

JOHN SHACKELFORD

Direct Examination by Mr. Allen	2489

VOLUME VI

CONTINUED - TRANSCRIPT OF TRIAL HELD OCTOBER 13-23, 2008.....	2501

DEFENSE TESTIMONY

JOHN SHACKELFORD (CONTINUED)

Direct Examination by Mr. Allen (Continued)	2501
Cross-examination by Ms. Crick	2515
Re-direct Examination by Mr. Allen	2523

LISA LAMB

Direct Examination by Mr. Allen	2536
Cross-examination by Mr. Gowdy.....	2575

PAM GORDON

Direct Examination by Mr. Allen	2586
Cross-examination by Mr. Gowdy.....	2590

DOCTOR ALEX MORTON

Direct Examination by Mrs. Hodges	2594
Cross-examination by Ms. Crick	2640
Re-direct Examination by Mrs. Hodges.....	2654

MOTION TO EXCLUDE GENOGRAM	2658

TESTIMONY CONTINUED

DOCTOR DONNA SCHWARTZ-WATTS

Direct Examination by Mr. Allen	2663
Cross-examination by Mr. Gowdy.....	2707

PROFFERED TESTIMONY

DOCTOR MARTI LORING

Direct Examination by Mr. Allen	2732
Cross-examination by Mr. Gowdy.....	2743

COURT'S RULING ON MOTION TO EXCLUDE GENOGRAM	2748

TESTIMONY CONTINUED

DOCTOR MARTI LORING

Direct Examination by Mr. Allen	2752
Cross-examination by Ms. Crick	2793

JAMES AIKEN	
Direct Examination by Mr. Allen	2808
Cross-examination by Mr. Barnette	2817
THE DEFENSE RESTS	2824
CHARGE CONFERENCE ON AGGRAVATING AND MITIGATING CIRCUMSTANCES	2825
CLOSING ARGUMENT BY MR. GOWDY	2831
CLOSING ARGUMENT BY MR. ALLEN.....	2851
CLOSING ARGUMENT BY DEFENDANT	2858
JURY CHARGE	2860
VERDICT	2886
MOTION FOR A NEW TRIAL AND A NEW SENTENCING TRIAL AND ALL MOTIONS RENEWED	2891
COURT’S RULING	2892
SENTENCING	2893
FINAL BRIEF OF APPELLANT	2897
FINAL BRIEF OF RESPONDENT	2913
<u>STATE V. ANDRES ANTONIO TORRES</u> , OP. NO. 26904 (S.C. SUP. CT. FILED DEC. 13, 2010)	2938
APPLICATION FOR POST-CONVICTION RELIEF (FILED APRIL 22, 2011)	2942
RETURN AND MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS (FILED MAY 19, 2011)	2951
FIRST AMENDED APPLICATION FOR POST-CONVICTION RELIEF (DATED JULY 6, 2012).....	2977
FINAL AMENDED APPLICATION FOR POST-CONVICTION RELIEF (FILED APRIL 7, 2014)	2991

VOLUME VII

CONTINUED - FINAL AMENDED APPLICATION FOR POST-CONVICTION RELIEF (FILED APRIL 7, 2014)	3001
TRANSCRIPT OF APPOINTMENT OF COUNSEL HEARING DATED MARCH 10, 2011	3011
TRANSCRIPT OF POST-CONVICTION RELIEF HEARING DATED APRIL 14-16, 21-25, 30, 2014, AND JUNE 30, 2015	3020
MOTION FOR SUMMARY JUDGEMENT	3031
COURT’S RULING	3046
TESTIMONY	
REID LINDSEY	
Direct Examination by Mr. Ehlies	3047
Cross-examination by Ms. Brown	3081
Re-direct Examination by Mr. Ehlies	3097
Re-cross Examination by Ms. Brown	3099
Final Re-direct Examination by Mr. Ehlies	3103
CHARLES RUSSELL CLEVINGER	
Direct Examination by Mr. Ehlies	3104
Cross-examination by Ms. Brown	3125
CRYSTAL WILLIAMSON	
Direct Examination by Mr. Ehlies	3128
Cross-examination by Ms. Brown	3146
Re-direct Examination by Mr. Ehlies	3151
PHYLLIS WHITE	
Direct Examination by Mr. Schoen	3155
Cross-examination by Ms. Brown	3161
Re-direct Examination by Mr. Schoen.....	3164
MEGAN WILLIAMSON	
Direct Examination by Mr. Tessier.....	3165
Cross-examination by Ms. Brown	3173
Re-direct Examination by Mr. Tessier.....	3176

JESSICA HUGHEY HINSON

Direct Examination by Mr. Schoen	3178
Cross-examination by Ms. Brown	3189
Re-direct Examination by Mr. Schoen.....	3193
Re-cross Examination by Ms. Brown	3198
Final Re-direct Examination by Mr. Schoen	3204
Final Re-cross Examination by Ms. Brown.....	3205

MARY DARLENE PRICE

Direct Examination by Mr. Tessier.....	3206
Cross-examination by Ms. Brown	3212
Re-direct Examination by Mr. Tessier.....	3213

MEGAN MCKINNISH

Direct Examination by Mr. Schoen	3214
Cross-examination by Ms. Brown	3217

TAMMY BULL HUGHEY

Direct Examination by Mr. Tessier.....	3219
Cross-examination by Ms. Brown	3269
Re-direct Examination by Mr. Tessier.....	3291
Re-cross Examination by Ms. Brown	3297

ROGER KIRBY

Direct Examination by Mr. Tessier.....	3299
Cross-examination by Mr. Zelenka.....	3325
Re-direct Examination by Mr. Tessier.....	3365

KEVIN BIGGERSTAFF

Direct Examination by Mr. Schoen	3369
Cross-examination by Mr. Zelenka.....	3398
Re-direct Examination by Mr. Schoen.....	3411

DOCTOR JACK M. RARY

Direct Examination by Mr. Tessier.....	3418
Cross-examination by Ms. Timmons.....	3474
Re-direct Examination by Mr. Tessier.....	3495

JENNIFER ANN MONDONEDO

Direct Examination by Mr. Schoen	3499

VOLUME VIII

CONTINUED - TRANSCRIPT OF POST-CONVICTION RELIEF

HEARING DATED APRIL 14-16, 21-25, 30, 2014, AND JUNE 30, 2015	3501

TESTIMONY CONTINUED

JENNIFER ANN MONDONEDO (CONTINUED)

Direct Examination by Mr. Schoen (Continued)	3501
Cross-examination by Ms. Brown	3506
Re-direct Examination by Mr. Schoen.....	3512

DOCTOR JONATHAN JOSEPH LIPMAN

Direct Examination by Mr. Tessier.....	3515
Cross-examination by Ms. Brown	3574
Re-direct Examination by Mr. Tessier.....	3612

DOCTOR THOMAS EDWARD SCHACHT

Direct Examination by Mr. Schoen	3614
Cross-examination by Mr. Zelenka.....	3712
Re-direct Examination by Mr. Schoen.....	3746
Re-cross Examination by Mr. Zelenka	3755

KATHLEEN J. HODGES

Direct Examination by Mr. Ehliès	3756
Cross-examination by Ms. Brown	3851
Re-direct Examination by Mr. Ehliès	3872
Re-cross Examination by Ms. Brown	3877
Final Re-direct Examination by Mr. Ehliès	3878

DOCTOR STACEY WOOD

Direct Examination by Mr. Tessier.....	3880
Cross-examination by Mr. Zelenka.....	3948
Re-direct Examination by Mr. Tessier.....	3960

DOCTOR GEORGE WOODS

Direct Examination by Mr. Ehliès	3962

VOLUME IX

CONTINUED - TRANSCRIPT OF POST-CONVICTION RELIEF

HEARING DATED APRIL 14-16, 21-25, 30, 2014, AND JUNE 30, 2015	4001

TESTIMONY CONTINUED

DOCTOR GEORGE WOODS (CONTINUED)

Direct Examination by Mr. Ehliès (Continued).....	4001
Cross-examination by Mr. Zelenka.....	4041
Re-direct Examination by Mr. Ehliès	4062

JOHN G. RECKENBEIL

Direct Examination by Mr. Ehlies	4064
Cross-examination by Ms. Brown	4148
Re-direct Examination by Mr. Ehlies	4201
Re-cross Examination by Ms. Brown	4220

CLAY T. ALLEN

Direct Examination by Mr. Ehlies	4221
Cross-examination by Ms. Brown	4365
Re-direct Examination by Mr. Ehlies	4431

APPLICANT RESTS.....	4440

MOTION FOR ADDITIONAL TIME TO PREPARE BY RESPONDENT	4441

COURT’S RULING, GRANTING MOTION	4444

PROCEEDINGS RESUMED ON JUNE 30, 2015	4446

RESPONDENT’S WITNESS

DOCTOR JOHN EDWARD SPENCE

Direct Examination by Ms. Timmons.....	4446
Cross-examination by Mr. Tessier.....	4467
Re-direct Examination by Ms. Timmons.....	4490

RESPONDENT RESTS.....	4493

APPLICANT’S EXHIBIT #2 (VOLUNTARY STATEMENT OF CHARLES DONALD EMORY DATED 5/11/07).....	4497

APPLICANT’S EXHIBIT #3 (VOLUNTARY STATEMENT OF CHARLES DONALD EMORY DATED 5/11/07).....	4500

VOLUME X

CONTINUED - APPLICANT’S EXHIBIT #3 (VOLUNTARY STATEMENT OF CHARLES DONALD EMORY DATED 5/11/07).....	4501

APPLICANT’S EXHIBIT #4 (AFFIDAVIT OF JESSICA HUGHEY DATED 8/15/08)	4505

APPLICANT’S EXHIBIT #5 (VOLUNTARY STATEMENT OF JESSICA HUGHEY DATED 5/11/07)	4508

APPLICANT’S EXHIBIT #6 (AFFIDAVIT OF TAMMY HUGHEY DATED 8/13/08)	4511
APPLICANT’S EXHIBIT #7 (SUPPLEMENTAL AFFIDAVIT OF TAMMY HUGHEY DATED 8/15/08)	4516
APPLICANT’S EXHIBIT #9 (VOLUNTARY STATEMENT OF KEVIN BIGGERSTAFF DATED 5/16/07)	4517
APPLICANT’S EXHIBIT #10 (INVESTIGATIVE REPORT OF ALLEN WOOD DATED 5/13/07)	4519
APPLICANT’S EXHIBIT #11 (CORONER’S INVESTIGATIVE NOTES DATED 5/11/07).....	4521
APPLICANT’S EXHIBIT #12 (CORONER’S INVESTIGATIVE NOTES DATED 5/11/07).....	4524
APPLICANT’S EXHIBIT #13 (CURRICULUM VITAE OF DR. JACK M. RARY).....	4528
APPLICANT’S EXHIBIT #16 (REPORT FROM LABCORP DATED 3/21/14)	4536
APPLICANT’S EXHIBIT #17 (DNA REPORT OF DR. JACK M. RARY).....	4537
APPLICANT’S EXHIBIT #18 (REPORT FROM THE GREAT PLAINS LABORATORY, INC.).....	4552
APPLICANT’S EXHIBIT #19 (CURRICULUM VITAE OF JONATHAN JOSEPH LIPMAN, PH.D., MSB., FACN)	4559
APPLICANT’S EXHIBIT #20 (REPORT FROM YOUSCRIPT DATED MAY 24, 2013)	4572
APPLICANT’S EXHIBIT #21 (CURRICULUM VITAE OF THOMAS EDWARD SCHACHT, PSYD, ABPP).....	4573
APPLICANT’S EXHIBIT #22 (CURRICULUM VITAE OF STACEY WOOD, PH.D.)	4592
APPLICANT’S EXHIBIT #23 (NEUROPSYCHOLOGICAL EVALUATION SUMMARY OF STACEY WOOD, PH.D. DATED 1/18/2013).....	4610
APPLICANT’S EXHIBIT #24 (CURRICULUM VITAE OF GEORGE W. WOODS, JR., M.D.).....	4614

APPLICANT’S EXHIBIT #25 (THIRD-PARTY GUILT LIST)	4629
APPLICANT’S EXHIBIT #26 (MEDICAL RECORDS OF THE APPLICANT).....	4633
APPLICANT’S EXHIBIT #27 (PSYCHIATRIC EVALUATION OF APPLICANT DATED 10/16/08 OF DONNA SCHWARTZ-WATTS, M.D. AND ATTACHED DOCUMENTS).....	4749
APPLICANT’S EXHIBIT #28 (MEDICAL RECORDS OF LISA B. TORRES).....	4776
APPLICANT’S EXHIBIT #29 (PSYCHIATRIC HISTORY AND MENTAL STATUS EXAMINATION DATED 10/23/94 OF APPLICANT)	4939
APPLICANT’S EXHIBIT #30 (SUMMARY OF MITIGATION CASE PRESENTED AT TRIAL)	4944
APPLICANT’S EXHIBIT #31 (COPY OF COVER PAGE OF DEPOSITION OF H. WAYNE TOBIN, M.D. DATED 4/2/14, AND COPY OF DEPOSITION OF H. WAYNE TOBIN, M.D. DATED 7/23/14; ORIGINAL OF 4/2/14 DEPOSITION WAS UNOPENED IN THE CLERK’S OFFICE)	4945
APPLICANT’S EXHIBIT #32 (NEWSPAPER ARTICLE FROM SPARTANBURG HERALD DATED 5/13/07).....	4980
APPLICANT’S EXHIBIT #33 (COPY OF DEPOSITION OF JOHN EDWARD SPENCE, M.D. DATED 3/26/15; ORIGINAL WAS UNOPENED IN CLERK’S OFFICE).....	4983

VOLUME XI

CONTINUED - APPLICANT’S EXHIBIT #33 (COPY OF DEPOSITION OF JOHN EDWARD SPENCE, M.D. DATED 3/26/15; ORIGINAL WAS UNOPENED IN CLERK’S OFFICE).....	5001
APPLICANT’S EXHIBIT #34 (LETTER DATED APRIL 7, 2015)	5025
STATE’S EXHIBIT #1 (VOLUNTARY STATEMENT OF TAMMY BELL HUGHEY DATED 5/11/07)	5056
STATE’S EXHIBIT #2 (VOLUNTARY STATEMENT OF TAMMY HUGHEY DATED 5/11/07)	5059
STATE’S EXHIBIT #4 (VOLUNTARY STATEMENT OF JESSICA HUGHEY DATED 5/11/07)	5061

STATE’S EXHIBIT #5 (STIPULATION #1 FROM TRIAL).....	5062
STATE’S EXHIBIT #6 (BILLING STATEMENT FROM SKIDMORE AND ASSOCIATES DATED 10/6/2008).....	5065
STATE’S EXHIBIT #9 (FINAL DISCHARGE SUMMARY).....	5069
STATE’S EXHIBIT #10 (TIMELINE).....	5071
STATE’S EXHIBIT #11 (TONY TORRES’ LIVING SITUATIONS).....	5072
STATE’S EXHIBIT #12 (C.V. OF DR. JOHN EDWARD SPENCE).....	5073
STATE’S EXHIBIT #13 (PRADER-WILLI PRINTOUT).....	5087
STATE’S EXHIBIT #14 (22Q11 DELETION PRINTOUT)	5123
COURT’S EXHIBIT #1 (COPY OF DEPOSITION OF ROGER KIRBY DATED 2/20/14; ORIGINAL WAS UNOPENED IN CLERK’S OFFICE).....	5152
COURT’S EXHIBIT #2 (NOTICE OF DEPOSITION OF ROGER ALLEN KIRBY DATED 2/4/14)	5239
COURT’S EXHIBIT #3 (COPY OF DEPOSITION OF CHRISTOPHER KEVIN BIGGERSTAFF DATED 2/21/14; ORIGINAL WAS UNOPENED IN CLERK’S OFFICE)	5240
ORDER DENYING POST-CONVICTION RELIEF (DATED DECEMBER 9, 2019).....	5294
NOTICE AND MOTION PURSUANT TO SCRCP 59 (DATED DECEMBER 18, 2019).....	5343
RETURN TO MOTION PURSUANT TO SCRCP 59 (DATED JANUARY 2, 2020).....	5353
FORM 4 DECISION BY THE COURT DENYING APPLICANT’S SCRCP 59 MOTION (DATED MAY 8, 2020).....	5364
INDICTMENTS	5365

THE FOLLOWING DOCUMENTS ARE ON FILE WITH THIS COURT:

APPLICANT'S EXHIBIT #1 (PHOTOGRAPHS), APPLICANT'S EXHIBIT #8 (PHOTOGRAPHS), APPLICANT'S EXHIBIT #14 (PHOTOGRAPHS OF THE APPLICANT), APPLICANT'S EXHIBIT #15 (PHOTOGRAPHS OF THE APPLICANT'S BODY), APPLICANT'S EXHIBIT #31 (DEPOSITIONS OF H. WAYNE TOBIN, M.D., DATED 4/2/14 AND 7/23/14; ORIGINAL OF THE 4/2/14 DEPOSITION WAS UNOPENED IN THE CLERK'S OFFICE), APPLICANT'S EXHIBIT #33 (DEPOSITION OF JOHN EDWARD SPENCE, M.D. DATED 3/26/15; ORIGINAL WAS UNOPENED IN CLERK'S OFFICE), STATE'S EXHIBIT #3 (PHOTOGRAPH—S-366 TRIAL EXHIBIT), STATE'S EXHIBIT #7 (PHOTOGRAPH—S-327 TRIAL EXHIBIT), STATE'S EXHIBIT #8 (PHOTOGRAPH—S-328 TRIAL EXHIBIT), COURT'S EXHIBIT #1 (DEPOSITION OF ROGER KIRBY DATED 2/20/14; ORIGINAL WAS UNOPENED IN CLERK'S OFFICE), AND COURT'S EXHIBIT #3 (DEPOSITION OF CHRISTOPHER KEVIN BIGGERSTAFF DATED 2/21/14; ORIGINAL WAS UNOPENED IN CLERK'S OFFICE)

Individual Juror Qualification

1 Q And would you be willing to accept the law as
2 instructed by the judge and apply it to the facts of the
3 case as you, the jury, might determine them to be?

4 A Yes, sir.

5 Q So that means even though you might not like the law,
6 and even though you might disagree with the law as
7 instructed by the judge, you would still be willing to
8 follow the law in making your determinations in the case, is
9 that true?

10 A That's correct.

11 Q Now, if you were a juror in this case, and would you be
12 willing to set aside any information or knowledge that you
13 may have gained about this case from any source prior to the
14 trial and decide the case solely upon the evidence that was
15 presented during the trial, that's the testimony of the
16 witnesses, and the evidence that comes in through those
17 witnesses?

18 Could you decide the case solely upon that evidence?

19 A Yes, sir.

20 Q And set aside any outside information?

21 A Yes, sir.

22 Q All right. Now, I mentioned to you yesterday and I'll
23 gonna, am gonna ask you specifically about this today. A
24 criminal defendant in this state is always presumed to be
25 innocent. Now, that means he doesn't have to prove his

Individual Juror Qualification

1 innocence.

2 Do you understand that concept of the law?

3 A Yes, sir.

4 Q Also in this state, the burden, burden of proof is upon
5 the state to prove the defendant guilty beyond a reasonable
6 doubt.

7 Do you understand that concept of the law?

8 A Yes, sir.

9 Q Now, if you were sitting as a juror in a criminal case,
10 again, not this particular one, but any criminal case, would
11 you be willing to listen to the law and the evidence as
12 presented to you, and based on those things, could you find
13 a person not guilty as charged?

14 A Yes, sir.

15 Q If you listened to the law and the evidence?

16 A Yes, sir.

17 Q So, you could make a determination someone was not
18 guilty?

19 A Yes, sir.

20 Q The state didn't meet its burden.

21 You understand that?

22 In other words, the state didn't meet its burden of
23 proof?

24 A Yes, sir.

25 Q So, you---

1 A Yes, sir.

2 Q Okay. Now, also -- so, in other words, it's your
3 position that just because someone's been accused of a crime
4 and they've been arrested doesn't automatically mean that
5 they're guilty?

6 A Yes, sir.

7 Q Is that true?

8 A Yes, sir.

9 Q Now, if, however, the evidence convinced you, beyond a
10 reasonable doubt, that a person was guilty, would you be
11 able to find someone guilty of a crime?

12 A Yes, sir.

13 Q So, you're the kind of person who, depending upon the
14 strength of the evidence and what the testimony or evidence
15 showed and what the law is as given to you, that you could
16 find a person either guilty or not guilty depending on that
17 evidence and law?

18 A That's correct.

19 Q Now, I'm gonna talk to you a little bit more
20 specifically about the death penalty, and, and I told you
21 we'd get into that in, in this case. In South Carolina,
22 generally the judge decides the penalties if someone's found
23 guilty of a crime. An exception to that rule exists in the
24 type of case where the State alleges that a murder took
25 place and that the State seeks the death penalty.

Individual Juror Qualification

1 And in that case, I've explained that the jury
2 determines the guilt or innocence in the penalty, in the
3 guilt or innocence phase of the trial, and then in the
4 second phase of the trial, sentencing takes place and the
5 jury decides what is the appropriate sentence.

6 You understand this is a little different than most
7 cases?

8 A Yes, sir.

9 Q All right. Now, now, the only determination in the
10 separate sentencing proceeding is, to be made by the jury is
11 the type of sentence to be handed out, and there's, and
12 there's only two choices. Either life imprisonment at that
13 point because the defendant's already been found guilty of
14 the murder and the other is the death penalty.

15 Do you understand those two choices?

16 A Yes, sir.

17 Q Now, I want you to put yourself in the, this situation
18 theoretically. Just, in your mind, think about being in the
19 situation. You're on a jury in a case where the State is
20 seeking the death penalty. You and your fellow jurors have
21 found a defendant guilty of the offense of murder. You're
22 about to walk back into the courtroom and sit down and begin
23 to hear the evidence concerning what is the appropriate
24 sentence. So, there's gonna be additional evidence
25 presented on that issue.

Individual Juror Qualification

1 Now, I gave you a little sheet of paper also back in
2 the jury room and it described three types of jurors in that
3 situation.

4 Did you see that paper?

5 A Yes, sir.

6 Q And did you have a chance to read that?

7 A Yes, sir.

8 Q All right, sir. Now, there are three types of jurors
9 described on that paper. The first type of juror is a
10 person who has just convicted a person of murder, and that
11 person is already made up their mind, before they walk back
12 into the courtroom, that the death penalty is the only
13 appropriate punishment before the sentencing phase even
14 takes place. That's the first type of juror that's
15 described.

16 The second type of juror is a person who is also
17 already made up their mind as to what they're going to do
18 because they believe that the State, no matter what the
19 seriousness of the crime is, no matter what happened, never
20 has the right to take a life for punishment for a crime.

21 The third type of juror doesn't know what that juror is
22 going to do. He doesn't know whether he's going to vote for
23 life imprisonment or going to vote for death. That juror
24 has decided that he would have to wait and listen to the
25 facts and circumstances presented during the sentencing

Individual Juror Qualification

1 phase before that juror makes up his mind as to what the
2 appropriate punishment is.

3 Now, do you understand the three types of jurors I
4 described to you?

5 A Yes, sir.

6 Q And does that go along with the paper you read in the
7 back?

8 A That's correct.

9 Q Now, of those three types of jurors, which one most
10 closely describes your situation, your, your feelings in
11 that situation?

12 A It would have to be three.

13 Q So, you would be someone who'd come in with an open
14 mind who was willing to listen to the facts and
15 circumstances?

16 A Yes, sir.

17 Q Now, if you listened to the evidence during the
18 sentencing phase of the case, and you listened to that
19 evidence, and you, and if the evidence justified it, would
20 you be willing to sentence someone to death if the evidence
21 justified it during the sentencing phase?

22 A Yes, sir.

23 Q And if, after considering the facts and the evidence
24 that are presented during the sentencing phase, would you
25 also be willing to give someone the sentences, sentence of

Individual Juror Qualification

1 life imprisonment without parole?

2 A Yes, sir.

3 Q So, you could sentence someone to either life or death
4 depending on the evidence that you hear during the
5 sentencing phase?

6 A That's correct.

7 Q Now -- and it -- would it depend upon the facts and
8 circumstances that you heard during that portion of the
9 trial, the sentencing phase?

10 A Yes, sir.

11 Q Okay, sir. Now, I'm going to ask you also if you were
12 selected to serve on this jury, I think you've already heard
13 in our discussions that the jury would be sequestered.

14 A Uh-huh. (Affirmative).

15 Q That means that you would be required to stay in a
16 hotel and you would be there until the trial was ended.
17 There would be people with you, of course, and you would
18 have the opportunity to watch television, communicate,
19 limited communications. Also you would not be allowed
20 though to go home during that period of time and it will
21 last, we think, about a week to do that particular part of
22 the trial.

23 And my question to you is, and I understand it's very
24 much of an inconvenience to anybody in that situation, but
25 would, if you were in that situation, would that situation

Individual Juror Qualification

1 pose a serious risk of danger to your health or well being,
2 your health or well being?

3 A No, sir.

4 Q And would it pose a serious risk of danger to the
5 health or well being of anyone who is dependent upon you---

6 A No, sir.

7 Q ---if that occurred.

8 All right. I want to thank you very much for
9 responding to my questions.

10 A Yes, sir.

11 Q At this time we're going to allow the lawyers to ask
12 you some questions. We'll allow the defense to go first.

13 EXAMINATION

14 BY MR. ALLEN:

15 Q Morning, Mr. Hardy.

16 A Good morning.

17 Q I'm Clay Allen. I'm, along with Mr. Reckenbeil and
18 Mrs. Hodges, representing Tony Torres.

19 A Yes, sir.

20 Q Have you -- I think this question's been asked before.
21 I just want to make sure.

22 Have you heard anything about this case at all?

23 A No, sir, I picked the paper up Sunday, and I remember
24 the name and I put it back down.

25 Q Okay.

Individual Juror Qualification

1 A Yeah.

2 Q So, you saw that there was an article, but you did
3 not---

4 A Yeah, I did not read it, the article.

5 Q And that was because you wanted to---

6 A well, because I remember, during the questionnaire that
7 I answered, that I remembered the name.

8 Q I see.

9 A Yes, sir.

10 Q At that time I believe you indicated you did not
11 remember the name, right?

12 A No, sir, I remembered the name when I opened the paper,
13 yeah.

14 Q Oh, no, excuse me.

15 But when you filled out the questionnaire you did not
16 represent the name?

17 A No, I didn't know the name at that time.

18 Q Okay.

19 A All right.

20 Q And with respect to anything that you heard in court
21 the last two days---

22 A Uh-huh. (Affirmative).

23 Q ---is there anything that jogged your memory that
24 caused you to remember this case or remember anything you
25 heard about this case?

Individual Juror Qualification

1 A No, sir.

2 Q All right. Now, sir, of course, I also want to talk to
3 you a little bit about your views on the death penalty and
4 life in prison. And as the judge indicated, we have to sort
5 of do this in a way that assumes that, would not assume,
6 but, you know, talks about the second phase of the trial,
7 which, of course, we may never get to depending on the
8 jury's verdict.

9 A Yes, sir.

10 Q And of course, by my asking you these questions, I want
11 to make it plain that I'm not trying to insinuate how I
12 view---

13 A Yes, sir.

14 Q ---the evidence or how I think the case should turn
15 out.

16 Do you understand that?

17 A Yes, sir.

18 Q All right. But in -- essentially, can you tell me
19 about your views on the death penalty if you have any?

20 A I really don't have, don't have any concrete views on,
21 on the death penalty. Whether believing that it's wrong or
22 right, I really don't have any, any bearing on that.

23 Q Okay. I mean it's probably been a subject that you,
24 you heard other people talk about?

25 A Not really.

Individual Juror Qualification

1 Q Not really?

2 A Not really.

3 Q Okay. What I want to know is that in a case where
4 there's been a determination by the jury, like you and 11
5 others if you're on the jury, made a determination that an
6 individual is guilty of murder, by that, of course, we're
7 talking about a willful killing of another person with
8 malice aforethought. All that could be explained to you by
9 the judge. But it's a situation where the jury has
10 determined that the, that person did not have a legitimate
11 defense to it.

12 In other words, no self-defense, no insanity, no
13 accident. In other words, a jury was convinced, beyond a
14 reasonable doubt, that the person committed the murder and
15 is responsible for it.

16 You understand what I'm talking about?

17 A Yes, sir.

18 Q And what I want to know is do you have a view as to the
19 only appropriate punishment for a case like that?

20 A Only appropriate, no, sir.

21 Q Okay. In other words, you can consider other factors?

22 A Yes, sir, I would consider all options.

23 Q Okay. Before imposing or deciding what should be the
24 appropriate punishment?

25 A That's correct.

Individual Juror Qualification

1 Q Okay. When we talk about the second phase of the
2 trial, of course, what it means is that a person has been
3 already found guilty of the murder.

4 You understand that?

5 A Yes, sir.

6 Q No -- again, no legal justification for it. No, no
7 legal excuse for it. A person is guilty.

8 okay?

9 A (Witness nods affirmatively.)

10 Q But we talk about other facts and circumstances, some
11 facts seem to make it worse, and other factors that what we
12 call mitigation that may tend to, although not a legal
13 excuse or a legal justification, but that tend to make it --
14 well, let me put it to you this way. Anything, in fairness
15 or mercy, should indicate that a sentence other than death
16 should be the correct sentence.

17 Kind of get an idea of what I'm talking about?

18 A Yes, sir.

19 Q And what I want to know is if you were sitting as a
20 juror, would you be able to consider all this evidence --

21 A Yes, sir.

22 Q -- before making up your mind as to the appropriate
23 punishment?

24 A Yes, sir.

25 Q One second please.

Individual Juror Qualification

1 A Okay.

2 (Pause.)

3 Q Sir, I don't want to ask you about a specific opinion
4 about this case or any case because, of course, you haven't
5 heard anything about this case---

6 A Yes, sir.

7 Q ---or for that matter any other case. But if you have
8 made a decision for yourself that would justify one or the
9 other punishments, I'm not gonna specify which, okay, you
10 believe that a certain punishment is justified, it might be
11 the death penalty, or it might be life in prison---

12 A Uh-huh. (Affirmative).

13 Q ---are you the type of person that will stay with that
14 opinion even though you, you discuss it with other people?

15 A Again, I would look at all, everything involved in it,
16 in the situation.

17 Q Yes, sir.

18 A Yes, sir.

19 Q Okay. And of course, the part of the job of the juror
20 is to discuss their opinions and their view of the
21 evidence---

22 A Yes, sir.

23 Q ---with other jurors---

24 A Yes, sir.

25 Q ---and come to a decision.

Individual Juror Qualification

1 A Yes, sir.

2 Q But it -- what, what I want to know is that are you the
3 type of person that if you have decided that one or the
4 other punishments is the appropriate punishment, are you the
5 kind of person that would stay with that opinion even if it
6 might mean others disagree with you?

7 A I consider myself to be open minded. Again, it would
8 depend on -- they, they would have a chance to, to give
9 their argument and I would listen definitely --

10 Q Yes, sir.

11 A -- before making a final decision.

12 Q Yes, sir.

13 A Yes, sir.

14 MR. ALLEN: Okay. No other questions, Your Honor.

15 THE COURT: State may ask questions.

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

17 THE COURT: Yes, sir, Mr. Gowdy.

18 EXAMINATION

19 BY SOLICITOR GOWDY:

20 Q Good morning, Mr. Hardy.

21 A Good morning.

22 Q My name is Trey Gowdy and I'm a part of the prosecution
23 team. Let me first start by thanking you for your answers
24 yesterday, today, and especially the questionnaire, which
25 is, which is very helpful.

Individual Juror Qualification

1 when His Honor was asking you about your thoughts and
2 beliefs on the death penalty or perhaps it was defense
3 counsel, I think your, your remark was that you had not
4 spent a lot of time thinking about it, and had, it's not
5 something that comes up in day to day conversation a whole
6 lot.

7 A That's correct.

8 Q But you also indicated to His Honor that you could give
9 death if you thought it was appropriate?

10 A Yes, sir.

11 Q On what do you base that, that belief on?

12 what, what makes you, given the fact you hadn't thought
13 that much about it---

14 A Uh-huh. (Affirmative).

15 Q ---what makes you certain that if you thought the
16 circumstances were right you could impose it?

17 A I would have to be explained under the law as far as
18 the options and then I'll consider all the evidence given.

19 Q Yes, sir.

20 A Yes, sir.

21 Q And I know the Court did a very good job of explaining
22 this. The -- South Carolina law never requires you to vote
23 for the death penalty.

24 A Yes, sir.

25 Q You will always have the option of life imprisonment.

Individual Juror Qualification

1 A Yes, sir.

2 Q And you could vote for life for any reason or no reason
3 and you don't have to give a reason.

4 A Yes, sir.

5 Q Against that backdrop, do you still think that there
6 are circumstances where you would vote for death?

7 A There could, yes, sir.

8 Q Okay. I notice that you had previous jury service.

9 A Yes, sir.

10 Q And it was a not guilty verdict on, in an impaired
11 driving case I believe?

12 A That's correct.

13 Q Was it in Spartanburg?

14 A It was -- yeah, Boiling Springs.

15 Q Boiling Springs.

16 A Yeah.

17 Q Was the decision to, to find the defendant not guilty
18 because of sloppy police work or was it a close case and you
19 just decided to go with the defendant?

20 A We didn't feel that the State presented enough evidence
21 to render a guilty verdict.

22 Q Do you remember the law enforcement agency that worked
23 that case?

24 A I think it was the South Carolina Highway Patrol.

25 Q Highway Patrol.

Individual Juror Qualification

1 Okay. All right. But while you were on that jury,
2 obviously you deliberate and you listen to other peoples'
3 prospective and you try to reach a decision as a group?

4 A That's correct.

5 Q Is, is that something that you found comfortable?
6 Did you enjoy your experience as a juror?

7 A Well, as much as I could. I mean it wasn't anything
8 that was hard pressed or anything like that.

9 Q Right.

10 A Yes, sir.

11 Q Okay. Thank you for answering, Mr. Hardy.

12 A Yes, sir.

13 THE COURT: Any other questions?

14 MR. ALLEN: No, Your Honor.

15 THE COURT: All right. Mr. Hardy, just a couple of
16 things I'm going to go over with you. You've not been
17 selected on a jury. We're still in the qualification
18 process. However, what we're going to do is we'll be in
19 touch with you if you are to come back for further jury
20 selection. Now, if you come back to the courthouse, that
21 will be for the actual jury selection.

22 WITNESS: Yes, sir.

23 THE COURT: I will tell you now come prepared to stay,
24 if you do that, because, if you were selected, you would go
25 into the sequestration that we talked about. So, bring some

Individual Juror Qualification

1 clothes packed, things of that nature, the things that you
2 need for the approximate one week time of the trial.

3 WITNESS: Yes, sir.

4 THE COURT: Do you understand that, sir?

5 WITNESS: Yes, sir.

6 THE COURT: All right, sir. Then do we have correct
7 contact information from you?

8 WITNESS: Yes, sir.

9 THE COURT: So, we have the numbers where you can be
10 reached?

11 They're accurate on the information you've given us?

12 WITNESS: Yes, sir.

13 THE COURT: All right, sir. Thank you very much for
14 coming this morning. You're free to go at this time.

15 WITNESS: All right. Thank you.

16 (The following takes place outside the hearing of the
17 juror.)

18 THE COURT: All right. State's position concerning
19 Mr. Hardy?

20 SOLICITOR GOWDY: Your Honor, we believe Mr. Hardy is
21 qualified.

22 THE COURT: Defense position?

23 MR. ALLEN: We agree he's qualified.

24 THE COURT: The Court will find him qualified. So,
25 I'll place him on the list as qualified, as a qualified

Individual Juror Qualification

1 juror.

2 SOLICITOR GOWDY: Your Honor, could Mr. Allen and I
3 approach for one second on something that has nothing to do
4 with the case?

5 THE COURT: You sure may.

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

7 THE COURT: Mr. Humphries, I'm going to need Lynn
8 Gilmer.

9 BAILIFF: Yes, sir.

10 LYNN GILMER, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Excuse me.

15 Sir, your name is Lynn Gilmer, is that correct?

16 A That's correct.

17 Q And Mr. Gilmer, I want to remind you that yesterday you
18 took an oath to tell me the truth about this case, is that
19 correct?

20 A That's correct.

21 Q And so, you remember doing that and I, I'm reminding
22 you of that---

23 A Okay.

24 Q ---just to let you know you're still under oath for
25 purposes of our discussion now.

Individual Juror Qualification

1 A Yes.

2 Q You understand that as well?

3 A Yes, sir.

4 Q All right, sir. First of all, I want to thank you very
5 much for your being back here today. I understand you're
6 under subpoena and all that. But we do appreciate you being
7 here.

8 A Okay.

9 Q I recognize it's an inconvenience, and it might be a
10 fairly uncomfortable setting for you. Not often are you put
11 in a room and set off by yourself and people ask questions
12 of you. I want to let you know that we're not here to try
13 to change any of your opinions. We're not here to try to
14 argue with you in any fashion. So, I hope you feel as
15 comfortable as you can feel in this situation.

16 A Okay.

17 Q I will tell you now that there are no right or wrong
18 answers to any of the questions that we're about to go over
19 with you. We're here simply to gather a little information
20 about you, and determine what your opinions are, not to try
21 to change them.

22 Do you understand that, sir?

23 A Yes, sir.

24 Q All right. At anytime during the proceeding you feel
25 uncomfortable with what's going on, let me know and we'll

Individual Juror Qualification

1 try to deal with that problem.

2 Okay, sir?

3 A Yes, sir.

4 Q Now, my first question, has anybody contacted you about
5 this case?

6 A No, sir.

7 Q Have you read or seen anything about this case?

8 A I think it was in Sunday's paper.

9 Q Okay. So, you may of seen that?

10 A Yes, sir.

11 Q Have you seen anything since that time?

12 A No, sir.

13 Q All right. And has anything that you have seen caused
14 you to form an opinion such that that opinion could not be
15 changed by what goes on during the trial?

16 A No, sir.

17 Q All right. Now, my next question is have you ever
18 participated in any blog or other Internet site or any other
19 location concerning the imposing or the not imposing of the
20 death penalty?

21 A No, sir.

22 Q Have you ever participated in any demonstration or
23 other political rally or meeting where the focus or issue
24 involved was the imposition or the non-imposition of the
25 death penalty?

Individual Juror Qualification

1 A No, sir.

2 Q Now, are you the kind of person who could put anything
3 that you may have heard or seen previously and decide the
4 case solely upon the evidence that you hear during, in the
5 courtroom during a trial?

6 A Yes, sir.

7 Q Now, while you were in the jury room we gave you a list
8 of witnesses to review, people that were potential
9 witnesses, and I'm gonna talk to you about those people for
10 just a minute. I don't want you to identify any of those
11 people by name. Okay. But I do want to talk about the list
12 in general.

13 Did you read the list?

14 A Yes, sir.

15 Q And so, you had a chance to review it?

16 A Yes, sir.

17 Q Now, after reading the list, are, is there anyone on
18 the list that you have any social, business, or personal
19 connections with in any way?

20 A No, sir.

21 Q Are you related, either by blood or marriage, or have
22 you formerly been related by blood or marriage to any
23 individual who is listed on that list?

24 A No, sir.

25 Q I'm going to ask you now perhaps what would be

Individual Juror Qualification

1 considered some more personal questions about your opinions
2 and views on some things. Obviously we're not trying to
3 invade your privacy. We're trying to find out how you feel
4 about things, and you appear to be an individual who's
5 secure enough in your opinions and how you feel that you
6 won't feel threatened by these questions. So -- and again,
7 we're not trying to change your feelings. We're just trying
8 to understand them.

9 One of the things that we're going to ask you about
10 during this part of my questioning will be the death penalty
11 specifically because that might be an issue in the trial.
12 As I explained to you yesterday, that would be taken up in a
13 separate trial once the trial on the question of guilt or
14 innocence had been completed.

15 So, in effect, in a way, we're kind of putting the cart
16 before the horse here because it's, if, if the defendant
17 were found not guilty of the charges there would be no
18 penalty phase.

19 A Okay.

20 Q And so, I want you to understand this is our only
21 opportunity though to discuss this with you before the
22 jury's selected. And so, we have to put the cart in front
23 of the horse. But, but the fact that we're doing that
24 should not reflect adversely on the defendant or any defense
25 that he may raise, raise to the charges. It's simply this

Individual Juror Qualification

1 is our chance to talk about it, and we're gonna talk about
2 it at this time.

3 A Okay.

4 Q Do you understand what I'm saying?

5 A Yes, sir.

6 Q Okay. Now, first of all, I'm gonna ask you about --
7 and I want you to put yourself in the position of being a
8 juror in any criminal case, not just this one, and -- but if
9 you were a juror in any criminal case, are you the kind of
10 juror who would be willing to listen to the law as
11 instructed to you by the judge?

12 A Yes, sir.

13 Q Would you be willing to accept the law as instructed by
14 the judge and apply it to the facts in the case as you, as
15 the jury finds them to be?

16 A Yes, I would.

17 Q Now, is that true even though you might not like the
18 law, even though you might disagree with the law, would you
19 still be willing to follow the law if you were instructed by
20 the Court to do so?

21 A Yes, I would.

22 Q Now, I'm gonna talk to you a little bit about this case
23 in more specifics, and I want to ask you about your
24 willingness -- I talked, talked to you generally about your
25 willingness to set aside knowledge that you may have gained

Individual Juror Qualification

1 outside of the courtroom. But I'm gonna ask you
2 specifically about this case.

3 Are you willing to set aside anything that you've
4 heard, read, or seen about this case outside the courtroom
5 during the trial?

6 A Yes, I am.

7 Q And so, if there was any information, information about
8 that, you're willing to decide the case purely upon what you
9 hear in the courtroom?

10 A Yes, I am.

11 Q Now, I explained yesterday, but I want to be sure you
12 understand, so, I ask you specifically about this, in a
13 criminal case in this state, a defendant is always presumed
14 to be innocent of the charges that are, that have been
15 alleged. Therefore, the defendant has no burden whatsoever
16 to prove his innocence.

17 Do you understand that?

18 A Yes, I do.

19 Q And the State, in this state, always has the burden of
20 proving its allegations or proving the defendant guilty
21 beyond a reasonable doubt.

22 Do you understand that concept---

23 A Yes, I do.

24 Q ---of the law?

25 A Yes, sir.

Individual Juror Qualification

1 Q And are you willing to follow those two concepts of the
2 law?

3 A Yes, I am.

4 Q All right. Now, again, I'm going to ask you about
5 being a juror in a, not in this, not in this case, but any
6 case.

7 Are you the kind of juror who would be willing to
8 listen to the law and the evidence as presented to you, and
9 based on what those things show or what those things were
10 and based upon the circumstances as you understand them to
11 in the, in the case, are you the kind of juror who could
12 find someone not guilty of the crime charged?

13 If you listen to all of the facts and circumstances
14 during the trial, all of the evidence---

15 A Okay.

16 Q ---and if, based on that evidence, are you the kind of
17 juror who could find someone not guilty of the crime
18 charged?

19 A Yes, I am.

20 Q In other words, what I'm asking you is the mere fact
21 that someone has been arrested and charged does not
22 automatically mean that person is guilty.

23 Is that your position?

24 A Yes, I feel that way, yes, sir.

25 Q All right, sir. Now, if the evidence convinced you,

Individual Juror Qualification

1 beyond a reasonable doubt, that a person was guilty, would
2 you also be willing to find that person guilty of the crime
3 charged?

4 A Yes, I would.

5 Q So, you are the kind of juror, I, I take it -- and I
6 don't want to put words in your mouth. But this is the way
7 I understand your position. You can tell me if I'm wrong.

8 You're the kind of person who would be able to make up
9 your mind, depending upon the strength of the evidence and
10 what the testimony and evidence showed, and be able to find
11 a person either guilty or not guilty of a crime that was
12 charged?

13 A Yes, I could.

14 Q Now, we're gonna talk about the death penalty in some
15 more specifics at this time because, as I indicated to you,
16 this is the kind of trial and it's different in our state.
17 Normally, when someone is found guilty of a crime, the judge
18 decides what the appropriate penalty should be. An
19 exception to that general rule is in a case where someone is
20 accused of a murder, and the State seeks the death penalty
21 for that murder.

22 And in that situation, of course, the jury makes the
23 decision as to the appropriate penalty and there's two
24 choices. Either life imprisonment or the death penalty.
25 Those are the two choices that a jury has in that situation.

Individual Juror Qualification

1 And so, when you were back in the jury room, is -- do
2 you understand that's how that works?

3 A Yes.

4 Q And you understand the trial would be in two different
5 phases?

6 A Yes, sir.

7 Q Same jury deciding both issues?

8 A Yes, sir.

9 Q You understand that?

10 A Yes, sir.

11 Q Okay, sir. Now, when you were back in the jury room, I
12 laid out a sheet of paper that described three different
13 possible jurors.

14 Did you see that paper?

15 A Yes, sir.

16 Q And I'm going to describe those jurors and the
17 situation that that juror would be in would be this. The
18 jury has already made a determination that the defendant is
19 guilty of murder. We're coming back then for the sentencing
20 phase of the trial.

21 A Okay.

22 Q And the same jury is about to walk into the courtroom
23 for that sentencing phase of the trial.

24 Now, the three possibilities or the three jurors I
25 described on that piece of paper was, the first juror, was a

1 juror who was, who is already made up his mind. He has
2 decided that the death penalty is the only appropriate
3 punishment for someone who has been found guilty of murder.

4 The second type of juror that I described on that paper
5 is someone who is also already made up their mind because
6 it's their belief that the state should never take a life
7 for the commission of a crime, and, therefore, would always
8 vote for life imprisonment.

9 Now, the third type of juror is someone who comes back
10 into the jury room and doesn't know how they're going to
11 vote. That person is, is going to have to wait and listen
12 to the evidence and the testimony presented during that
13 phase of the trial, and then make a decision as to the
14 appropriate type of punishment that should be given.

15 Now, of those three jurors that I've just described,
16 which one most closely describes your feelings?

17 A It would be the last one.

18 Q The third one?

19 A Yes, sir.

20 Q So, under those circumstances, you would have to listen
21 to the facts and evidence presented during that phase of the
22 trial before you could make a decision on the penalty?

23 A Yes.

24 Q Now, sir, if you thought the facts and evidence did
25 justify the imposition of the death sentence, would you be

Individual Juror Qualification

1 willing to vote or, vote with the jury to sentence someone
2 to death?

3 A Yes.

4 Q And if you felt that the facts and evidence did not
5 justify the death penalty or for any other reason, would you
6 also be willing to vote with the jury to sentence someone to
7 life imprisonment?

8 A Yes, I would.

9 Q So that means that you could sentence someone to either
10 life or death depending on the facts and circumstances as
11 you find them to be?

12 A That is correct.

13 Q Now, there -- I have explained and I want to be sure
14 you understand that once the jury is selected, and if you
15 were selected to sit on this jury, you would have to go into
16 what's called sequestration.

17 A Yes, sir.

18 Q During that period of time, your contact with people on
19 the outside would be very limited. You'd be staying in a,
20 in a nice place and get, get your meals paid, paid for and,
21 and fed and that sort of thing. But again, it would be a
22 period of about a week we estimate for this trial on, on, to
23 be completed.

24 So, my question to you, I realize it's an
25 inconvenience, it would be an inconvenience in anybody's

1 life to be in that situation, but my question is if you were
2 placed in that position, would that, in any way, pose a
3 serious risk of danger to either your health or your well
4 being?

5 A No, it would not.

6 Q And if you were placed in that situation, would that
7 situation pose a serious risk of danger to the health or
8 well being of anyone who depends upon you?

9 A No, it would not.

10 Q All right. I want to thank you very much for answering
11 my questions. That completes what I wanted to ask. We
12 allow the defense to go first in questioning. So, you may
13 proceed.

14 A Okay.

15 MR. ALLEN: Thank you, Your Honor.

16 EXAMINATION

17 BY MR. ALLEN:

18 Q Good morning, Mr. Gilmer.

19 A Good morning.

20 Q Again, I'm Clay Allen. And I, along with John
21 Reckenbeil and Kathy Hodges, are representing Tony Torres.

22 A Okay.

23 Q Okay. We appreciate your service and we appreciate
24 your candor, and again, I just want to remind you there's no
25 right or wrong answers. I'm not trying to talk you into or

Individual Juror Qualification

1 out of anything.

2 A Okay.

3 Q I just simply want to make sure I understand and the
4 Court can understand how you feel about certain things.

5 A Okay.

6 Q Fair enough?

7 A Yes, sir.

8 Q Okay. Now, you indicated that, for example, that you
9 read something about this case in Sunday's paper?

10 A Yes.

11 Q Is that that article that was on the first page?

12 A Yes.

13 Q Can you tell me, is there anything that stands out in
14 your mind about that article or --?

15 A The only thing that stood out was I knew I was gonna be
16 here on the trial for it. That's -- I guess that's all
17 really.

18 Q You didn't, you didn't, you don't remember anything
19 about this paper's rendition of the facts or anything about
20 either the, Mr. and Mrs. Emery or Mr. Torres?

21 A I'm not sure exactly what you're asking.

22 Q Is there anything that stands out to you from the
23 article about what the paper said that happened?

24 A The only thing I know there was two people killed in
25 it.

Individual Juror Qualification

1 Q Okay.

2 A And I'm not sure exactly what you---

3 Q Okay. That's the part of what I'm getting at.

4 A Okay.

5 Q If anything stands out in your mind from the article
6 about what happened. You indicated that two people were
7 killed.

8 A No, sir. No.

9 Q That's about it?

10 A That's -- I'd say that's about it.

11 Q Okay. And do you recall reading or hearing about this
12 case about a year and a half ago?

13 A I do not recall it, no, sir.

14 Q Okay.

15 A No.

16 Q Do you know Mr. or Mrs. or did you know Mr. or Mrs.
17 Emery?

18 A I did not know them personally.

19 Q Okay.

20 A He was a photographer and he did take pictures at my
21 daughter's wedding about, I think about seven years ago.
22 But I don't know him. No, I did not know him.

23 Q Okay.

24 A And the only reason -- my wife told me that cause I
25 didn't, I did not know that.

Individual Juror Qualification

1 Q Okay. So, you didn't even remember, in the flurry of
2 signing checks for your daughter's wedding---

3 A No, I didn't.

4 Q ---writing---

5 A No.

6 Q Okay. Is there anything about that fact, you know, the
7 fact that he took pictures at your daughter's wedding that
8 would affect you, in any way, as a---

9 A No, I don't---

10 Q ---juror in this case?

11 A I don't even think I met him. I have no idea. I
12 just---

13 Q Okay.

14 A No, it does not influence me any.

15 Q I see.

16 Now, I appreciate your responses. What -- of course,
17 as the judge indicated that this trial has, you might say,
18 an initial phase or a first phase and that's like any other
19 trial where evidence is presented to the jury and a
20 determination must be made as to whether the State's proven,
21 beyond a reasonable doubt, that an individual committed a
22 crime.

23 Okay?

24 A Okay.

25 Q What sometimes we call the guilt or innocence phase in

Individual Juror Qualification

1 a case like this. But I want to take you to the point of
2 where, if you were selected for a jury, that you and the
3 other, the other 11 jurors had unanimously agreed that an
4 individual has been or is guilty of a murder. And by that,
5 of course, we're talking about a willful, intentional
6 killing, excuse me, a willful killing of another person with
7 malice aforethought, and you and the other jurors have
8 decided that there's no defense, no legal justification for
9 that killing.

10 Examples would be self-defense, for example. There's
11 no self-defense.

12 A Okay.

13 Q No insanity. No accident. You and the other 11 jurors
14 have decided that the individual committed the murder and is
15 responsible for it.

16 Do you see where I'm going?

17 A Yes, sir.

18 Q Now, what I want to know is do you have an opinion, at
19 this time, as to the only, as to whether or not there is --
20 do you have an opinion as to the only appropriate punishment
21 for a case such as that for that guilty murder?

22 A Could you explain it one more time?

23 Just---

24 Q Okay. I want to take you to the point where you and
25 the jury have found an individual guilty---

Individual Juror Qualification

- 1 A Okay.
- 2 Q ---of murder---
- 3 A Okay.
- 4 Q ---like I've explained.
- 5 A Okay.
- 6 Q And there's no legal justification for it.
- 7 A Okay.
- 8 Q No self-defense. No accident. This person is that --
- 9 the jury has found that this person has committed a murder
- 10 and is responsible for it.
- 11 The question is do you believe that there is only one
- 12 appropriate punishment in such case?
- 13 A No.
- 14 Q You would be able to consider -- excuse me.
- 15 Could you consider, for example, the death penalty in a
- 16 case such as that?
- 17 A Yes, I could.
- 18 Q And could you consider life without the possibility of
- 19 parole in a case such as that?
- 20 A Yes, I could.
- 21 Q Okay. Is it fair then to say that at the point that an
- 22 individual may be found guilty of murder that you would not
- 23 have made up your mind as to the appropriate punishment at
- 24 that point?
- 25 A That's correct.

Individual Juror Qualification

1 Q Okay. Would it be to fair to say that you would have
2 to consider other factors?

3 Okay. Let me explain this again.

4 A Okay.

5 Q As the judge indicated, if the jury finds an individual
6 guilty of murder, you know, death penalty case, there will
7 be a second phase. The jury would hear what we call
8 evidence in aggravation, matters that tend to make the
9 murder worse, and there may also be some evidence in what we
10 call mitigation. Mitigation doesn't necessarily, doesn't
11 mean that there's like lawful justifiable excuse because the
12 jury's already determined that there is none. But rather
13 mitigation or matters that, which in fairness or in mercy,
14 tend to indicate there should be some sentence other than
15 the death penalty.

16 A Okay.

17 Q Do you follow what I'm saying?

18 A Yes, sir.

19 Q Could you consider both types of evidence in arriving
20 at an appropriate punishment?

21 A Yes, I could.

22 Q If the State can prove, in such a case, that certain
23 aggravating circumstances exist, could you vote for a life
24 imprisonment sentence?

25 A Yes, sir, I could.

Individual Juror Qualification

1 Q Okay. I'm not, I'm not trying to put words in your
2 mouth. But when you indicated that you could, it sounded
3 like you might of wanted to go forward.

4 I mean is there---

5 A Could you explain that one more time to me please, sir?

6 Q Even if the State proves that there are these
7 aggravating circumstances, these matters that tend to make
8 the murder worse, and I don't mean to diminish -- you know,
9 murder cases are all very serious. We all understand that.

10 A Yeah.

11 Q I don't mean to diminish anyone's life.

12 But if the State can prove that there's certain
13 aggravating circumstances that tend to make a particular
14 murder worse, can you vote for life imprisonment if you feel
15 that's an appropriate punishment?

16 A I feel like I could, yes, sir.

17 Q Let me state it another way, and I'm not asking you to
18 give me an example.

19 All right, sir?

20 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
21 this point. I mean we've asked this question three or four
22 different times and then he said he's gonna state it a
23 different way.

24 THE COURT: Well, I'll, I'll let him phrase the
25 question. Then I'll make a decision on the objection. I

Individual Juror Qualification

1 don't know exactly what he's gonna ask.

2 Q I want to know, sir, is that is there a case of murder,
3 that if certain aggravating circumstances apply, that you
4 could not vote for the death penalty or that you could not
5 vote for life imprisonment?

6 A I'd say yes.

7 Q Okay. And in a situation such as what you're thinking
8 about that you would, that you could not consider mitigating
9 factors in a case like that?

10 A I'm sorry. I'm, I'm -- I've lost you.

11 Q Okay. Again, the mitigating factors or the mitigating
12 evidence is evidence that may tend to take a murder case---

13 A Okay.

14 Q ---that even though a person is guilty of murder, even
15 if certain aggravating circumstances are shown to exist, the
16 mitigating evidence tends to show that, in fairness or in
17 mercy, that some sentence other than death is the
18 appropriate sentence.

19 A I feel like I could.

20 Q Okay. So, my question is that is there a case of
21 murder, which if certain aggravating circumstances are
22 shown, that you would not consider any mitigating factors
23 and only consider the death penalty?

24 A I'd say no.

25 Q There is -- in other words, there is no such case

Individual Juror Qualification

1 that's so aggravated you would only consider the death
2 penalty?

3 That's what you're saying?

4 A No, sir, I'm, I'm -- I don't know what I'm---

5 Q Let me try---

6 THE COURT: Let's move on to another line of
7 questioning.

8 SOLICITOR BARNETTE: Yeah, I'm gonna object.

9 THE COURT: I'm gonna sustain the objection at this
10 time.

11 Q Do you understand that, even if aggravating
12 circumstances are proven, that the law never requires a
13 death, that a death penalty be imposed?

14 A Yes.

15 Q In other words, a jury is always free, for whatever
16 reason sufficient to the juror, that they did not have to
17 impose a death penalty?

18 A Yes, I understand that.

19 Q And, of course, I imagine you know that people's
20 opinion on the death penalty may vary, right?

21 A Yes.

22 Q Okay. And of course, every person's opinion is
23 entitled to respect.

24 would you agree with that statement?

25 A Yes.

Individual Juror Qualification

1 Q Okay. And you're wanting, of course, your views on
2 this subject to be, to be respected by others, right?

3 A Yes.

4 Q And would you respect the opinion of others if they do
5 not happen to agree with you?

6 A Yes, I would.

7 Q Thank you, sir.

8 Thank you, Your Honor.

9 THE COURT: State may question.

10 SOLICITOR BARNETTE: May it please the Court, Your
11 Honor?

12 THE COURT: Yes, sir.

13 EXAMINATION

14 BY SOLICITOR BARNETTE:

15 Q Mr. Gilmer, I'm Barry Barnette. This is Mr. Trey
16 Gowdy, Cindy Crick. We appreciate your answers and
17 everything, taking the time to talk to us. I know it's hard
18 to talk about these things.

19 A Yeah.

20 Q I just have a few questions.

21 A Okay.

22 Q If I understood right, basically you would watch the
23 case, base your decision on the facts of the case, and the
24 law the judge gives to you?

25 A Yes, I would.

Individual Juror Qualification

1 Q And you'd make decisions based on what you saw in
2 court. You could vote for death or life without parole
3 depending on what the situation was in the facts?

4 A Yes, I could.

5 Q And you'd listen to everything about that?

6 A I'm sorry?

7 Q And you'd make your decision based off that?

8 A Yes.

9 Q Thank you for your time. We appreciate you being here.

10 A Okay.

11 THE COURT: All right. Anything further?

12 MR. ALLEN: No, Your Honor.

13 THE COURT: All right. Mr. Gilmer, just let me go over
14 just a couple things with you so I'm sure I understand where
15 we are.

16 WITNESS: Okay.

17 THE COURT: You've not been selected on the jury.
18 We're still in the qualification process, and we'll be going
19 through that for a little while longer. Maybe a while, a
20 while longer.

21 The -- I do want to let you know, however, that if you
22 are called to come back to the courthouse, and you are
23 qualified as a juror in the case, when you come back to the
24 courthouse, you need to be prepared to stay with us. And I
25 expect that the trial will take about a week---

1 WITNESS: Okay.

2 THE COURT: ---once we get started. And so, you need
3 to bring sufficient clothing and things of that nature to do
4 that because you'll be staying in a motel and you'll be with
5 us for that length of time.

6 Now, I want to be sure that the contact information
7 that you have provided us is correct, the phone numbers
8 where you can be reached.

9 WITNESS: Yes, sir.

10 THE COURT: Things of that nature.

11 WITNESS: Yes, sir.

12 THE COURT: Now, if they're not, tell us now so we can
13 get that straightened out.

14 WITNESS: That's correct.

15 THE COURT: All right. We should be in touch with you
16 shortly concerning your future instructions on the jury
17 panel.

18 WITNESS: Okay.

19 THE COURT: Okay. Thank you very much for coming, sir.

20 WITNESS: Thank you.

21 (The following takes place outside the presence of the
22 juror.)

23 THE COURT: State's position regarding Mr. Gilmer?

24 SOLICITOR GOWDY: He's qualified, Your Honor.

25 THE COURT: Defense.

Individual Juror Qualification

1 MR. ALLEN: Your Honor, we would respectfully move to
2 strike this juror, and the reason for that is that, in my
3 questioning of him, there was an answer that he gave
4 indicating that he, there is a case where he would impose
5 the death penalty, there is a case with that certain
6 aggravating circumstances where he would believe the death
7 penalty is the only appropriate sentence. And because I'm
8 not allowed to obviously go into the factors of this case
9 and whatnot, that's where I have the problem with the Morgan
10 type situation where we can't get into the categories of
11 those types of cases.

12 I'm trying to abide by the Court's instructions from
13 the earlier Court's ruling. But that's my frustration is
14 that I'm afraid there's a case, there might be the case of a
15 murder of two people, for example, that this individual may
16 not---

17 THE COURT: Well, again, sir, you, my ruling has been,
18 and I'll continue to rule that way, that you're not allowed
19 to ask specific, case specific questions on this case that
20 have to do with aggravating or mitigating circumstances.
21 So, that's where we are on that.

22 Now, my -- anything, any other reason you think he's
23 disqualified other than the ones you stated?

24 MR. ALLEN: Well, if he is not able to consider
25 something other than the death penalty on a certain type of

1 case, then I think he would not be able to follow the, the
2 law as the Court gives it and consider mitigating factors
3 and that's why I would believe that he is not qualified
4 under Morgan, United States Constitution, or the Sixth,
5 Eighth, and Fourteenth Amendments to the South Carolina
6 Constitution Article I, Section 3, 14, and 15.

7 THE COURT: Anything else the State wish to address in
8 connection with the juror?

9 SOLICITOR GOWDY: Yes, sir, Your Honor. This game of
10 gotcha where you come up, you ask a question six different
11 times until you get an answer where you can argue that
12 they're not qualified. We can all come up with a scenario
13 under which we would always vote for death. The massacre at
14 a kindergarten. I mean to ask that question, that, that's
15 not the way to get where he wants to get.

16 You can ask are there categories of cases where you
17 would automatically vote for death. But to state is there a
18 fact pattern under which you would automatically vote for
19 death, every one of us would answer yes to that question,
20 and that's the only question, out of all, the 30 minutes
21 where he voir dired him, the only question that he can hang
22 his argument on. Every other question he's a typical type
23 three juror.

24 THE COURT: I'll find that the juror is qualified. I,
25 I, I agree with the State's position that when you ask a

Individual Juror Qualification

1 question is there a possible scenario where you would always
2 vote for death, when you have jurors such as we're seeking,
3 there are jurors who could vote for death and who could vote
4 for life. So, I think the answer would always have to be
5 yes to that particular, if there is a possible scenario
6 where you'd vote for death. If they're willing to consider
7 death, willing to consider life, they'd always answer yes to
8 that question.

9 So, it's my finding that Mr. Gilmer did testify that he
10 would be willing to consider mitigating circumstances. He
11 could vote for life or he could vote for death depending on
12 those circumstances, and I find he's qualified under the
13 law.

14 All right. We need to bring in Bradson Harrison,
15 Number 135.

16 BAILIFF: Yes, sir.

17 BRADSON HARRISON, having been previously
18 sworn, testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q Morning. It's my belief your name is Bradson Harrison.

22 A Yes, sir.

23 Q Is that correct, sir?

24 A Yes, sir.

25 Q I want to thank you very much for your returning today.

Individual Juror Qualification

1 I understand that you have to do that. But I do appreciate
2 your willingness to come forward and, and serve as
3 requested.

4 I want to remind you that you were placed under oath
5 yesterday to respond to my questions truthfully, honestly,
6 and completely. And, and the reason I'm reminding you of
7 that fact is I want to be sure you understand you're still
8 under oath---

9 A Yes, sir.

10 Q ---for purposes of our discussion today.

11 Do you understand that, sir?

12 A Yes, sir.

13 Q All right. I understand that this is somewhat of an
14 unusual situation for an individual to be in, to be put in a
15 box, and sit by yourself, and be questioned by people. And,
16 and so, I appreciate that you might be a little
17 uncomfortable in this setting, and I want to let you know
18 that you, that we're not here to try to change your opinions
19 about anything. We're here to gather some information about
20 you.

21 I will tell you now that the questions we're about to
22 ask have no right or wrong answers.

23 A Yes, sir.

24 Q There is no, no way you can be right on a question or
25 wrong on a question. We're here just to gather information

Individual Juror Qualification

1 about your opinions. If, at anytime, you feel uncomfortable
2 about what's going on or you feel that someone's trying to
3 change your opinions on a subject, let me know that and
4 we'll try to remedy that situation for you.

5 Do you understand where we are, sir?

6 A Yes, sir.

7 Q All right. I want to go over some matters with you.
8 I'll be asking questions first. Then we'll allow the
9 attorneys some time to talk to you as well.

10 A Okay.

11 Q All right. Now, since we talked earlier, yesterday,
12 has anybody contacted you about this case?

13 A No, sir.

14 Q And have you heard, read, or seen anything about this
15 case since yesterday?

16 A No, sir.

17 Q Have you been, been exposed to any information from any
18 source concerning this particular case?

19 A No, sir.

20 Q And has anything happened that might cause you to form
21 some opinion about this case since yesterday?

22 A No, sir.

23 Q Now, my next question is have you ever participated or
24 been involved in or responded to any blog or Internet site
25 or any other source of information concerning the death

Individual Juror Qualification

1 penalty issue?

2 A No, sir.

3 Q Either for it or against it?

4 A No, sir.

5 Q Have you ever participated in any type of political
6 activity, a demonstration, a rally, or a meeting, concerning
7 either the imposition of the death penalty or the
8 non-imposition of the death penalty?

9 A No, sir.

10 Q Now, are you the kind of juror, if you were selected,
11 who would put aside anything that you may have seen, heard,
12 or read previously about a matter and decide a case based
13 solely upon the information that you hear in the courtroom
14 during the trial?

15 would you be able to do that?

16 A Yes, sir.

17 Q Now, I'm going to go over a, some questions about some
18 information I provided to you. There was a list of
19 witnesses in, back in the jury room given to you to look
20 over and consider.

21 Is that correct?

22 A Yes, sir.

23 Q And did you do that?

24 A Yes, sir.

25 Q Now, I'm going to ask some questions about that list,

Individual Juror Qualification

1 and I'm gonna tell you now I don't want you to identify
2 anybody by name.

3 A Okay.

4 Q What I do want to do is gather some information about
5 the people on that list and their relationship or possible
6 relationship to you.

7 A Okay.

8 Q Now, after having read that list, do, was there anyone
9 on that list that you have had any social, business, or
10 personal connections whatsoever?

11 A No, sir.

12 Q Was there anybody on that list that you might be
13 related to either by blood or marriage either now or former?

14 A No, sir.

15 Q So, as far as you know, you have no connection with
16 anyone listed on that list as potential witnesses in the
17 trial?

18 A No, sir.

19 Q Is that correct?

20 A Yes, sir.

21 Q Okay. Now, I'm going to ask now some more personal
22 questions, first of all, about your, your position in
23 connection with the death penalty. Again, I'm going to tell
24 you we're not trying to invade your privacy. We are trying
25 to determine how you feel about the case and gather some

1 information or opinions that are important to us about the
2 case obviously.

3 You appear to be an individual who's secure enough in
4 your feelings and your opinions that you can explain those
5 to us without any fear or any concern. And if you have a
6 problem again, I'll let you tell, tell me and we'll try to
7 address that.

8 Do you understand what we're going to do?

9 A Yes, sir.

10 Q All right. Now, one of the things I am going to talk
11 to you about is your position or whatever position you might
12 have concerning the death penalty specifically because that
13 may be an issue in the trial. I want to explain to you, as
14 I did yesterday to be sure you understand it, this trial, as
15 it goes forward, will have a guilt phase of the trial. That
16 will be the first part of the trial. And during that, the
17 jury will determine whether or not the defendant or the
18 state has met its burden of proof of proving the defendant
19 guilty beyond a reasonable doubt of the crimes that have
20 been alleged.

21 Once that has been completed -- one of the crimes is
22 the charge for murder. If the defendant is found guilty of
23 that murder, the state has sought the death penalty for
24 that, that crime. And so, there will be a separate
25 sentencing phase of the trial, separate trial altogether,

Individual Juror Qualification

1 but the same jury will participate in both trials.

2 Do you understand how that works?

3 A Yes, sir.

4 Q Now, we're gonna talk about the death penalty right
5 now. And to a certain extent we're putting the cart before
6 the horse because there's been no determination of any guilt
7 of any crime at this point in time. And, and so -- but this
8 is the only chance that we will have to discuss that issue
9 with you. So, we have to discuss it now.

10 So, I want to tell you the fact I'm discussing the
11 penalty phase should not be taken in any way against the
12 defendant or against any defense that he might raise. It's
13 simply this is the time we have to talk to you before the
14 jury's selected. So, I want to be sure that you understand
15 that that's our situation.

16 A Yes, sir.

17 Q Do you understand that?

18 A Yes, sir.

19 Q All right. Now, sir, first of all, I'm gonna ask you,
20 if you were selected as a jury, juror in any criminal case,
21 and I'm not speaking about this one in particular, just any
22 one of them, but if you were a juror in a criminal case, are
23 you the kind of juror who would be willing to listen to the
24 law as instructed to you by the Court?

25 A Yes, sir.

Individual Juror Qualification

1 Q All right. Would you be willing to accept the law and
2 apply it to the facts of the case as you find them to be?

3 A Yes, sir.

4 Q Now, is that true even though you might not like the
5 law or even though you may disagree with what the law says,
6 would you still be willing to follow the law as instructed
7 by the Court?

8 A Yes, sir.

9 Q Now, if you were a juror in this case, this is the
10 State versus Torres, would you be able and willing to set
11 aside any and all information and knowledge that you might
12 have heard about this case from any source whatsoever?

13 That includes things that you might have heard, read,
14 seen, or anything about this case that you may have heard
15 about or seen outside of the courtroom or even during the
16 trial.

17 So, if any information should occur to you in that
18 regard, could you disregard that information and decide the
19 case purely upon what you hear in the courtroom?

20 Could you do that?

21 A Yes, sir.

22 Q Now, I want you to understand that, and I explained it
23 yesterday, but I want to ask you specifically about this.
24 In South Carolina, as in the United States, a criminal
25 defendant is always presumed to be innocent, and, therefore,

Individual Juror Qualification

1 the criminal defendant does not have to prove his innocence.

2 Do you understand that concept?

3 A Yes, sir.

4 Q Also, in this state, and in the United States, the
5 State has the burden of proving that the defendant is guilty
6 beyond a reasonable doubt.

7 Do you understand that the State has that burden?

8 A Yes, sir.

9 Q Now, if you were a juror and you were sitting in a
10 criminal case, and again, I'm not talking about this one in
11 particular, would you be listening, be willing to listen to
12 the law and evidence presented to you, and based upon what
13 those things were, how it was presented, and based upon the
14 circumstances as you find them to be, could you find a
15 person not guilty of a crime as charged?

16 A No, sir.

17 Q I mean you think -- is it your belief that because he's
18 been arrested and he's always guilty of the crime?

19 A No, sir.

20 Q Maybe you misunderstood my question.

21 A Yes, sir, I did.

22 Q Let me be sure you do understand it.

23 A Okay.

24 Q What I'm saying is that if you were in a criminal case
25 and you heard all the evidence, you heard all the facts, you

Individual Juror Qualification

1 were charged by, by, with the law by the judge, and you took
2 the, the evidence as you found it to be, and applied the law
3 to it, could you find a person not guilty of a crime
4 charged?

5 A Yes, sir.

6 Q So, in other words, it's not your belief, just because
7 someone's been charged, that they're guilty?

8 A Yes, sir.

9 Q Okay. Now, however, if the evidence did convince you,
10 beyond a reasonable doubt, that a person was guilty of the
11 crime charged, would you be able to find somebody guilty of
12 that crime?

13 A Yes, sir.

14 Q So, I take it then that, that, and tell me if I'm wrong
15 about this, but you would be able to make up your mind
16 depending upon the strength of the evidence and what the
17 testimony or the evidence showed and you could find a person
18 either guilty or not guilty depending on that law and that
19 evidence?

20 A Yes, sir.

21 Q Is that correct?

22 A Yes, sir.

23 Q Now, let's talk about the penalty phase for the, for a
24 minute, and I'll tell you now that this case is a little
25 unusual cause, in South Carolina, generally, the judge sets

Individual Juror Qualification

1 the penalties for, for crimes that are, someone's found
2 guilty of. That's -- this case is different because, under
3 the law, where the State alleges that a murder occurred and
4 they also seek the death penalty for that murder, the jury
5 becomes the body that decides the penalty to be imposed.
6 And as I told you, there's two phases of the trial. The
7 guilt phase and then if the defendant is found guilty of
8 that crime, murder, then we go on to the penalty phase.

9 A Yes.

10 Q Do you understand that?

11 A Yes, sir.

12 Q And there's only two choices to be made once we reach
13 the penalty phase of the trial, and that choice is life
14 imprisonment or the death penalty. Those are the two
15 choices that the jury has at that time.

16 A Yes, sir.

17 Q Do you understand that as well?

18 A Yes, sir.

19 Q All right. Now, now, I want you to put yourself in a
20 situation theoretically as a juror in a case where the State
21 gets, the State is seeking the death penalty and imagine
22 that you and your other jurors have already decided that,
23 and convicted a defendant of a murder. And you're about to
24 walk back into the courtroom to start that second phase of
25 the trial to decide the punishment, either life imprisonment

Individual Juror Qualification

1 or the death penalty.

2 Do you understand the position I've put you in right
3 now?

4 A Yes, sir.

5 Q So, I want you to imagine yourself in that position.

6 When you're in the jury room, I provided you with a
7 sheet of paper that listed three types of jurors.

8 A Yes, sir.

9 Q Do you remember that?

10 A Yes, sir.

11 Q All right. The first type of juror is someone, who in
12 that situation where the jury has convicted a defendant, has
13 already made up that, his mind that the only possible
14 penalty for that is the death penalty.

15 The second type of juror that I described on that piece
16 of paper to you is someone who also has already made up
17 their mind. They have a belief that no matter what the
18 severity of the crime and no matter what the crime is, the
19 state never has the right to take one some, take someone's
20 life as punishment for a crime and that person then has
21 already made up their mind that they're going to vote for
22 life imprisonment.

23 Now, the third type of juror described on that sheet of
24 paper doesn't know what he or she is going to do. He hasn't
25 made up his mind as to whether he's going to vote for life

Individual Juror Qualification

1 imprisonment or death. That juror wants to wait and listen
2 to the evidence and testimony presented during the
3 sentencing phase, and there would be additional evidence and
4 testimony presented during that phase, and then make a
5 decision as to the appropriate punishment that should be
6 given.

7 Now, of the three types of jurors that I just described
8 to you, the one that's already for the death penalty if a
9 conviction occurs, one that is never for the death penalty,
10 or one that wants to listen to the facts and circumstances
11 and make a decision, which one best describes your feelings?

12 A Listen to the evidence.

13 Q So, you'll be number three?

14 A Yes, sir.

15 Q All right. So, under those circumstances, keeping in
16 mind the defendant has already been found guilty of murder
17 and the issue of guilt is no longer a concern, you would be
18 willing to listen to the facts and evidence, and if the
19 evidence justified it, would you be willing to sentence
20 someone to death?

21 A Yes, sir.

22 Q And by the same token, if you thought the facts and
23 evidence, as presented during the sentencing phase, did not
24 justify the death penalty, would you be willing to sentence
25 someone to life in prison?

Individual Juror Qualification

1 A Yes, sir.

2 Q So, you could sentence someone to either life
3 imprisonment or you could sentence someone to death
4 depending on the facts and circumstances as you find them to
5 be?

6 A Yes, sir.

7 Q Now, finally, I want to tell you that if you were
8 selected as a juror in this case you will be sequestered.
9 That's a legal phrase that means we'll keep you separate.
10 We won't let you be exposed to, to anything, outside
11 influences. You'd be staying in a hotel, be given your
12 meals. You'll have limited rights to communicate with
13 people. But we will limit what you can watch on television
14 and what things you could be exposed to, and you'll be there
15 for about a week.

16 Now, my next question to you is if you were selected on
17 the jury and you were required to stay for a week during a
18 trial, would that, in any way, pose a serious risk of danger
19 to either your health or well being?

20 A No, sir.

21 Q Or would that pose a serious risk of danger to either,
22 of, of danger to the health or well being of someone who
23 might be dependent upon you?

24 A No, sir.

25 Q All right. I want to thank you very much for answering

Individual Juror Qualification

1 my questions. At this time I'm going to allow the attorneys
2 to go over some things with you and will allow the defense
3 to go first.

4 A Okay.

5 THE COURT: You may proceed, Mr. Reckenbeil.

6 EXAMINATION

7 BY MR. RECKENBEIL:

8 Q Mr. Harrison, thank you so much for coming this morning
9 and thank you for answering that jury questionnaire. I know
10 this is not a pleasant situation. But I appreciate you
11 meeting your obligation head on and coming here this morning
12 as well as filling out that questionnaire.

13 I had an opportunity to review that questionnaire and
14 it says that there was an affirmative answer when you were
15 asked about being a victim of a crime, and you talked about
16 breaking and entering.

17 A Yes, sir.

18 Q Was that you as the victim of breaking and entering?

19 A Yes, sir.

20 Q How long ago did that happen?

21 A Seventeen years ago.

22 Q Seventeen years ago?

23 A Yes, sir.

24 Q Okay. Has that experience made you impartial in a
25 situation with an individual you were sitting in judgment

Individual Juror Qualification

1 that may of been accused of breaking and entering?

2 A No, sir.

3 Q So, were you able to be fair and impartial if you were
4 to hear---

5 A Yes, sir.

6 Q ---another case about that?

7 A Yes, sir.

8 Q Okay. So, just -- that's just based upon that
9 situation?

10 That hasn't made you impartial?

11 A No, sir.

12 Q Okay. I also read that questionnaire and it said that
13 you were on a, a jury in which you convicted somebody of
14 murder.

15 A Yes.

16 Q How long ago was that?

17 A Twelve years ago.

18 Q Okay. You remember the deliberation situation---

19 A Yes.

20 Q ---where you and the jurors talked about the case?

21 A Yes.

22 Q Were you able to articulate your position when you were
23 sitting in that deliberation room or were you---

24 A Yes, sir.

25 Q ---just kind of sit back and just wait until everybody

Individual Juror Qualification

1 else made their decision and then you chimed in?

2 A No, we discussed it. Everybody in there did.

3 Q Okay. Do you have any problem sitting in a group
4 giving your---

5 A No, sir.

6 Q ---giving your opinion?

7 A No, sir.

8 Q Okay. And in this situation as well, if you were
9 selected as a juror, you understand that you are entitled to
10 your opinion, correct?

11 A Yes, sir.

12 Q And that, in fact, would you feel like just back in
13 that situation when you're deliberating, did you feel
14 intimidated and coerced that you had to change your opinion?

15 A No, sir.

16 Q And in this situation again, the same thing, if you
17 have an opinion, would you feel that somebody could
18 intimidate you or coerce you to change your opinion?

19 A No, sir.

20 Q All right. Do you have a view on the death penalty?

21 A I think it's necessary when the crime is, you know, to
22 be punished. If the crime is high enough, it should be
23 punished by death.

24 Q Okay. And you understand that the crime that we have
25 is murder?

Individual Juror Qualification

1 A Yes, sir.

2 Q Right?

3 A Yes, sir.

4 Q Okay. So, you believe that, in fact, in the death
5 penalty and you believe that an individual could be sent to
6 death based upon murder?

7 A Not just murders. Circumstances, you know, was it, you
8 know, premeditated or---

9 Q Right.

10 A ---or did, did it make it out they done it---

11 Q Right.

12 A ---you know. I know it's a different situation. You
13 know, sometime rage takes over---

14 Q Yeah.

15 A ---you know.

16 Q Sure.

17 Now, you have a preconceived notion just like everyone
18 has a preconceived notion about what they think about the
19 death penalty.

20 Considering that preconceived notion before you came to
21 this courtroom, is there any situation where you could say
22 to yourself I could never ever give that person life in
23 prison, that I can only vote for the death penalty?

24 A No, sir, I mean I could go either way.

25 Q You could go either way?

Individual Juror Qualification

1 A Yes, sir.

2 Q So, you could understand, as Judge Couch talked about,
3 because nothing's been proven in this courtroom?

4 A Yes, sir.

5 Q You understand that?

6 A Yes, sir.

7 Q You understand that, the fact that the defendant is
8 innocent until proven guilty?

9 A Yes, sir.

10 Q And also the fact that the State is seeking the death
11 penalty, has that given you a preconceived notion as to the
12 guilt or innocence of my client?

13 A No, sir.

14 Q Okay. So, understand when you come back to that second
15 part of the phase cause this is our only opportunity to
16 question you about this situation --

17 A Yes, sir.

18 Q -- putting yourself in that situation, when you come
19 back into that courtroom, it's kind of a whole new ball
20 game?

21 A Yes, sir.

22 Q You understand what Judge Couch was asking you to do?

23 A Yes, sir.

24 Q You could sit there and you can listen to the State and
25 present their evidence, which they're gonna present what

Individual Juror Qualification

1 they call aggravating factors, and then we're gonna have an
2 opportunity, as the defense, to present mitigating factors
3 to try to lessen -- so, do you feel that you could be fair
4 and impartial to give both the defense an opportunity to
5 present their evidence and the State an opportunity to
6 present their evidence and then make a decision?

7 A Yes, sir.

8 Q Okay. And then once you make your decision about
9 whether or not to implement the death penalty or life in
10 prison, do you feel that, in fact, you can be sound in that
11 decision going back into that jury room and making a pretty
12 good, articulate---

13 A Definitely.

14 Q ---in that deliberation?

15 A Definitely.

16 Q All right. Thank you, sir. I appreciate you being
17 here.

18 A Thank you.

19 THE COURT: State may now question the juror.

20 SOLICITOR BARNETTE: May it please the Court, Your
21 Honor?

22 THE COURT: Yes, sir, Mr. Barnette.

23 EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Mr. Harrison, I'm Barry Barnette. I'm in the

Individual Juror Qualification

1 solicitor's Office with Trey Gowdy. Cindy Crick will be
2 with us representing the State in this case.

3 A Yes, sir.

4 Q I just want to tell you that, thank you for being here
5 and thank you for filling out the questionnaire. I know
6 it's thoughtful and I know it took a lot of time to go
7 through that and everything and we appreciate that.

8 If I understood your answers right, you're the type of
9 juror that will listen to everything?

10 A Yes, sir.

11 Q Weigh the facts, make a decision based off the facts?

12 A Yes, sir.

13 Q And you'd take the instruction from the law, I mean
14 from the judge and apply the law to the facts?

15 A Yes, sir.

16 Q And you could either find death is appropriate or you
17 can find life without parole is appropriate?

18 A Yes, sir.

19 Q Appreciate your time. Thank you for answering my
20 questions.

21 A Thank you.

22 THE COURT: Anything further from this juror?

23 MR. RECKENBEIL: Nothing further. Thank you, Your
24 Honor.

25 THE COURT: All right. Now, Mr. Harrison, let me go

1 over just a couple of things with you so -- I want to be
2 sure you understand where we are now. You've not been
3 selected to be on the jury at this time. We're still going
4 through the qualification process. Once we've gone through
5 the qualification process with the jurors that we have,
6 we'll be back in touch with you concerning your
7 participation in the trial.

8 I want to be sure that the contact information that we
9 have for you is correct. It hasn't changed since you've
10 answered the information---

11 WITNESS: No, sir.

12 THE COURT: ---to the clerk, is that correct?

13 WITNESS: Yes, sir, that's correct.

14 THE COURT: All right, sir. And I will tell you that
15 we will be in the, touch with you in the not too distant
16 future about your service on the jury panel. And again, I
17 want to thank you very much for your willingness to come
18 forward and serve.

19 I will also, as I tell everyone, my instructions
20 concerning outside information, and, and publicity and
21 discussing the case continue at this time.

22 WITNESS: Yes, sir.

23 THE COURT: You're free to go. Thank you, sir.

24 WITNESS: Thank you.

25 (The following takes place outside the presence of the

Individual Juror Qualification

1 juror.)

2 THE COURT: All right. State's position regarding that
3 juror, Mr. Harrison?

4 SOLICITOR GOWDY: He's qualified, Your Honor.

5 MR. RECKENBEIL: Qualified.

6 THE COURT: All right. The Court will find that he is
7 qualified.

8 All right. That completes Panel Number 2. We're gonna
9 take about a five minute break and then we'll start with the
10 next panel.

11 Court's in recess for about five minutes.

12 (Whereupon, a short recess was taken at this time.)

13 THE COURT: You ready to proceed with the next one?

14 MRS. HODGES: Yes, sir.

15 MR. RECKENBEIL: Yeah, that's fine.

16 THE COURT: State ready?

17 SOLICITOR GOWDY: Yes, sir, Your Honor.

18 THE COURT: All right. Bring in---

19 BAILIFF: Gregory.

20 THE COURT: ---Kyra Gregory.

21 KYRA GREGORY, having been previously
22 sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q All right, ma'am. Your name is -- is it Kyra?

Individual Juror Qualification

1 A Kyra.

2 Q Kyra Gregory

3 All right. Now, Mrs. Gregory, I want to, first of all,
4 thank you for coming back today and helping us get, get this
5 matter underway. I realize you don't have a lot of choice.
6 But we do appreciate your, your willingness to come forward
7 and, and be available for service.

8 I do want to remind you that yesterday you were placed
9 under oath to tell us the truth in this matter, and the only
10 reason I'm reminding you of that is so that you'll
11 understand that you're still under oath for purposes of our
12 discussion today.

13 A Yes, sir.

14 Q You understand that, ma'am?

15 A Yes, sir, I do.

16 Q All right. Now, what's going to happen, and, and I
17 realize that you're in a little bit of an unusual situation
18 being put in a box and a chair and asked questions and, and
19 I realize that sometimes that can make you uncomfortable.
20 It's not our purpose to do that today. We're going to be
21 asking you some questions concerning your opinions and your,
22 your positions on some matters.

23 There are no right or wrong answers to the questions
24 that we're going to ask you, and it's not our purpose to try
25 to change any of your opinions. It's simply to gather some

Individual Juror Qualification

1 information so that we can make intelligent decisions
2 concerning jury selection.

3 Do you understand that, ma'am?

4 A Yes, I do.

5 Q Now, if, at anytime during this process, you feel
6 uncomfortable, you feel like that we've gone beyond what I
7 just told you, you let me know and we'll try to rectify that
8 situation.

9 Okay?

10 A Okay.

11 Q All right. Now, the first question I have for you,
12 since we talked yesterday, has anyone contacted you about
13 this case or have you heard, read, or seen anything about
14 the case?

15 A No.

16 Q Have you been exposed to any information from any other
17 source about this case?

18 A No.

19 Q And has anything happened since we last talked to cause
20 you to form any other opinions about this case?

21 A No, it has not.

22 Q All right. Have you ever participated or responded, in
23 any way, to any blog or Internet site or any other source of
24 information concerning either the imposition or the
25 non-imposition of the death penalty?

Individual Juror Qualification

1 A No.

2 Q Have you ever participated in any demonstrations or
3 political activity concerning the imposition of the death
4 penalty?

5 A No.

6 Q Now, ma'am, are you -- if you were selected as a juror,
7 would you be the kind of juror who could put aside anything
8 that you may have heard or read in the past and decide the
9 case solely upon the evidence that's presented during the
10 trial of this case?

11 A Absolutely.

12 Q All right. Now, ma'am, I'm going to ask you some
13 questions about a list that was given to you while you were
14 waiting. It was a list that had listed on it the potential
15 witnesses during this trial.

16 Did you have a chance to look at that?

17 A Yes, I did.

18 Q And did you review it?

19 A Yes, I did.

20 Q All right. I'm gonna ask you some questions about that
21 and I don't want you to identify anybody by name. Okay.
22 But I'll ask you generally some questions.

23 After reviewing the list, can you tell me if there was
24 anyone on that list that you had any social, business, or
25 personal contact or connection with in any way?

Individual Juror Qualification

1 A No.

2 Q And did you notice anyone who was on that list that you
3 might have been related to either by blood or marriage
4 either now or in the past?

5 A No.

6 Q So, as far as you know, you have no connections with
7 anyone who was on that list?

8 A That's correct.

9 Q All right. Good. Now, I'm going to ask you some
10 questions about the death penalty. These are to gather,
11 again, your information, the information concerning your
12 opinions concerning certain topics that have to do with
13 that. Again, it's not our intention to invade your privacy.
14 But we are trying to find out some information about those
15 opinions cause they're important to us in this case.

16 You appear to be someone who's secure enough in your
17 beliefs and your opinions that we can talk about this
18 without you feeling threatened in any way.

19 A Yes.

20 Q Is that correct, ma'am?

21 A Yes, that's correct.

22 Q Okay. Now, I do want to make you aware of, like I did
23 yesterday, but be sure you understand that discussing the
24 death penalty right now is kind of like putting the cart in
25 front of the horse. There are two different trials that

Individual Juror Qualification

1 will take place in this case. The first trial will be as to
2 guilt or innocence on the charges that have been presented.

3 And once that trial has been completed, should the jury
4 determine the defendant is guilty of the crime of murder,
5 the State has sought the death penalty in this case. That
6 means they'll be a separate trial held after the first one.

7 Now, the same jurors will participate in both trials.
8 But that second, second trial would be on the question of
9 what penalty would be appropriate. At that time there would
10 be two choices, either life or death.

11 Now, ma'am, the fact that we're talking about the death
12 penalty now should not, in any way, reflect adversely or go
13 against the defendant. This is simply the only time that we
14 can discuss that issue and those opinions before we start
15 the trial. And so, we're not, talking about something that
16 we may never get to depending on the verdict in the first
17 case, but it's something that we do have to talk about
18 before selecting the jury.

19 Do you understand what I'm saying?

20 A Yes, I do.

21 Q Okay. Now, ma'am, if you were a juror in any criminal
22 case, and I'm not talking just about this case, I'm talking
23 about any criminal case, would you be willing to listen to
24 the law as instructed to you by the judge?

25 A Yes.

Individual Juror Qualification

1 Q And would you be willing to accept the law as
2 instructed by the judge and apply it to the facts that you
3 find as a juror in the case?

4 A Yes.

5 Q Now, is that true even though you might not like what
6 the law is that's given to you by the judge or you might
7 disagree with the law, would you still be willing to apply
8 the law as given to you to the facts as you find them to be?

9 A Yes.

10 Q All right. Now, ma'am, if you were a juror in this
11 case, and I know I've asked you generally about this, but I
12 want to talk specifically about this case, are you able and
13 willing to set aside any knowledge or information that you
14 might have about this case from any other source at all,
15 what you might have heard, what you might have heard, what
16 you might have seen, and decide the case solely or purely
17 upon the evidence that you hear during the trial?

18 A Yes, I have purposely not read the paper or watched the
19 news.

20 Q Well good. I think that's a good thing for jurors to
21 do in this situation.

22 Now, I mentioned earlier, but I want to be sure you
23 understand these concepts, first of all, under the law of
24 this state, a criminal defendant, no matter who that is or
25 what that criminal defendant is charged with, is always

Individual Juror Qualification

1 presumed to be innocent. And therefore, a criminal
2 defendant never has to and does not have to prove his
3 innocence.

4 Do you understand that?

5 A Yes, sir.

6 Q Do you also understand the concept that when the State
7 accuses someone of committing a crime, that the State has
8 the burden of proving that person guilty beyond a reasonable
9 doubt before that person can be convicted.

10 Do you understand that concept?

11 A Yes, I do.

12 Q And, ma'am, are you willing to accept those concepts
13 and apply them in this case?

14 A Yes.

15 Q Now, if you were sitting as a juror in a criminal case,
16 I take it then that you, based on the evidence and the
17 things that were presented, could find a person, if you
18 listened to all the evidence, listened to all the facts,
19 could you find a person not guilty of the charge?

20 A Yes, I could. It would depend on what was presented.

21 Q Oh, I understand.

22 You'd go based on the facts and circumstances?

23 A Yes.

24 Q The evidence presented?

25 A Right.

Individual Juror Qualification

1 Q So, it's not your belief that simply because someone
2 has been arrested and charged that they're automatically
3 guilty of the crime?

4 A Yeah, I don't think so.

5 Q Okay. If, however, though you listened to the evidence
6 and that evidence convinced you, beyond a reasonable doubt,
7 that a person was guilty, would you be able then to find a
8 person guilty?

9 A Yes, I would.

10 Q So, I take it, and tell me if I'm describing you
11 incorrectly, that you would make up your mind, depending
12 upon the strength of the evidence, and the testimony,
13 whatever that showed, and that you would be able to either
14 find the person guilty based on that evidence or not guilty?

15 A That is correct.

16 Q All right. Let's talk about then the death penalty for
17 a minute specifically, and I've already told you that, that
18 that, that this is a little bit unusual for us to do that
19 because it would be at the end of the trial, but we have to
20 do it. And I'll explain to you, in South Carolina,
21 generally when someone is found guilty of a crime, that it's
22 the Judge's responsibility to determine the punishment that
23 will be required of that person. That's different in a case
24 such as that where the State is seeking a conviction of
25 murder and is also asking that the death penalty be imposed.

Individual Juror Qualification

1 And in that unusual circumstance, the jury determines
2 the punishment. And again, it's in a separate trial and
3 they're two choices, either life imprisonment without parole
4 or the death penalty. Those are the two choices in the
5 separate sentencing phase of the trial.

6 And under those circumstances, if the jury convicts the
7 defendant, the defendant of the crime of, of murder, and
8 guilt has been determined, then the jury comes back, and in
9 that separate sentencing proceeding, listens to additional
10 evidence at that time and will hear additional testimony on
11 that question only.

12 You understand that's how that will proceed?

13 A Yes.

14 Q All right. Now, back in the, in the waiting room where
15 you were, there was a sheet of paper that described three
16 different jurors.

17 Did you read that?

18 A Yes, I did.

19 Q Did you understand what it said?

20 A I did.

21 Q And in that it, it described three different jurors and
22 I want you now to kind of put yourself in a position. Put
23 yourself in the position that you're on a jury. The jury is
24 already heard the issues of guilt or innocence, and has
25 decided that the defendant is guilty of murder.

Individual Juror Qualification

1 So, you're about to come back into the courtroom and
2 start what's called the sentencing phase, what I've
3 described to you as the sentencing phase.

4 Do you understand the position that I've put you in?

5 A Yes.

6 Q Okay. Now, that sheet of paper described three
7 different types of jurors. The first type of juror who, is
8 someone who comes back into that courtroom for that second
9 penalty phase and that juror already knows how that juror is
10 gonna vote. That juror has decided to vote for the death
11 penalty regardless of what is said during that hearing
12 because that juror believes that that is the only, most
13 appropriate penalty for someone convicted of murder. And
14 so, that juror is already made up his mind or her mind in
15 your case.

16 Now, the second type of juror that would come back into
17 the courtroom is someone who's also already made up their
18 mind because that juror believes that, under no
19 circumstances, does the State have the right to take
20 someone's life for the commission of a crime. And so that
21 juror has already made up his or her mind that that juror
22 would vote for life imprisonment every time.

23 Now, the third type of juror is a juror who doesn't yet
24 have his mind made up as to whether he's going to vote for
25 life imprisonment or death. That juror has decided to wait

Individual Juror Qualification

1 and listen to the evidence and testimony and then decide on
2 the question of life or death.

3 Do you understand what is meant by the three types of
4 jurors?

5 A Yes.

6 Q Now, ma'am, if I were to ask you which of those three
7 types of jurors best describes your feeling, which one would
8 it be?

9 A I would be the third.

10 Q So, you would be willing to listen to the facts and
11 circumstances then and be in a position to render a decision
12 based on those facts and circumstances?

13 A Yes.

14 Q Now, ma'am, if you were to find that someone is guilty
15 of murder, and if you found that the facts and evidence that
16 you heard during the sentencing phase justified it, would
17 you be willing to sentence someone to the death penalty?

18 A Yes, if I felt that that was the right thing.

19 Q Yes, ma'am.

20 And by the same token, if you had found someone guilty
21 of murder, then you've listened to the facts and
22 circumstances during the sentencing phase, and if you felt
23 that those facts and sentence, evidence did not justify the,
24 the death penalty, would you be willing to sentence someone
25 to life in prison?

Individual Juror Qualification

1 A Yes.

2 Q So, you could sentence someone to either life
3 imprisonment or death?

4 A Yes.

5 Q Is that correct?

6 A That's correct.

7 Q All right. Now, finally, I've told you already and I
8 think you've heard, during our proceedings, that this jury
9 is going to be sequestered once it's selected. That means
10 that you won't be allowed to go home in the evenings. You
11 will have limited contact with anyone on the outside.
12 You'll be limited as to what you can see on television and
13 what you can hear and what you can read in newspapers and
14 things of that nature. You will be, of course, housed and
15 fed and, and that sort of thing.

16 We expect this trial to last for about a week perhaps,
17 perhaps once the trial actually begins. And the question
18 I'm going to ask you about that sequestering, sequestration,
19 I realize for every, anyone in that situation it's an
20 inconvenience.

21 But my question is if you were in that situation, would
22 that pose a serious risk of danger to your health or to your
23 well being?

24 A No, it would not.

25 Q And would that situation pose a serious risk of danger

1 to the health or well being of anyone who might be dependent
2 upon you?

3 A No.

4 Q So, you could handle that situation on a personal
5 basis?

6 A Yes, sir, I have.

7 Q Is that right, ma'am?

8 A Yeah.

9 Q Okay. Now, that completes the questions I wanted to
10 ask of you.

11 A Okay.

12 Q We allow the defense to go first in asking questions.
13 Mr. Reckenbeil, you may proceed.

14 MR. RECKENBEIL: Thank you, Your Honor.

15 EXAMINATION

16 BY MR. RECKENBEIL:

17 Q Mrs. Gregory, thanks very much for coming this morning
18 as well as meeting your obligation of this jury situation as
19 well as filling out that questionnaire. I also applaud you
20 because I did hear that you said that you didn't read the
21 paper---

22 A Yes.

23 Q ---or you didn't watch TV.

24 A I've purposely not done that.

25 Q Because you, you knew you were gonna come here?

Individual Juror Qualification

- 1 A Yes.
- 2 Q And---
- 3 A I had a feeling, you know, when I got the paperwork, I
- 4 had a feeling I didn't want to do anything that would
- 5 alter---
- 6 Q Right. well, I appreciate that.
- 7 A Yes.
- 8 Q And I know this Court appreciates because you're coming
- 9 in with an open mind in this case.
- 10 A Yes.
- 11 Q But I did have the opportunity to review that jury
- 12 questionnaire that you submitted to the Court, and it said
- 13 that you sat on a prior jury in Magistrate Court.
- 14 A Yes, it was.
- 15 Q Do you remember what town or city that was in?
- 16 A It was Spartanburg.
- 17 Q Spartanburg?
- 18 A Uh-huh. (Affirmative).
- 19 Q Was it here in this courthouse?
- 20 A Yes, it was.
- 21 Q Downstairs?
- 22 A Yes.
- 23 Q And it was a traffic accident that you sat in on?
- 24 A Yes.
- 25 Q Do you remember the verdict in the case?

Individual Juror Qualification

1 A It was not guilty.

2 Q Not guilty?

3 A Uh-huh. (Affirmative).

4 Q Do you remember in that situation where you got to the
5 end of the case and the judge says okay, jury, it's your,
6 your turn to deliberate?

7 A Uh-huh. (Affirmative).

8 Q Putting yourself back into that position, did you have
9 a problem articulating your thoughts and your opinions about
10 that case to the other jurors in communicating your not
11 guilty finding?

12 A I did not.

13 Q All right. Did you have a problem with other jurors
14 trying to coerce you or intimidate you in a manner to try to
15 change your mind about your position of not guilty?

16 A No.

17 Q All right. And you made up your decision based upon
18 the facts and evidence of that case of not guilty?

19 A That's correct.

20 Q And when you went back into that jury room, there
21 wasn't a, a situation where you felt that your mind had to
22 be changed or somebody else had to convince you or you were
23 convinced based upon that evidence?

24 A Yes.

25 Q All right. Now, do you have a view on the death

Individual Juror Qualification

1 penalty?

2 A No.

3 Q Nothing whatsoever?

4 A Hu huh. (Negative).

5 I think it's a case-by-case basis I think. It would
6 depend.

7 Q So, no preconceived notion as to whether or not you
8 would be for it or against it?

9 A No, it would depend solely on the facts that are
10 presented.

11 Q Okay. Would you vote for a political person based upon
12 their view of the death penalty?

13 A No.

14 Q Okay. Have you ever had a view on the death penalty?

15 A No.

16 Q Okay. So, coming into this courtroom today, you've
17 never had any sort of pro for or pro against it?

18 A That's correct.

19 Q Okay. And any discussion that you ever had with family
20 that you've taken a position either way?

21 A Either way. It, it -- each time it would depend on the
22 case and what had happened and---

23 Q Fact and circumstances?

24 A Yes, that's correct.

25 Q Okay. Is there a situation in which you could never

1 ever give a person life in prison and that it would only be
2 the death penalty in an appropriate case?

3 A No.

4 Q All right. And then vice versa---

5 A Yes.

6 Q ---there is a situation where you never could give a
7 person life that, and that they would, or excuse me, you
8 would never give death and you would always give them life?

9 A Not always.

10 Q It just depends upon the situation?

11 A Yes, that's exactly right.

12 Q Okay. And that's what I want to talk a little bit
13 about.

14 A Uh-huh. (Affirmative).

15 Q Judge Couch has, has told you about the situation where
16 he wants you to envision if, in fact, there was a finding of
17 guilt, and, and I want to impress upon you the fact that
18 just because the State is seeking the death penalty, does
19 that have any sort of preconceived notions or any sort of
20 influence as to guilt or innocence of my client?

21 A No, it doesn't.

22 Q Nothing whatsoever?

23 A No.

24 Q Okay. Now, of course, because the fact that normally
25 the judge makes the decision as to the penalty phase or as

Individual Juror Qualification

1 to an individual, but you're gonna be sitting in that if we
2 get there.

3 A Uh-huh. (Affirmative).

4 Q We're gonna have a second part of the case. There's
5 already gonna be a finding of guilt, and putting yourself in
6 that position, if you would, you've already answered the
7 question that you feel that you're Juror Number 3, are you
8 able to put behind you the evidence, the fact that there was
9 a conviction of murder, what has been told to you, and then
10 you have the ability to come out with a fresh mind, sit
11 there ready and willing and able to listen to what, in fact,
12 is gonna be provided to you in that second phase?

13 A Yes, sir.

14 Q Okay. And in the second phase, there is a, a brand new
15 burden of proof by the State, and the judge is gonna talk to
16 you about the law if we get there. But you also need to
17 understand is, is that the defense is gonna have an
18 opportunity to present evidence, and we're gonna have an
19 opportunity to present mitigating evidence, to lessen if, in
20 fact, there's a finding of guilt.

21 Are you willing and able to sit there and to listen to
22 our evidence that we're gonna be able to present to show if,
23 in fact, there was a finding of guilty and a lessening of
24 the murder?

25 A Yes.

Individual Juror Qualification

1 Q Okay. Just vice versa with the State, you're gonna be
2 able to sit there and listen as to their---

3 A Uh-huh. (Affirmative).

4 Q ---their---

5 A I would.

6 Q ---evidence that they present?

7 A (Witness nods affirmatively.)

8 Q Now -- and then also coming back to what I've talked to
9 you about your deliberations with the jury in the situation
10 of the traffic court case, once you make up your mind as to
11 life or death, would you be willing and would you be able to
12 go back into that jury room steadfast with your position
13 either way and articulate that to the jury, not be coerced,
14 not be intimidated to change your mind?

15 A Yes, I wouldn't let anybody else make up my mind.

16 Q Right.

17 It would be based upon what you---

18 A Yes.

19 Q ---want to decide?

20 A Yes.

21 Q Okay. Thank you very much, ma'am.

22 THE COURT: State may ask questions.

23 SOLICITOR CRICK: Thank you, Your Honor.

24 THE COURT: Mrs. Crick.

25 EXAMINATION

Individual Juror Qualification

1 BY SOLICITOR CRICK:

2 Q Mrs. Gregory, I also want to thank you for being here
3 and, and going through all this with us today. I'm Cindy
4 Crick and I'm on the prosecution team with Trey Gowdy and
5 Barry Barnette. I'm just gonna ask you a couple of quick
6 follow-up questions.

7 You mentioned, when Mr. Reckenbeil was asking you
8 questions, that you hadn't thought a whole lot about the
9 death penalty, but that you thought you could impose the
10 death penalty.

11 what is it that makes you think that you could impose a
12 death penalty?

13 A I believe that if there was a reason and that I knew
14 that a hundred percent myself that I felt like there was
15 reason that I could do that.

16 Q And what do you mean by reason?

17 A Evidence and facts being proven to me.

18 Q So, it would depend upon the particular facts of the
19 case whether you could do that or not?

20 A Yes.

21 Q Would you have an open mind and be willing to listen to
22 the other jurors that might be back there with you?

23 A I would listen to them. I would not allow them to
24 change my mind.

25 Q And so, if you had already made up your mind, that

Individual Juror Qualification

1 would pretty much be it for you?

2 They wouldn't be able to sway you one way or, or
3 another way?

4 A That's correct.

5 Q And you are saying that you could actually sign your
6 name on that verdict form imposing the death sentence if
7 that were appropriate?

8 A Yes.

9 SOLICITOR CRICK: Just one moment.

10 (Pause.)

11 SOLICITOR CRICK: I think that's it.

12 THE COURT: Anything further of this particular juror?

13 MR. RECKENBEIL: One question.

14 THE COURT: Yes, sir.

15 EXAMINATION

16 BY MR. RECKENBEIL:

17 Q That fact scenario Mrs. Crick is asking you to envision
18 in your mind when you're thinking about the fact of imposing
19 the death penalty, is there any way whatsoever, envisioning
20 that fact scenario, that you could not give that person life
21 in, in prison?

22 A I could. I mean there -- it would depend on what I had
23 heard if it would be the life or the death penalty.

24 Q Okay. Understanding that---

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q But there's no question Mrs. Crick was going into a
2 specific fact scenario that you have encased in your mind.
3 I know you, you somewhat answered my question.

4 But is there an opportunity for you not to give that
5 person life in prison?

6 A No.

7 Q That you would have the ability to give that person
8 life in prison?

9 A Yes, it would depend on what I, on the evidence and
10 facts that I had heard.

11 MR. RECKENBEIL: Okay. Well, judge, we would rest upon
12 our previous objections and we have no more questions of
13 this witness.

14 THE COURT: All right. Ma'am, let me go over just a
15 couple of things with you.

16 WITNESS: Okay.

17 THE COURT: Okay. Ma'am, the -- we have not selected a
18 jury. We're still in qualification and we, what we're going
19 to do is go through qualifying jurors and then we'll go
20 through a jury selection process once that's completed. I
21 don't know how long that's going to take.

22 So, I'm going to tell you that my previous instructions
23 to you concerning no contact and no information will
24 continue. No discussions. And we will contact you in the
25 not too distant future concerning your future service on the

Individual Juror Qualification

1 jury panel.

2 Again, thank you for your willingness to come forward
3 and, and be present, and at this point in time you're free
4 to go.

5 Thank you very much, ma'am.

6 WITNESS: Thank you.

7 (The following takes place outside the presence of the
8 juror.)

9 THE COURT: State's position regarding the juror?

10 SOLICITOR GOWDY: She's qualified, Your Honor.

11 THE COURT: Defense position?

12 MR. RECKENBEIL: I think she's qualified, Your Honor.

13 THE COURT: All right. Court finds she is qualified.
14 We'll need Jennifer Scoggins, Mr. Humphries.

15 BAILIFF: Yes, sir.

16 JENNIFER SCOGGINS, having been previously
17 sworn, testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q Good morning.

21 A Hello. Morning.

22 Q I believe your name is Jennifer Scoggins, is that
23 right?

24 A Yes, sir.

25 Q And Mrs. Scoggins, I want to thank you for your

Individual Juror Qualification

1 continued participation in our process in coming back today.
2 A couple of things I'm going to go over with you at this
3 time.

4 I recognize that you're in a position you're not use to
5 being in, in a chair with a microphone being asked
6 questions, and, and in a courtroom setting and I appreciate
7 that. I understand you can be uncomfortable in this
8 situation.

9 And I want to tell you now that what's gonna happen is
10 I'm going to ask you a few questions about your positions
11 and your views and how you would handle things as a juror.
12 And then I'm going to allow the attorneys to ask some
13 follow-up questions to what I've gone over with you.

14 Do you understand that?

15 A Yes, sir.

16 Q It's not our purpose here to try to change your mind or
17 your opinions on any subject. But it is our opinion to
18 gather information about you so that we can make intelligent
19 decisions concerning your participation in the trial.

20 Do you understand that, ma'am?

21 A Yes, sir.

22 Q So, there's no right or wrong answers to any of our
23 questions. We just want to know your views. And if, at
24 anytime, you feel uncomfortable about this process or you
25 feel like someone's trying to make you change your mind when

Individual Juror Qualification

1 you don't want to or something of that nature, you let me
2 know and we'll try to remedy that situation for you.

3 Do you understand that, ma'am?

4 A Yes.

5 Q Okay. Now, first of all, I've got some questions of
6 you.

7 Since we talked yesterday, has anyone contacted you
8 about the case?

9 A No, sir.

10 Q Have you heard or read or seen anything about the case?

11 A I saw it come on television and I turned it off.

12 Q Oh, good. That's a good thing. That's what I asked
13 you to do.

14 Have you been exposed to any information that might
15 have caused you to form any opinion about this case since we
16 talked yesterday?

17 A No, sir.

18 Q All right. Now, have you ever participated or
19 responded to any blog or Internet site or anything of that
20 nature concerning the death penalty?

21 A No, sir.

22 Q Have you ever participated in any demonstration or
23 other political activity either for or against the death
24 penalty?

25 A No, sir.

Individual Juror Qualification

1 Q Now, ma'am, as a juror, do you believe that you could
2 put aside anything that you might have heard or read or seen
3 outside of the courtroom and decide a case or decide this
4 case strictly upon what you hear in the courtroom?

5 A Yes.

6 Q Could you do that?

7 A Yes, sir.

8 Q All right. Now, ma'am, I want to go over some things
9 about a list that I put in the jury room for you to look at.
10 It was a list, a list of individuals who might be witnesses
11 in this case. I'm not going to ask you to identify any of
12 those people by name. I don't want you to do that. I do
13 want to ask you generally about that list.

14 Did you have a chance to review it?

15 A Yes, sir.

16 Q And as to the people that were on that list, do you
17 have or have you ever had any social, business, or personal
18 connections with any of those individuals?

19 A No, sir.

20 Q And ma'am, are you related, in any way, by either blood
21 or marriage or former marriage, to any of those individuals
22 who might be listed on that list?

23 A No.

24 Q Now, ma'am, I'm going to ask you now some questions
25 that might be a little more personal in nature, and they

1 have to do with certain topics and information about, and
2 opinions, your opinions on those topics. I'm not trying to
3 invade your privacy by asking these questions. I'm trying
4 to, to determine your opinions. And you appear to be
5 someone who is secure enough in your own opinions and
6 thoughts that you can tell me about that without feeling
7 threatened.

8 Is that correct?

9 A Yes, sir.

10 Q Okay. Now, one of the things I'm going to ask you
11 about obviously is the, is the penalty or the death penalty
12 in this case specifically because you understand that could
13 be at issue in this trial. I do want you to understand,
14 however, that it's somewhat premature for us to talk about
15 that because, as I explained to you yesterday, there's two,
16 two phases to this case.

17 The first part of the trial will be guilt or innocence
18 as to the charges that have been levied. And that will
19 occur, and, of course, in this case, one of those charges is
20 the charge of murder. And for that murder the State has
21 sought the penalty of the death penalty.

22 The -- for that reason, if the defendant were found
23 guilty of that particular murder, then we would hold a
24 separate trial, a second trial, called the penalty phase is
25 one way we refer to that. And the same jury would

Individual Juror Qualification

1 participate in both phases, but it would be a separate or
2 new trial having to do with the penalty that might be
3 imposed, and there would be additional evidence and
4 additional testimony offered on that issue during that phase
5 of the trial.

6 Now, do you understand what I'm saying?

7 A Yes, sir.

8 Q And you understand how that would work?

9 A Yes.

10 Q Okay. And I realize today that we're kind of putting
11 the cart in front of the horse cause we may never get to
12 that phase of the trial. And also I'm gonna caution you
13 don't, in any way, hold the fact that we're talking about
14 this now against the defendant. You shouldn't take this, in
15 any way against him, or any defense that he may raise to the
16 original charge. It's simply that we're about to select a
17 jury, and this is the only time we can talk about this
18 before the jury is selected because, once you're selected,
19 you'll participate in both trials if both trials occur.

20 So, you understand we have to talk about it now?

21 A Yes.

22 Q Okay. Now, ma'am, if you were a juror in any criminal
23 case, and I'm not talking about this one in particular, but
24 if you were a juror in any case, would you be willing to
25 listen to the law as directed by the judge?

Individual Juror Qualification

1 A Yes.

2 Q And would you be willing to accept the law as given to
3 you by the judge and apply it to the facts as you find them
4 to be?

5 A Yes.

6 Q Now, is that true even though you might disagree with
7 the law the judge gives you, or even though you may not
8 think that that law is correct, would you still be willing
9 to accept the law as instructed by the judge and apply it to
10 the facts as you find them to be?

11 A Yes, sir.

12 Q Now, I've already asked you generally about this, but
13 in particular as to this case, cause there has been some
14 mention of this case in the media, would you be willing to
15 put aside anything that you've heard outside of the
16 courtroom as to this case including things you may have
17 read, heard, or seen, and decide the case purely upon the
18 evidence presented during the trial?

19 A Yes.

20 Q And you believe you could do that?

21 A Yes.

22 Q Now, ma'am, yesterday when we were talking about this
23 case I went over a couple of things, but I want to go over
24 them with you to emphasize this to you. Be sure you
25 understand it.

Individual Juror Qualification

1 In any criminal proceeding in this state a defendant is
2 always presumed to be innocent of the crimes charged. That
3 means the defendant does not have to prove his innocence.

4 Do you understand that concept?

5 A Yes.

6 Q Also under the laws and Constitution of this state and
7 the United States the State always has the burden of proving
8 that the defendant is guilty beyond a reasonable doubt.

9 Do you understand that concept?

10 A Yes.

11 Q And if you were sitting in a jury room and are in a
12 criminal case, and I'm not talking about this case in
13 particular, would you be willing to listen to the law
14 presented and the evidence presented, and based upon what
15 those things were, could you find a person, depending on how
16 you found the facts and the, and the evidence and the law,
17 could you find a person not guilty of a charge that that
18 person faced?

19 A Yes.

20 Q And by the same token, if you believed that the
21 defendant had met its burden of proof, could you find
22 someone guilty of the crime charged?

23 A Yes.

24 Q In other words, you don't believe, just because someone
25 has been charged with a crime or arrested, that they're

Individual Juror Qualification

1 automatically guilty, is that right?

2 A That's right.

3 Q All right. Now -- and so, tell me if I'm describing
4 you correctly, would you be able to make up your mind,
5 depending upon the strength of the evidence and what the
6 testimony and evidence showed and what the law is, that you
7 could either find someone guilty or not guilty depending
8 upon those facts?

9 A Yes.

10 Q Now, again, we're gonna talk about the death penalty
11 situation in a little more detail. I want to explain to you
12 that generally, in South Carolina, the judge sets the
13 punishment for someone convicted of a crime. The exception
14 to that is death, that where the State seeks the death
15 penalty, and it's the jury's responsibility then to
16 determine the appropriate punishment to be imposed. The two
17 choices are life imprisonment or death. Should the jury
18 find the defendant guilty of murder and then go to the
19 sentencing phase, that's the two choices the jury would be
20 facing.

21 Do you understand that?

22 A Yes.

23 Q Now, ma'am, in that separate proceeding there would be
24 additional evidence and testimony presented during that part
25 of the trial for the sentencing phase. And so, there would

Individual Juror Qualification

1 be additional, additional evidence that you would listen to
2 during that time.

3 Now, back in the jury room I provided you with a paper
4 that described three different kinds of jurors.

5 Do you remember that paper?

6 A Yes, sir.

7 Q Did you have a chance to read that and look over it for
8 me?

9 A Yes, I did.

10 Q All right. And so, I'm, I'm asking you now to put
11 yourself in a situation in your mind. Okay. Let's assume
12 that you got selected on the jury, and your, you and your
13 fellow jurors have heard the first part of the case, and you
14 have reached a determination that the defendant is guilty of
15 the crime of murder.

16 Now we're about to begin the sentencing part of the
17 phase once that has occurred. And so, you're about to walk
18 back into the courtroom to consider the question of the
19 penalty and again the two choices that are provided.

20 Do you understand the situation---

21 A Yes.

22 Q ---I've asked you to put yourself in?

23 A Yes, I do.

24 Q All right. Now, I described, on that paper that I gave
25 you, three different kinds of jurors, and the first type of

Individual Juror Qualification

1 juror I described is a person who has already made up their
2 mind before they walk into that second phase. It's their
3 belief and it's their finding, it's their opinion and that
4 person has already decided that they're going to vote for
5 the death penalty every time because that juror believes
6 that's the most appropriate penalty for someone convicted of
7 murder, and, therefore, that's the only penalty to be given.

8 The second juror I'm gonna describe is someone whose
9 also already made up their mind. That juror is someone who
10 believes that the State does not have the right to take
11 someone's life in penalty for a crime, and, therefore, on
12 every occasion will vote for the life imprisonment and would
13 never vote for the death penalty because that's not the
14 appropriate penalty.

15 Now, the third juror we described on that piece of
16 paper is someone who's walking back into that courtroom and
17 that person has not yet made up their mind as to what the
18 appropriate penalty is. That person doesn't know whether or
19 not that person would vote for life imprisonment or death.
20 That juror wants to wait and listen to the evidence
21 presented during the third phase, the second phase of the
22 trial, and then decide as to what the appropriate penalty
23 is.

24 Now, do you understand what I mean by the three types
25 of jurors?

Individual Juror Qualification

1 A Yes, I do.

2 Q Now, ma'am, I -- what I'm asking you is, of those three
3 types of jurors, which one do you think best describes how
4 you would feel in that situation?

5 A Type three.

6 Q So, you think that you would be a person who would have
7 an open mind at that time, and even after finding someone
8 guilty of murder, and that you would want to listen to the
9 facts and evidence presented during the sentencing phase
10 before you make a decision as to the appropriate penalty?

11 A Yes, sir.

12 Q Now, ma'am, if, under those circumstances I just
13 described, you listen to the evidence, and you're in the
14 situation where guilt is no longer a concern, you listen to
15 the facts and evidence presented during the sentencing
16 phase, and you find that the, that the evidence justified
17 it, would you be willing to sentence someone to death?

18 A Yes, sir.

19 Q And even though the -- and if, and if you also listened
20 to the facts and evidence and it was your finding that the
21 evidence did not justify the death penalty, would you also
22 be willing to sentence someone to life in prison in that
23 situation?

24 A Yes, I would.

25 Q So, you could sentence someone to life or death

Individual Juror Qualification

1 depending on those facts and circumstances that you find?

2 A Yes.

3 Q Now, ma'am, my next question has to do with your
4 situation I guess on a, on a personal basis. I've explained
5 that if you were selected to serve on the jury, we haven't
6 selected the jury yet, but you have to -- but if you were,
7 and it's a possibility that you would, we would sequester
8 the jury during that period of time, and we think the trial
9 will last about seven days, about a week or maybe five days.
10 Somewhere in that neighborhood, five to seven days.

11 During that week you would be, of course, housed in a,
12 in a hotel. You'd be receiving your meals there. You
13 wouldn't be allowed to travel freely. You would have some
14 limited communication during that time with others. But you
15 would be limited as to what you could see or read as far as
16 news information and things of that nature.

17 So, that would be -- it would be obviously an
18 inconvenience in anybody's life for that to occur. I
19 understand it could be an inconvenience.

20 However, my question to you is if you were in that
21 situation, would that pose a serious risk or danger to your
22 health or well being?

23 A No, sir.

24 Q Or would that situation, if you were in it, would it
25 pose a serious danger to the health or well being of anyone

Individual Juror Qualification

1 who is dependent upon you?

2 A No, sir.

3 Q All right. That completes the questions I'm going to
4 ask you. I did tell you the attorneys would have a chance
5 to follow-up on my questions. We allow the defense to go
6 first.

7 You may proceed, Mrs. Hodges.

8 MRS. HODGES: Thank you, Your Honor.

9 EXAMINATION

10 BY MRS. HODGES:

11 Q Good morning, Mrs. Scoggins.

12 A Morning.

13 Q Along with Clay Allen and John Reckenbeil, we're
14 representing Tony Torres in the trial of this case, and I
15 appreciate your being here and answering a lot of questions
16 for the judge. You answered a lot yesterday, answered
17 questions on the questionnaire. And the problem with
18 lawyers is we always have a few more questions.

19 One of the things I noticed in your questionnaire is
20 that you've been a victim of a, what you phrased as minor
21 crimes, theft and some property damage?

22 A Yes.

23 Q Is that right?

24 A Yes.

25 Q How long ago was that?

Individual Juror Qualification

1 A Several years. Probably three to four years ago.

2 Q okay. were those cases resolved?

3 A No, it was property at my home---

4 Q okay.

5 A ---that was stolen out of my carport. Just something
6 like that. It was never resolved.

7 Q okay. So, nobody was ever charged with it or went to
8 court or anything like that?

9 A No.

10 Q Anything in that experience that would affect your
11 ability to serve as a juror in this case with these
12 particular charges?

13 A No, ma'am.

14 Q okay. who -- did you have any, did you -- was that
15 investigated by the Spartanburg Sheriff's Office or---

16 A I believe it's -- Spartanburg County came out cause we
17 live in the county.

18 Q okay. You'd mentioned that you had not heard anything.
19 In the course of conversations today in Court,
20 conversation yesterday in Court, do you have any knowledge
21 or remember reading anything about this case when it first
22 happened---

23 A No.

24 Q ---about a year and a half ago?

25 A Cause I was trying to figure out how I didn't hear

Individual Juror Qualification

1 about it.

2 Q Okay.

3 A Yeah, I didn't hear about it.

4 Q Did you-all take the newspaper at home?

5 A I usually read it at work.

6 Q Okay.

7 A Because somebody gets it at work.

8 Q Okay. So, so, you don't really, I mean, have any
9 recollection of this, of this crime or anything in the
10 case---

11 A No.

12 Q ---when it first occurred?

13 A No.

14 Q Okay. Have you been able to form an opinion based on
15 what you've heard yesterday and today about this case in
16 terms of, of guilt or innocence or anything like that?

17 A No.

18 Q Okay. When we deal with these types of cases,
19 obviously, you know, we have, we have them in two parts.
20 And when we're talking about murder, we're basically talking
21 about the killing of another person that was done willfully
22 basically by somebody who has a malignant heart called
23 malice. The person had that malice in their heart. And,
24 and basically when you find somebody guilty of murder,
25 there's basically no other justification to excuse them from

Individual Juror Qualification

1 being found guilty. Basically that person is the person
2 that, that you-all have determined, as a jury, is
3 responsible for, for doing that killing.

4 Does that make sense to you?

5 A Yes, it does.

6 Q Okay. At that point, do you have an opinion as to
7 whether the death penalty would be the only appropriate
8 penalty for somebody found guilty of murder?

9 A Repeat that again. I'm not sure.

10 Q When somebody's found guilty of murder, do you feel
11 that the death penalty is the only appropriate penalty?

12 A No.

13 Q Okay. So, you're open to both the possibility of death
14 penalties as, as a penalty as well as life imprisonment---

15 A Yes.

16 Q ---for possibly the penalty?

17 A Yes.

18 Q Okay. If there's aggravating circumstances proven to
19 you that make the crime more serious, could make it, you
20 know, the worst of the worst, do you have an opinion as to
21 whether the death penalty is the only appropriate penalty in
22 that case?

23 A I can see where the death penalty would be appropriate
24 in a situation like that.

25 Q Okay. It would be appropriate, but is it the only

1 penalty you think that would be appropriate?

2 A It's -- I'm not sure how to answer that. Depending on
3 the situation like the judge's said earlier---

4 Q Okay.

5 A ---the evidence in the sentencing phase.

6 Q Okay. Would you be open to, to considering what we
7 call mitigating factors, evidence that would lessen the
8 severity of the penalty?

9 A Yes.

10 Q Okay. Would you -- and, and, and if you consider both
11 the aggravating factors and the mitigating factors,
12 considering both of those, do you, would you still feel that
13 the death penalty, that the death penalty is the only
14 appropriate penalty?

15 A No, I could see where life---

16 Q Okay.

17 A ---could be a option.

18 Q Life could be an option for you?

19 A Yes.

20 Q Okay. In that particular type of situation -- you've,
21 you've not served on a jury before, is that right?

22 A No.

23 Q Okay. Have you ever been in discussions where, where
24 kind of a group of people are making, making a decision and
25 then have you been in those discussions and felt free and

Individual Juror Qualification

1 able to express your opinions in those discussions?

2 A Yes.

3 Q Okay. Have you ever been in those discussions where
4 you felt intimidated by somebody or, or kind of, of coerced
5 by somebody in terms of changing your opinion?

6 A No.

7 Q Okay. So, if you have a specific opinion, you feel
8 that you can basically articulate that opinion to other
9 people and, and kind of stand by it?

10 A Yes.

11 Q Okay.

12 A Definitely.

13 Q All right. You would obviously expect, would, would
14 respect other people's opinions?

15 A Yes.

16 Q Okay. And expect your opinion to be respected in, in a
17 discussion?

18 A Yes.

19 Q Okay. Do you have any -- kind of coming into this
20 courtroom, I mean do you have any views about the death
21 penalty?

22 I mean have you discussed it with people before?

23 A Just, you know, like with my family that there are
24 circumstances that the death penalty is warranted.

25 Q Okay. And is that all the time or just certain

Individual Juror Qualification

1 circumstances?

2 A Certain circumstances.

3 MRS. HODGES: Okay. Beg the Court's indulgence just a
4 moment?

5 THE COURT: Yes, ma'am.

6 (Pause.)

7 Q When you're discussing the death penalty with your
8 family, what we were just talking about, you said that in
9 certain circumstances that it, that it's warranted, in, in
10 those instances that you're thinking of, is that, is that
11 the only penalty that is warranted?

12 A Well, through discussions, we've talked about the
13 situations involving the crime. What, I guess, maybe how
14 violent or the reason for the crime.

15 Q Uh-huh. (Affirmative).

16 A And in certain circumstances I guess I would say yes,
17 it is the only, depending on the situation, it would be the
18 only option---

19 Q Okay.

20 A ---would be the death penalty.

21 Q And in those situations, if somebody brought mitigating
22 evidence to you, would, would that change your opinion at
23 all or, or would you still consider, in those situations,
24 the death penalty is the only appropriate punishment?

25 A Okay. If they brought mitigating evidence to me?

Individual Juror Qualification

1 Q Yes.

2 A Then I would consider that.

3 Q Okay. And if you would consider it, but would it
4 still -- would, would that change your opinion as to whether
5 the death penalty is still the only option?

6 A The mitigating circumstances could change my opinion on
7 whether a death penalty should be given.

8 Q Okay. Thank you, ma'am.

9 THE COURT: State, Mrs. Crick.

10 SOLICITOR CRICK: Thank you, Your Honor.

11 EXAMINATION

12 BY SOLICITOR CRICK:

13 Q Good afternoon, Mrs. Scoggins.

14 A Afternoon.

15 Q I'm Cindy Crick and I'm on the prosecution team with
16 Trey Gowdy right here and Barry Barnette, and I'm really not
17 gonna ask you a whole lot of other questions. I do
18 appreciate you being here and answering all the ones that
19 we've already asked you. But I just want to make sure I
20 understood you correctly when you spoke to Judge Couch and
21 Mrs. Hodges.

22 It's my understanding that you said, depending on the
23 evidence presented in the case, you could consider either a
24 life sentence or a death sentence?

25 A Yes.

Individual Juror Qualification

1 Q And that would depend on all of the circumstances you
2 heard from both the State, and if the defense had any, from
3 the defense as well?

4 A Yes, in like the sentencing phase.

5 Q Okay. Thank you. I think that's all I have for you.

6 THE COURT: Anything further of this juror?

7 MRS. HODGES: No, sir, nothing. No other questions.

8 THE COURT: All right. Mrs. Scoggins, let me just go
9 over just a couple of things with you.

10 First of all, as I told you, we're not selecting a jury
11 today. We're going through still qualification process. We
12 will contact you in the not too distant future letting you
13 know about your future service on the jury. I will tell you
14 that that should occur within the next day or two. I'm not
15 sure how long it's gonna take us to get through this
16 process. But we will do that.

17 Now, ma'am, my former instructions to you concerning no
18 contact and no information continue until this matter is
19 resolved.

20 Do you understand that, ma'am?

21 WITNESS: Yes, sir.

22 THE COURT: Okay. Now the information you've given us
23 on how to contact you, is it correct?

24 WITNESS: Yes, sir.

25 THE COURT: If you're asked to come back to the

Individual Juror Qualification

1 courthouse, and I will tell you that you will be in a
2 situation where you could possibly be on the jury, you
3 should come prepared to stay for that week that I was
4 talking about. So, bring whatever you need to do that,
5 because if you're selected, you immediately go on the jury
6 and be sequestered as I described.

7 Do you understand that, ma'am?

8 WITNESS: Yes, sir.

9 THE COURT: All right. Again, thank you very much and
10 at this time you're free to go.

11 WITNESS: Thanks.

12 (The following takes place outside the presence of the
13 juror.)

14 THE COURT: State's position?

15 SOLICITOR GOWDY: State's position is she's qualified.

16 THE COURT: Defense.

17 MRS. HODGES: Your Honor, subject to our objections,
18 you know, I would just renew our objections.

19 THE COURT: All right. I'll find that she is
20 qualified.

21 Madam Clerk, probably need to take a lunch order from
22 everyone in the courtroom.

23 Do you want to go ahead and do that for me?

24 CLERK: Yes, sir.

25 (Pause.)

Individual Juror Qualification

1 THE COURT: All right. Mr. Bailiff, we're gonna need
2 Marvin Clements.

3 BAILIFF: Yes, sir.

4 MR. RECKENBEIL: Judge, I just want to bring to the
5 Court's attention that Mr. Clements has indicated that he is
6 not a United States citizens.

7 THE COURT: Well, he didn't indicate that yesterday.
8 So---

9 MR. RECKENBEIL: That's his juror questionnaire. He
10 slashed right through it.

11 THE COURT: I'll, I'll get, I'll get to that at the
12 very beginning of my questioning.

13 MR. RECKENBEIL: I just wanted to make the Court aware
14 of that, that that's clearly on there.

15 THE COURT: She hadn't handed that to me yet. But I'll
16 be aware of it.

17 MR. RECKENBEIL: Okay.

18 BAILIFF: Ready for him?

19 THE COURT: Yes, sir.

20 MARVIN CLEMENTS, having been previously
21 sworn, testified as follows:

22 EXAMINATION

23 BY THE COURT:

24 Q All right, sir. Your name is Marvin Clements, is that
25 correct?

Individual Juror Qualification

1 A Yes, sir.

2 Q Now, Mr. Clements, I'm going to remind you that you are
3 still under oath from our discussions yesterday. So, what
4 you're saying to me now is under oath.

5 Do you understand that, sir?

6 A Yes, sir.

7 Q Just wanted to remind you of that before we started.

8 One thing I want to clear up before we get started, on
9 your questioning, of course, we got the jury questionnaire
10 and we thank you very much for your filling that out. The
11 copy that I have indicates that you were born in Lynchburg
12 Virginia, but then I note down on disqualifications there's
13 a mark made where it says I am not a U.S. citizen. But it
14 appears you may of scratched it out. I just wanted to be
15 sure.

16 Are you a citizen of the United States of America?

17 A Yes, sir, I was coming off vacation. I was tired. I'm
18 sorry.

19 Q Okay. All right. So, that, that, that did not
20 indicate that you are not citizen?

21 A No.

22 Q Okay. So, you are a citizen?

23 A Yes, sir.

24 Q Okay. I wanted to just clear that up up front so we
25 didn't have any questions about that and wasn't, so that

Individual Juror Qualification

1 wasn't an issue in this matter.

2 Now, sir, I want to let you know that I'm going to go
3 over some things with you. I'm going to be asking you
4 questions, some questions. I realize that you don't
5 normally come into a courtroom and sit behind a, a
6 microphone and answer questions. And so, this might be a
7 little uncomfortable for you or might be a little bit of a
8 different situation than you're use to, and I want to assure
9 you that you're not here to try to embarrass anyone. We're
10 not here to make you feel uncomfortable. We're just trying
11 to gather some information concerning your opinions and your
12 positions regarding some things because it's important in
13 making intelligent decisions about selecting a jury.

14 Do you understand that, sir?

15 A Yes, sir.

16 Q All right. Now, if, at anytime during our questioning,
17 you feel uncomfortable or you feel like something's being
18 done that shouldn't be done, you let me know and we'll try
19 to deal with that situation.

20 Okay, sir?

21 A All right.

22 Q Now, the first thing I want to ask you is since we
23 discussed, met you yesterday and you were with the jury
24 panel, has anyone talked to you about this case?

25 A No, sir.

Individual Juror Qualification

1 Q Have you heard, read, or seen anything about this case
2 since yesterday?

3 A No, sir.

4 Q Has anything happened that might cause you to form any
5 opinion, one way or the other, about this case since our
6 meetings yesterday?

7 A No, sir.

8 Q Now, have you ever participated in or responded to, in
9 any way, any Internet sites, blogs, or anything like that
10 that has to do with the issue of the death penalty?

11 A No, sir.

12 Q Have you ever participated in any political activities
13 such as demonstrations, rallies, or meetings that might deal
14 with the issue of the death penalty?

15 A No, sir.

16 Q Now, sir, generally, can you put aside anything that
17 you may have heard outside of the courtroom, anything that
18 you might of read or heard or seen previously, and decide
19 the case based on what you do hear in the courtroom?

20 A Yes, sir.

21 Q So, you could do that as a juror?

22 A Yes, sir.

23 Q All right, sir. Now, while you were in the waiting
24 room you were shown a list and that list included the names
25 of people who might be witnesses in this case.

Individual Juror Qualification

1 Do you remember that list?

2 A Yes, sir.

3 Q And did you have a chance to review that list?

4 A Yes, sir.

5 Q I don't want you to identify anyone at this time by
6 name. That's not my purpose. I want to just discuss that
7 list with you generally.

8 My first question is after having read that list, have
9 you ever had any social, business, or personal connections
10 with any of the individuals who are named on that list as
11 potential witnesses?

12 A No, sir.

13 Q Are you related now or in the past have you been
14 related to any of the individuals who were named on that
15 list?

16 A No, sir.

17 Q So, as far as you know, you have no connection with
18 anybody who is listed on that list?

19 A No, sir.

20 Q Is that correct?

21 A Yes, sir.

22 Q All right. Now, I'm going to ask you some more
23 personal questions again and I'm not trying to invade your
24 privacy. I do want to find out how you feel on certain
25 subjects because your opinions are important. You appear to

1 be a very secure individual. You're able to answer my
2 questions about your opinions without feeling threatened.

3 Is that true?

4 A Yes, sir.

5 Q All right. Now, the first thing I'm gonna talk to you
6 about is your opinions or one of the things I'll talk to you
7 about will be your opinions concerning the death penalty
8 because that is a factor we have to consider in this case.
9 However, I want to explain to you that, and I think you
10 understand, but I want to be sure you understand, this case
11 will be divided into two parts or two phases.

12 The first part will have to do with the guilt or
13 innocence of the defendant of the crimes which have been
14 presented. One of those crimes is the crime of murder
15 that's been alleged, and the State, for that crime, has
16 sought the death penalty. So, in this particular case, we
17 don't get to that death penalty unless the defendant is
18 found guilty of the crime for which the penalty is, is
19 sought.

20 So, to a certain degree, we're putting the cart in
21 front of the horse by talking about these matters right now.
22 But by the same token, the same jury that considers the
23 guilt or innocence of the defendant will also consider the
24 penalty. And since we're going to be selecting a jury
25 shortly, this is the only chance we have to talk about that.

Individual Juror Qualification

1 So, I'm telling you all that just to explain to you you
2 should not think any less of the defendant or any defense
3 that he raises or shouldn't hold the fact that we've talked
4 about the penalty at this stage. It's simply the only time
5 that we can talk about it before the jury is selected.

6 You understand that?

7 A Yes, sir.

8 Q All right. Now, if you were a juror in any criminal
9 case, would you be willing to listen to the law as
10 instructed to you by the judge?

11 A Yes, sir.

12 Q Would you be willing to accept the law as instructed by
13 the court and apply it to the facts as you find them to be?

14 A Yes, sir.

15 Q Now, is that true even though you may not like the law
16 you hear, even though you might disagree with the law you
17 hear, would you still be willing to follow the law as
18 instructed by the judge and apply it to the facts as you
19 find them to be?

20 A Yes, sir.

21 Q Now, if you were on this particular case, and I, we all
22 know from the questioning yesterday that there has been some
23 mention of this case in, in the media, would you be willing
24 to set aside anything that you may have heard outside of the
25 courtroom or during the trial and decide the case solely

1 upon and purely upon what you hear in the courtroom, the
2 evidence or the testimony of witnesses sworn to tell the
3 truth, as well as the evidence that comes in through that
4 testimony?

5 could you decide the case solely on that information?

6 A Yes, sir.

7 Q Now, I want to be sure some concepts are clear in your
8 mind. So, I'm gonna ask you about them.

9 The first concept is, in the State of South Carolina
10 and in our nation, criminal defendants are always presumed
11 to be innocent until such time as their, their guilt might
12 be proven by proof beyond a reasonable doubt. But a
13 criminal defendant is always presumed to be innocent. And
14 for that reason, the defendant never has to prove his or her
15 innocence.

16 Do you understand that?

17 A Yes, sir.

18 Q The State has that burden of proof, as I told you, of
19 proving the defendant guilty beyond a reasonable doubt.

20 Do you understand the State's burden in this case?

21 A Yes, sir.

22 Q Now, if you were sitting, sitting on a jury -- listen
23 to this question, question carefully cause it kind of throws
24 people off sometimes. So, I want to be sure you've listened
25 to it carefully.

1 A Okay.

2 Q If you're sitting on a criminal jury, not necessarily
3 this crime, would you be willing to listen to the law and
4 the evidence presented, and based upon what those things
5 were, and based upon the circumstances that you find, could
6 you find a person not guilty of the crime?

7 Again, I'll, I'll explain it again.

8 If you listened to all of the evidence---

9 A Uh-huh. (Affirmative).

10 Q ---if you listened to the facts presented and the law
11 as charged by the judge, could you find a person not guilty
12 of the crime that was charged?

13 A Yes.

14 Q So, in other words, you do not think just because
15 someone is accused of a crime or arrested that they must
16 automatically be guilty?

17 A No, sir.

18 Q So, you, you think that that's something that has to be
19 proven?

20 A Yes, sir.

21 Q Okay. Now, however, if the evidence convinced you,
22 beyond a reasonable doubt, that a person is guilty, are you
23 able to find someone guilty and issue that verdict?

24 A Yes, sir.

25 Q Now -- and by the same token, again, if it did not

1 convince you of, of guilt beyond a reasonable doubt, you
2 would be able to find that person not guilty, is that true?

3 A Yes, sir.

4 Q Now, I take it then, and tell me if this describes your
5 feelings after hearing my questions, depending upon the
6 strength of the evidence and what the testimony or the
7 evidence showed, that you are a person or a juror who could
8 either find someone guilty or not guilty, is that true?

9 A Yes, sir.

10 Q Now, again, we're gonna talk a little bit about the
11 death penalty. I want to be sure we've gone over this and
12 you understand my questions.

13 I've explained that there's two phases to the trial.
14 The same jury hears both phases. If the defendant were
15 found guilty of a murder, then we would have to hold the
16 second phase which was the sentencing phase, and there would
17 be new evidence, new testimony on the issue of the question
18 of the appropriateness of the penalty given at that time as
19 to that issue. And there's two choices. The jury can
20 either sentence the defendant to life imprisonment or to the
21 death penalty.

22 Do you understand that that's where, where we are?

23 A Yes, sir.

24 Q Now, I want to, in your mind, put yourself in a
25 situation. I want you to think about this.

Individual Juror Qualification

1 Let's assume that you were selected on a jury in a case
2 where murder was alleged, and the State is seeking the death
3 penalty, and you and your fellow jurors have found that the
4 defendant is guilty of the murder. So, that means we're
5 coming back to do the sentencing phase of the trial.

6 And as you are coming to the courtroom to begin the
7 sentencing phase of the trial where the additional evidence
8 would be presented, I'm going to ask you to go over three
9 possible scenarios.

10 Now, there was a sheet of paper back in the jury room
11 where we described three different kinds of jurors.

12 Did you see that?

13 A Yes, sir.

14 Q And did you read it?

15 A Yes, sir.

16 Q All right. Now, I'm gonna, again, put yourself in the
17 position you're about to walk back in for the sentencing
18 phase of the crime. One of the jurors we described on that
19 sheet of paper is someone who is already made up their mind.
20 That person is someone who is convinced that the only
21 appropriate penalty for murder is death. So, as that juror
22 is walking back into the courtroom, that juror has already
23 made up his mind to impose the death penalty.

24 The second type of juror that I want you to consider is
25 someone, who because they have a belief that the State never

1 has a right to take a life in punishment of a crime,
2 believes that that is appropriate, that that penalty is not
3 appropriate. And so, that juror is already made up their
4 mind that they're going to vote for life in that situation.

5 The third type of juror doesn't know what that juror is
6 going to do yet. He doesn't have a mind made up as to how
7 he's gonna vote, either for life or for the death penalty.
8 That juror has to wait and listen to the evidence and the
9 testimony and then make a decision as to whether or not to
10 impose the death penalty or whether to impose a sentence of
11 life imprisonment.

12 Now, do you understand what I mean by the three types
13 of jurors?

14 A Yes, sir.

15 Q All right. Now, of those three types of jurors that I
16 just explained to you, which of those three would best, best
17 describe you in that situation?

18 A Number three, sir.

19 Q All right, sir. So, does that -- that tells me that
20 you would be a juror, even though the defendant has been
21 found guilty of murder, that you would want to listen to the
22 evidence presented during the sentencing phase and then make
23 a decision as to the appropriateness of the crime?

24 A Yes, sir.

25 Q Now, if you listened to that evidence during the

Individual Juror Qualification

1 sentencing phase, and if you find that the evidence
2 justified it, would you be willing to sentence someone to
3 death?

4 A Yes, sir.

5 Q And if you listened to the facts and circumstances and
6 you find that the evidence did not justify the death
7 penalty, would you be willing to sentence someone to life
8 imprisonment without parole?

9 A Yes, sir.

10 Q So, that means that you could, given the facts or
11 circumstances, sentence someone to life or you could
12 sentence someone to death?

13 A Yes, sir.

14 Q Now, sir -- and that would depend upon the facts and
15 circumstances you heard in that portion of the trial, is
16 that correct?

17 A Yes, sir.

18 Q Now, I want to go over some, I guess, a personal issue
19 with you. If you were selected to serve on the jury, I've
20 already indicated that the jury will be sequestered. That
21 means that your freedoms will be limited somewhat. You'll
22 be staying in a hotel. The -- there will be people there to
23 see that you don't watch the wrong things. You will be
24 given limited communications with people on the outside,
25 family and that sort of thing.

Individual Juror Qualification

1 And that -- we expect, the, the, that part of the trial
2 to take about a week. Can't tell exactly. But we think the
3 trial of the case will take about a week once we get the
4 jury selected and begin the trial.

5 My question to you is that if you were in a situation
6 where you were, were sequestered, would that fact pose a
7 serious risk of danger to your health or well being?

8 A No, sir.

9 Q And if you were in that situation, while I understand
10 it's an inconvenience, would it pose a serious risk of
11 danger to the health or well being of anyone who is
12 dependent upon you?

13 A No, sir.

14 Q All right. That completes all the questions I want to
15 ask you. At this time I'll allow the defense to proceed and
16 ask some follow-up questions if they wish to.

17 Mrs. Hodges.

18 MRS. HODGES: Thank you, Your Honor.

19 EXAMINATION

20 BY MRS. HODGES:

21 Q Well, we just missed it. Good afternoon, Mr. Clements.

22 A Good afternoon.

23 Q I appreciate your being here and being willing to
24 answer the Judge's questions and our questions.

25 One of the things that I had noticed on your jury

Individual Juror Qualification

1 questionnaire, and I, you were candid with us yesterday, was
2 about your stepson being killed.

3 Has that case come to, to trial already?

4 A Yes, ma'am.

5 Q Okay. And, and I know that they're members of the --
6 was it this prosecution team or just members of the
7 prosecution team?

8 A It was members of the prosecution team.

9 Q Okay. Did any of us represent the, the person?

10 Did it, did it actually go to trial or, or was it a
11 plea or---

12 A He pleaded guilty.

13 Q He did plead guilty?

14 A Yes.

15 Q Okay. Anything about that experience that would affect
16 you in, in this case?

17 A No.

18 Q Okay. So, in, in terms of what you experienced there,
19 you could fair, give a fair hearing, if you will, to both
20 the State as well as the defense in this case?

21 A Yes, ma'am.

22 Q Okay. As we've talked about, the publicity in this
23 case, anything in terms of what we've talked about today or
24 yesterday spur a memory of what, of you remembering what
25 happened or heard anything about the case when it happened

Individual Juror Qualification

1 back in May of 2007?

2 A No, I just, just heard a little bit about it when it
3 happened. But that was, that was it cause---

4 Q Okay. Do you remember what you heard about it when it
5 happened?

6 A Well, I just heard that two people had got killed
7 because I was on my way from Virginia when it, when it
8 happened.

9 Q Okay. Now, were you spending time, were you spending
10 time in Virginia due to work or through---

11 A Well, I have family. I travel back and forth a lot.
12 So --.

13 Q Okay. And the -- so, you don't remember anything other
14 than two people getting killed?

15 A That was it, yeah.

16 Q Okay. Anything in the recent press that you, that you
17 remember hearing anything about?

18 A No.

19 Q Okay. The fact that two people were killed, would that
20 affect your ability to be a fair juror in this case?

21 A No.

22 Q Okay. One of the things we, we kind of deal with in
23 these types of cases is the fact that it's just -- not
24 general in these type cases, you know. And when we talk
25 about murder, we're talking about a killing that's basically

Individual Juror Qualification

1 done by somebody willfully with malice in their heart. They
2 basically did it with a, with an ill intent fatally bent on
3 mischief. Sort of just a -- and, and when, when somebody's
4 found guilty, it basically means that they did it. There's
5 no excuse or reason to justify them doing it. There's
6 basically, you know, that, that if, if any defense was
7 proffered, basically the jury has found that, that that
8 defense didn't excuse them for the killing.

9 A Uh-huh. (Affirmative).

10 Q Do you understand what I mean?

11 A Yeah.

12 Q All right. So, we're talking about a murder.

13 Basically somebody definitely being held responsible for it.

14 In that type of case, do you have an opinion as to
15 whether the death penalty is the only appropriate penalty
16 for somebody whose been found guilty of murder?

17 A Do I have an opinion, no.

18 Q Okay. Do you have an opinion on the death penalty at
19 all?

20 A I, I could just -- like, like you said, if somebody
21 just go out and do something, and deliberately doing it, you
22 know, you know, I kind of favor that because you know what
23 you're doing before you do it.

24 Q Okay. Are there situations that, that, that you feel
25 that the death penalty is not appropriate?

1 A Yeah, because, you know, sometimes, you know, we all do
2 stuff in the heat of the moment and, you know, that, that
3 you don't mean to do. I mean you don't have time to think
4 about it. I mean I think you should do your time to society
5 and you know --.

6 Q And, and when you're talking about those types of
7 situations, are you talking about just in terms of finding
8 somebody guilty of murder and just kind of in the guilt?

9 So, are you trying to decide whether they're guilty or
10 not?

11 A Trying to find if they're guilty first.

12 Q Okay. So, we're talking about a situation where
13 somebody's definitely been found guilty. There's no legal
14 excuse. No sort of, you know, heat of passion, no
15 provocation. Basically they've been found guilty.

16 In that type of case, do you think that the death
17 penalty is the only appropriate penalty?

18 A No.

19 Q Okay.

20 A I mean -- no, I don't think so, no.

21 Q Okay. Cause what's gonna happen in this case is if --
22 and like I said, you know, the judge is said is we're kind
23 of putting the cart before the horse. I mean we're not
24 conceding at all, you know, asking these questions, you
25 know, that the guilt has been established. We're just

Individual Juror Qualification

1 simply saying that, you know, this is the only chance we get
2 to talk about it.

3 A Yeah.

4 Q So, so, when you have a situation where somebody's been
5 found guilty and the State is able to provide what we call
6 an aggravating circumstance, something that makes the case,
7 you know, the worst of the worst, in that type of case do
8 you think that the death penalty is the only appropriate
9 circumstance?

10 A It depends, depends on what all, what all the evidence
11 is you know.

12 Q Okay. Are you -- if the State's able to produce
13 aggravating circumstances and the defense brings to you
14 mitigating circumstances, would, you know, do you feel that
15 you could consider those mitigating circumstances regarding
16 how to make your decision?

17 A Yes.

18 Q Okay. At that point would you consider the death
19 penalty the only appropriate penalty at that point?

20 A I, I, I'm missed -- I'm kind of -- I don't understand
21 what you're saying about the---

22 Q Well, somebody's been found guilty of murder.

23 A Okay.

24 Q The State presents aggravating circumstances. The
25 defense is able to produce mitigating factors.

1 At that point would you consider the death penalty the
2 only circumstance---

3 A Oh, no.

4 Q ---or the only appropriate penalty?

5 A No.

6 Q Okay. Have you done a lot of thinking about these
7 issues, the death penalty and things like that?

8 A They don't really cross your mind at all, at all times.
9 But, you know, sometimes, you know, you talk about it like
10 at work. Like we have different things that happen in the
11 world, you know, like, you know, like talking to your peers
12 about stuff like that.

13 Q Okay. And have you -- I mean do you, do you have an
14 opinion about the death penalty?

15 A Well, like I said, it's kind of mixed. If somebody go
16 out here and really torture somebody, and knowing you doing
17 somebody wrong, and you're not showing any remorse, I, I
18 think you should, you know, get the death penalty because
19 you're not considering -- I mean, I mean you had time to
20 think about what you're doing.

21 Q Okay. And in that situation, do you think that's the
22 only appropriate penalty?

23 A It's not the appropriate. But if the evidence showed,
24 you know, this is my, my opinion that if the evidence, you
25 know---

Individual Juror Qualification

1 Q Like I said, they're no right or wrong answers. I'm
2 just -- we're just trying to understand, you know, sort of,
3 you know, what your opinions are.

4 A Yeah.

5 Q All right. The -- have you, have you -- I mean is that
6 something, is that an opinion that you held for a long time,
7 long period of time?

8 A What's that, ma'am?

9 Q The, the, your -- what you just told me about how you
10 feel about the death penalty, is that something that's,
11 that, that you've held as an, as an opinion for a long
12 period of time?

13 A No, not that long. You know, not a long period of time
14 because if you look at how the world is, people just doing
15 stuff now just for no reason.

16 MRS. HODGES: Okay. Beg the, beg the Court's
17 indulgence?

18 THE COURT: Yes, ma'am.

19 (Pause.)

20 Q Thank you, Mr. Clements. I appreciate your time.

21 THE COURT: State.

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

23 THE COURT: Yes, sir.

24 EXAMINATION

25 BY SOLICITOR GOWDY:

1 Q Good afternoon, Mr. Clements.

2 A How you doing?

3 Q I'm gonna thank you for your answers today. I want to
4 thank you for your filling out the questionnaire and thank
5 you for your service to our country.

6 I believe you served in the Army for three years?

7 A Yes, sir.

8 Q Are you still in the reserves or the Guard?

9 A No, I did four years in the Guard and got out, sir.

10 Q Well, we all thank you for your service.

11 A Okay.

12 Q Well, with respect to your stepson's case, and I don't
13 want to spend a lot of time talking about it because I'm
14 sure it's painful.

15 But what was the name of the defendant?

16 A Talking about the guy that killed him?

17 Q Yes, sir.

18 A Clifton Fleming.

19 Q Okay. Was that case prosecuted by one of the three of
20 us or was it Derrick Bulsa, could he have done it, or Bob
21 Coler?

22 A I think it was -- I think it might of been Bob I think.

23 Q Okay. Was there anything about the prosecution that,
24 that left you thinking that we had not done the kind of job
25 for your family?

Individual Juror Qualification

1 A No.

2 Q Was it investigated by the Spartanburg County Sheriff's
3 Department?

4 A Yes, sir.

5 Q Was it anything about the investigation that you
6 thought was sloppy or could of been, could of been done
7 better?

8 A No, sir.

9 Q Okay. If I understood your answers correctly,
10 Mr. Clements, you are the type of person that has to wait
11 until all the information is in before you can decide
12 whether or not somebody's guilty or not guilty of a crime?

13 A Yes, sir.

14 Q And if you do decide they're guilty, and they're
15 presumed not guilty, but if you do decide they're guilty,
16 and we go to a sentencing, sentencing phase, you're gonna
17 have to listen to whatever either side puts in front of you
18 before you can decide on life or death?

19 A Yes, sir.

20 Q And if you think life's right, then that's what you're
21 gonna vote for?

22 A Yes, sir.

23 Q If you think death's right, then that's what you're
24 gonna vote for?

25 A Yes, sir.

1 Q We thank you for your answers.

2 THE COURT: Anything further from this juror?

3 MRS. HODGES: No, sir. Thank you.

4 THE COURT: Mr. Clements, let me just go over a couple
5 of things with you.

6 First of all, the information that you provided us
7 concerning how to contact you, is that information correct?

8 WITNESS: Yes, sir.

9 THE COURT: Okay. What we're going to do is we're --
10 we obviously have not selected a jury yet. We're going
11 through the qualification process. As you're aware, that
12 may take today and maybe part of tomorrow. I'm not sure
13 exactly how long it's gonna take.

14 But I will tell you that once we get into a position to
15 select a jury, we'll be contacting jurors to come back to
16 the courthouse. If you're requested to come back to the
17 courthouse, I will tell you then come prepared to stay for
18 about a week.

19 WITNESS: Okay.

20 THE COURT: Bring with you your, I guess your
21 toothbrush and whatever else you need. Because if you then
22 were selected on a jury, you'd be required to go directly
23 into sequestration and begin the trial. So, have that, that
24 material to, with you. Again, excuse me, we'll be
25 contacting you concerning your potential future service, and

Individual Juror Qualification

1 I want to thank you very much for your cooperation today.

2 I will tell you that my previous instructions upon not
3 discussing the case, not gathering any information from any
4 other source outside the courtroom, not listening to press
5 reports or media reports or reading those still is in
6 effect.

7 Do you understand that, sir?

8 WITNESS: Yes, sir.

9 THE COURT: All right. Thank you very much. You're
10 free to go.

11 WITNESS: All right.

12 (The following takes place outside the presence of the
13 juror.)

14 THE COURT: State's position on the juror?

15 SOLICITOR GOWDY: He's qualified, Your Honor.

16 THE COURT: Defense position?

17 MRS. HODGES: Your Honor, we'd renew our previous
18 objections.

19 THE COURT: All right. Any other objections
20 specifically?

21 MRS. HODGES: No.

22 THE COURT: All right. I find Mr. Clements to be
23 qualified for the jury.

24 All right. Mr. Bailiff, if you'll bring in 163, Beth
25 kitchens please.

1 BAILIFF: Yes, sir.

2 BETH KITCHENS, having been previously
3 sworn, testified as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q All right. Good morning, ma'am.

7 A Hi.

8 Q How you are?

9 A Fine.

10 Q I believe you're Beth Kitchens, is that right?

11 A Yes, sir.

12 Q All right. Mrs. Kitchens, the first thing I want to
13 tell you is you remember yesterday when you were with us you
14 took an oath to tell the truth?

15 Do you remember that?

16 A Yes, sir.

17 Q I want to remind you of that fact and the reason I'm
18 reminding you of that fact is because you're still under
19 oath for our discussions right now.

20 Do you -- are you aware of that?

21 A Yes, sir.

22 Q Okay. Now, ma'am, a couple of things I want to go over
23 with you before we actually begin the, our discussion. I
24 realize you're in a little bit of an unusual situation. Not
25 everybody gets to sit in a courtroom behind a microphone and

Individual Juror Qualification

1 have people ask questions. And I understand that can make
2 you uncomfortable.

3 A A little.

4 Q I understand that.

5 All right, ma'am. But I want you to understand that,
6 that we're not here to try to embarrass you or delve into
7 your privacy. But we do want to ask you some questions
8 about you and your opinions on certain things.

9 There are no right or wrong answers to the questions
10 we're going to ask. We simply want to know about you and,
11 and about some of the opinions you hold. If, at anytime
12 during our questioning, you feel uncomfortable or you think
13 somebody's about, trying to make you change your mind when
14 you don't want to or something of that nature, you let me
15 and we'll try to remedy that situation.

16 A Okay.

17 Q Do you understand that, ma'am?

18 A Yes, sir.

19 Q Okay. Now, as I indicated, I'm gonna ask you some
20 questions and we'll go through these. I think you'll
21 understand what I'm asking you, but if you have a question
22 about what I'm asking you, just let me know.

23 Now, since we talked yesterday, has anyone contacted
24 you about this case?

25 A No, sir.

1 Q Have you seen, heard, or read anything about this case?

2 A No, sir.

3 Q Have you been exposed to any information about the case
4 that might cause you to form an opinion concerning any issue
5 involved in this case since yesterday?

6 A No, sir.

7 Q Now, have you ever participated in any type of Internet
8 discussion or blog or anything of that nature concerning the
9 issue of the death penalty?

10 A No, sir.

11 Q Have you ever participated in any political activities,
12 demonstrations, rallies, or meetings, either for or against
13 the death penalty?

14 A No, sir.

15 Q Now, ma'am, I'm going to ask you a question concerning
16 your, your personal beliefs, and that question will be can
17 you put aside anything that you may have heard or seen
18 previously about this case and decide the case, if you were
19 on the jury, solely on what you hear in the courtroom?

20 A Yes, sir.

21 Q Now, ma'am, while you were in the waiting room you got
22 a list of people's names that are potential or possible
23 witnesses in the case.

24 Did you see that list?

25 A Yes, sir.

Individual Juror Qualification

1 Q And did you get a chance to look over it?

2 A Yes, sir.

3 Q I don't want you to identify anybody on that list by
4 name. I'm going to ask you generally about it. I think
5 you'll understand my questions. But don't name anybody on
6 the list to me right now.

7 Okay?

8 A Okay.

9 Q Now, after having read the list, do you think you have
10 any social, personal, or business connections with anyone on
11 that list?

12 A No, sir.

13 Q Do you believe that you have ever been related by blood
14 or marriage to anyone on that list?

15 A No, sir.

16 Q So, it's your belief you don't have any connections
17 with those individuals?

18 A Yes, sir.

19 Q All right. I'm now going to go over some questions
20 that are a little more personal about your views and
21 opinions. We're not trying to invade your privacy again.
22 But we're just trying to find out how you feel about some
23 things and get your opinions cause that will be important
24 when we try to select a jury later on.

25 I think you appear, so far in my discussion with you,

Individual Juror Qualification

1 that you're a secure enough person in your opinions and
2 beliefs that you can explain them to us without any fear.

3 Is that correct, ma'am?

4 A Yes, sir.

5 Q Okay. Now, one of the things I'm going to ask you
6 about specifically during this part of the questioning will
7 be the death penalty because that could be an issue in the
8 trial. I want you to understand, however, the trial has not
9 yet begun. So, it's premature really for us to talk about
10 the penalty phase of the trial. But I want to explain to
11 you that this is the only chance we'll get to talk to you
12 about these things.

13 Once you're selected, if you were selected to be on the
14 jury, you would go through the, the guilt or innocence phase
15 of the trial. And if the defendant were found guilty of the
16 crime for which the death penalty is being sought, you then
17 would go directly into the sentencing phase and we wouldn't
18 get a chance to talk to you about the penalty issue at that
19 time.

20 So, this is the only chance we have to talk to about
21 it, and I don't want you to think any less of the defendant
22 or any defense that me might raise because we've talked
23 about this now. This is simply the best or most convenient
24 time for us to do that.

25 You understand that, ma'am?

Individual Juror Qualification

1 A Yes, sir.

2 Q Okay. Now, if you were selected as a juror in any
3 criminal case, would you be willing to listen to the law as
4 instructed to you by the judge during the trial?

5 A Yes, sir.

6 Q And would you be willing to accept that law and apply
7 it to the facts as you find them to be during the trial?

8 A Yes, sir.

9 Q And ma'am, would that be true even though you might not
10 like the law the judge gives you and even though you might
11 disagree with the law, would you still be willing to follow
12 the law if you were instructed to do so by the Court?

13 A Yes, sir.

14 Q Now, ma'am, if you were a -- and, and this -- I'm
15 talking about specifically this case right now.

16 A Okay.

17 Q If you were a juror in this case, would you be willing
18 and able to set aside any information or knowledge that you
19 might have about this case from any source at all, anything
20 you've read, heard, or seen about the case, or either before
21 or during the trial, and decide the case purely upon what
22 you hear in the courtroom?

23 Can you do that?

24 A Yes, sir.

25 Q I want to reemphasize a couple of issues to you that

1 I've talked about, but want to be sure you understand those
2 concepts. The first one is, in this state and in the United
3 States, anyone charged with a crime is always presumed to be
4 innocent until the State proves guilt beyond a reasonable
5 doubt.

6 Now, that means that a defendant is never required to
7 prove himself or herself innocent of a crime that's charged.

8 Do you understand that concept?

9 A Yes, sir.

10 Q The defendant has no burden of proof in the case.

11 A Yes, sir.

12 Q Well -- but, but the same law makes the State have the
13 burden of proof proving the defendant guilty beyond a
14 reasonable doubt. So, the burden of proof in this case is
15 upon the State to prove guilt beyond a reasonable doubt.

16 Do you understand that concept?

17 A Yes, sir.

18 Q And will you be able to apply those two concepts to
19 this trial?

20 A Yes, sir.

21 Q Now, if you were sitting in a criminal trial, and I'm
22 not talking about this one specifically, would you be
23 willing to listen to the law and the evidence, and based
24 upon how you determine those things to be, once you've
25 considered the law and the evidence, could you find a person

Individual Juror Qualification

1 not guilty of the crime charged?

2 A Could you repeat that?

3 I'm sorry.

4 Q If you listened to the law and the evidence in a case,
5 and you listened to and then you formed an opinion as to,
6 your belief as to that law and evidence, once you completed
7 that, would you be able to find someone not guilty of the
8 crime in that, at that point in time?

9 A Yes, sir.

10 Q In other words, I guess the best, better way to ask
11 this might be is it your belief that just because someone
12 has been arrested and charged that they are automatically
13 guilty?

14 A No, sir.

15 Q So, if you heard evidence to the effect that they were
16 not guilty or that the State failed to meet its burden of
17 proof---

18 A Uh-huh. (Affirmative).

19 Q ---could you find someone not guilty of a crime?

20 A Yes, sir.

21 Q Okay. Now, ma'am, by the same token though, if you
22 believe that the State did meet its burden of proof, that it
23 proved someone guilty beyond a reasonable doubt, would you
24 be able to issue a verdict of guilty against an individual?

25 A Yes, sir.

1 Q Now, I take it then, and tell me if this describes you,
2 you would be able to make up your mind depending upon the
3 strength of the evidence you heard, and what the testimony,
4 testimony and evidence showed, and what the law was charged
5 by the judge, that you could either find someone guilty or
6 not guilty depending on those factors?

7 A Yes, sir.

8 Q Now let's talk about the death penalty in, in
9 particular now. I will tell you that normally, in criminal
10 cases, the judge decides the appropriate penalty once the
11 case has been completed. The jury doesn't participate in
12 that. An exception to that general rule is where the
13 charge, the crime charged is murder and the State seeks,
14 seeks the death penalty. And in that case, the jury decides
15 the appropriate penalty which could either be life in prison
16 or the death penalty. Those are the two choices.

17 You understand that, ma'am?

18 A Yes, sir.

19 Q And that there will be one trial to determine guilt or
20 innocence. And if a jury finds the defendant guilty of a
21 crime for which the death penalty is sought, they'll be a
22 separate trial concerning the appropriate penalty---

23 A Yes, sir.

24 Q ---at which additional evidence will be presented and
25 more people will testify on those issues.

Individual Juror Qualification

1 Do you understand that, ma'am?

2 A Yes, sir.

3 Q And the same jury will consider both.

4 A Yes, sir.

5 Q Now, back in the jury room, I had a sheet of paper back
6 there and I described three jurors on that sheet of paper.

7 Did you read that?

8 A Yes, sir.

9 Q All right. Now, I'm gonna go, ask you, in your mind,
10 to put yourself in a position.

11 A Okay.

12 Q Let's assume that you've been selected to serve on the
13 jury, and that jury has determined that a defendant is
14 guilty of the crime of murder. And the State has sought the
15 death penalty. So, you're coming back to the courtroom to
16 begin the sentencing part of the trial where the evidence
17 will be presented concerning sentence, life or death.

18 Can you put yourself in that position?

19 A Yes, sir.

20 Q Can imagine being there.

21 All right. Now, on the sheet of paper that I gave you,
22 there were three possible choices or three types of jurors
23 that might be coming back into that courtroom. The first
24 type of juror who's coming back into the courtroom has
25 already made up his or her mind. He is decided or she is,

Individual Juror Qualification

1 has decided, as they're coming in for the second phase, that
2 the death penalty is the only appropriate penalty for the
3 crime of murder, and, therefore, that juror's already
4 decided to vote for the death penalty.

5 Now, the second type of juror I described is someone
6 who doesn't believe that the State has the right to take
7 anyone's life in punishment for a crime. And so, therefore,
8 that juror too has already made up his or her mind to vote
9 against the death penalty and impose the penalty of life
10 imprisonment.

11 The third juror I described on that paper, paper
12 doesn't know what he or she is going to do. He or she does
13 not have her mind or his mind made up as to whether to vote
14 for the life imprisonment or to vote for the death. That
15 juror will have to wait and listen to the evidence and the
16 testimony and then decide as to what the appropriate
17 punishment would be.

18 Now, do you understand what I mean by the three types
19 of jurors?

20 A Yes, sir.

21 Q Okay. Now, of that three types of jurors, which one do
22 you, would you tell me best describes you in that situation?

23 A Juror number three.

24 Q So, under those circumstances, now keeping in mind the
25 defendant has been found guilty of murder and the issue of

Individual Juror Qualification

1 guilt is no longer a concern, you would be willing to listen
2 to the facts and the evidence in the sentencing phase, and
3 if the evidence justified it, you would be willing to
4 sentence someone to death, is that correct?

5 A Yes, sir.

6 Q And, by the same token, if you thought the evidence and
7 the facts did not justify the death penalty or for any other
8 reason you think it's appropriate, you also would be willing
9 to sentence someone to life in prison?

10 A Yes, sir.

11 Q Is that true?

12 A Uh-huh. (Affirmative).

13 Q All right. Now, so, you could sentence someone to
14 either life imprisonment or you could sentence someone to
15 death depending upon the evidence that you hear during that
16 phase of the trial?

17 Is that true?

18 A Yes, sir.

19 Q Now, ma'am, finally, I want to go over one matter with
20 you and I think you're aware of this. If you were selected
21 to serve on this jury, that jury will be sequestered. And
22 what that is is a fancy legal phrase to mean will keep you
23 separate and apart. We won't let you talk to, to -- you'll
24 have some communication with the outside world, but not
25 generally talk to anyone. We'll limit your information you

Individual Juror Qualification

1 can gather such as news reports and things of that nature.

2 I expect the trial -- of course, you'll be housed and
3 fed during that period of time. I expect the trial, during
4 the, the trial of the case, to actually take about a week
5 for the case to be tried. That's our anticipation, our best
6 estimate.

7 Now, my question to you about that is if you were
8 selected on the jury, and you were placed in that situation,
9 while I realize it's an inconvenience for anyone to be in
10 that situation, would that situation though pose a serious
11 risk of danger to either your health or your well being?

12 A The -- no, sir.

13 Q And would it also pose a serious risk or danger to the
14 health or well being of anyone who might be dependent upon
15 you?

16 A No, sir.

17 Q So, those factors would not be a problem in that
18 situation?

19 A No, sir.

20 Q All right. Ma'am, that completes the questions that I
21 had of you. I told you I'd let the attorneys follow-up on
22 my questions. And we allow the defense to go first.

23 Mrs. Hodges, you may proceed.

24 MRS. HODGES: Thank you, Your Honor.

25 EXAMINATION

Individual Juror Qualification

1 BY MRS. HODGES:

2 Q Mrs. Kitchens, I appreciate you being here today and I
3 am Kathy Hodges. Along with Clay Allen and John Reckenbeil,
4 I'm representing Tony Torres. A couple of things came out I
5 think in your responses yesterday to the Judge's questions.

6 You indicated yesterday that you actually had heard
7 something about this case.

8 A Uh-huh. (Affirmative).

9 Q Can you tell me where and what you heard?

10 A I just happened to be watching the news. I think it
11 was on Saturday.

12 Q Okay.

13 A And it mentioned that jury selection started.

14 Q Okay.

15 A That's all I heard.

16 Q Do you know, remember what, which TV channel it was?

17 A I don't.

18 Q Okay. And do you remember anything from the TV show
19 other than the, or TV news report other than that selection
20 was starting this week?

21 A No, ma'am.

22 Q Okay. Do you remember, after kind of being in Court
23 today, yesterday, you know hearing about jury selection
24 starting on Saturday, does that spring any memory of yours
25 from back in May of 2007 when the event actually happened?

Individual Juror Qualification

- 1 A No, ma'am.
- 2 Q Okay. So, you don't recall hearing about it about a
3 year and a half or so ago?
- 4 A No, ma'am.
- 5 Q Okay. Based on just what you heard in the courtroom
6 today and yesterday, have you formed an opinion about the
7 case or, or any, or anything in terms of sentencing?
- 8 A No, ma'am.
- 9 Q Okay. You'd also indicated to us that you have a
10 cousin that had served some time for burglary and robbery.
- 11 A Uh-huh. (Affirmative).
- 12 Q Was that here in South Carolina?
- 13 A Yes, ma'am.
- 14 Q Okay. Is that a cousin that you were close to?
- 15 A He's my first cousin.
- 16 Q Okay. I have a ton of first cousins.
- 17 A I mean I'm not really close to him.
- 18 Q Some I'm closer to than others.
- 19 A Not real close to him, no, ma'am.
- 20 Q Not real close to him.
- 21 Okay. That experience and the fact that he was charged
22 and served some time, would that affect you in, in, in this
23 case at all?
- 24 A No, ma'am.
- 25 Q Okay. So, you could give a fair trial to both the

Individual Juror Qualification

1 State as well as the defense?

2 A Uh-huh. (Affirmative).

3 Q Okay. You'd also mentioned, I guess, your husband is
4 first cousins with Mark Kitchens?

5 A Yes, ma'am.

6 Q Okay. Do y'all see each other on a regular basis or---

7 A No, ma'am.

8 Q Just kind of here and there?

9 A Yes, ma'am.

10 Q So, the fact that Mr. Kitchens is the Clerk of Court is
11 not gonna affect you?

12 A No, ma'am.

13 Q Okay. Back in 1988 you indicated to us that you
14 actually served on a jury on I guess it was a murder trial.

15 A I didn't serve on it. I was---

16 Q Oh, okay.

17 A ---in the---

18 Q Kind of like in the big pool like you are here today?

19 A Yes, ma'am.

20 Q But you didn't actually get picked---

21 A No, ma'am.

22 Q ---to actually sit in the box and serve on, on the
23 case?

24 A No, ma'am.

25 Q Okay. Cause you indicated that this woman was

Individual Juror Qualification

1 acquitted.

2 Were you just kind of, out of curiosity, just sort of
3 followed, followed what happened in the case?

4 A Yeah, I just stayed.

5 Q Okay.

6 A I just stayed throughout the trial.

7 Q Okay. So, just kind of sat in the gallery and, and
8 watched?

9 A Uh-huh. (Affirmative).

10 Q Okay. In this type of case, you know, obviously it's a
11 little different than probably the case you saw back then
12 and, and what you usually see. It's because it's, basically
13 it's a death penalty. The State, you know, said that they
14 seek to or are seeking the death penalty in this case. So,
15 we're gonna have two, two basically portions of it.

16 When we talk about murder, we're talking about the
17 willful killing of another human being with malice
18 aforethought. Malice basically means that somebody's done
19 it with kind of a wicked heart. Sort of, you know, just
20 kind of evil intent.

21 And when we talk about convicted, that somebody's been
22 convicted, what we're talking about is that basically the
23 jury has heard all of the evidence, testimony, considered
24 the law as the judge charges them, applies the law to the
25 evidence, to the facts as the jury finds them, and then

Individual Juror Qualification

1 basically decides that, that there are no defenses, if any
2 defenses were presented by, by the, the person accused.
3 Basically there's no defenses that rise to the level to
4 excuse that person from the killing. That basically, you
5 know, held responsible, that, you know, they did it.
6 They're responsible for it. They're guilty.

7 You understand what I mean?

8 A Yes, ma'am.

9 Q Okay. In that type of a case where somebody's been
10 convicted of willfully killing another person with malice
11 aforethought, do you feel that the only appropriate penalty
12 in that type of case is the death penalty?

13 A No, ma'am, I'd have to say no because that, to me, that
14 would depend on the evidence in that particular case.

15 Q Okay.

16 A And the heinous of the crime, the heinous nature of the
17 crime.

18 Q So, depending on how, how, how severe the crime was,
19 gruesome or whatever, then that will, kind of will sway you
20 as to whether you think that the death penalty is
21 appropriate or not?

22 A Right.

23 Q Okay. Once somebody's been found guilty in a capital
24 murder case of, of the murder, we move into the sentencing
25 phase where the State produces aggravating circumstances.

1 When the State produces those aggravating circumstances
2 that the jury finds that those aggravating circumstances
3 exist, at that point do you think that that's the only, that
4 the death penalty is the only appropriate crime?

5 A Again, it would just depend on the case in particular
6 to me. I wouldn't want to say yes or no.

7 Q Okay. You will be able to consider mitigating
8 circumstances?

9 That if the defense is able to produce to you
10 mitigating evidence and combine that together, would you be
11 able to then consider that as to determine that the death
12 penalty was the only appropriate penalty?

13 A That's a hard question. That's -- I would just have to
14 judge by the case. That's all I can say cause I---

15 Q Have you had much discussions with folks, family,
16 friends, co-workers about the death penalty?

17 A No, ma'am.

18 Q Okay. And prior to coming into court today and
19 yesterday, did you have an opinion about the death penalty?

20 A The same one I have right now. I mean depending on---

21 Q Just---

22 A ---at, what evidence is presented and the nature of the
23 crimes committed.

24 Q Okay. So, you basically would need to have to know
25 what the circumstances are to be able to determine whether

Individual Juror Qualification

1 the death penalty was an appropriate crime or whether life
2 in prison without the possibility of parole is the
3 appropriate crime?

4 A Right.

5 Q Okay. Had you ever formed or expressed an opinion,
6 and, and with somebody, about cases that you thought where
7 the death penalty was the only appropriate crime?

8 A No, ma'am.

9 Q Okay. Have you ever been in discussions where it's
10 basically like a group discussion where you-all are, are
11 having to come to a decision about a matter, kind of get a,
12 get a unanimous decision about a matter, either work or
13 church, or, you know, social group or anything like that?

14 Been involved in that type of situation?

15 A Yes, ma'am.

16 Q Okay. When you were involved in that type of
17 situation, were you able to articulate your opinions about
18 what needed to be done to the group?

19 A Yes, ma'am.

20 Q Okay. Did you have any problems in terms of being able
21 to express those opinions or, or if somebody disagreed with
22 you to kind of hold fast to your opinion?

23 A No, ma'am.

24 Q Okay. Never been coerced or intimidated by somebody
25 else to change your opinion?

1 A No, ma'am.

2 Q Obviously you want your opinions to be respected?

3 A Yes, ma'am.

4 Q And you'd be able to respect the opinions of others
5 involved in, in kind of a unanimous decision?

6 A Yes, ma'am.

7 Q And you understand that the jury is never required, in
8 a case, for any reason, could just be in fairness or in
9 mercy, in a death penalty case, the jury's never required to
10 vote for, to vote for death?

11 A Yes, ma'am.

12 MRS. HODGES: Okay. Bear with me just one moment.

13 THE COURT: Yes, ma'am.

14 (Pause.)

15 Q Thank you, Mrs. Kitchens.

16 THE COURT: The State.

17 SOLICITOR GOWDY: May it please the Court, Your Honor?

18 THE COURT: Yes, Mr. Gowdy.

19 EXAMINATION

20 BY SOLICITOR GOWDY:

21 Q Good afternoon, Mrs. Kitchens.

22 A Hi.

23 Q My name is Trey Gowdy and I'm part of the prosecution
24 team in this case. Thank you for your answers today,
25 yesterday, and especially the questionnaire, which I know

Individual Juror Qualification

1 asked personal questions.

2 I notice that you were born in Union, but you graduated
3 from Spartan High---

4 A Yes, sir.

5 Q ---a couple of years after I graduated Spartan High.
6 Actually more than a couple of years.

7 What do you do at Adidas?

8 A I am account management customer service rep.

9 Q And you have been there for how long?

10 A Just -- since January.

11 Q Okay. I guess it was 20 years ago when you watched the
12 jury trial?

13 A Uh-huh. (Affirmative).

14 Q Was it a Spartanburg case or a Union case?

15 A It was a Spartanburg County case.

16 Q From your view in the back, not sitting as a juror, but
17 just as a court observer, did it seem to you that, that the
18 prosecution or the police had the wrong person or maybe they
19 just didn't prove the elements of the crime?

20 A They had the right person, but I think they kind of
21 proved it more of an accidental death.

22 Q Right.

23 A They were many circumstances in it that couldn't, I
24 don't think the jury could convict her.

25 Q Yes, ma'am.

1 Let me finish with this. If I heard you correctly in
2 answers to His Honor's questions, you would listen to the
3 evidence. You would be fair and open minded. And at the
4 guilt stage, at the, when you reach a verdict based on
5 guilt, you could vote guilty or you could vote not guilty
6 depending on whether or not the State has met its burden?

7 A Yes, sir.

8 Q And if you got to that next stage, if you had a guilty
9 verdict, then you would want to hear everything anyone had
10 to say about whether life or death was appropriate, and if
11 you thought death was appropriate, you could vote for death?

12 A Yes, sir.

13 Q And if you thought life was appropriate you could vote
14 for life?

15 A Yes, sir.

16 Q It just depends on the case?

17 A Yes, sir.

18 Q All right. Thank you, Mrs. Kitchens.

19 A Thank you.

20 THE COURT: Anything further from this juror?

21 MRS. HODGES: No, sir. Thank you.

22 THE COURT: All right. Mrs. Kitchens, let me just go
23 over a couple of things with you at this point in time.

24 We've not selected a jury yet. We're in
25 qualifications. So, we're still talking with the jurors

Individual Juror Qualification

1 about their situations. We will be selecting a jury though
2 in the not too distant future.

3 The information that you've supplied us with your
4 questionnaire, is that the correct information as to where
5 we can get in touch with you?

6 WITNESS: Yes, sir.

7 THE COURT: All right. And I will tell you that if you
8 are called back, we will be in jury selection at that time.
9 And if you are called back, you should bring whatever you
10 need to bring to be able to stay with us for a week.

11 WITNESS: Okay.

12 THE COURT: Do you understand that?

13 WITNESS: Yes, sir.

14 THE COURT: And so, be sure you got your clothing and
15 whatever else you think you need to be able to stay in a
16 hotel for, for a weeks time.

17 WITNESS: Okay.

18 THE COURT: All right. Now, ma'am, I will caution you
19 that my previous instructions concerning contact or
20 discussions or media or anything of that nature remain in
21 effect.

22 Do you understand those instructions?

23 WITNESS: Yes, sir.

24 THE COURT: Okay. All right. I want to thank you very
25 much for your cooperation today and you're free to go at

1 this time.

2 WITNESS: Okay. Thank you.

3 (The following takes place outside the presence of the
4 juror.)

5 THE COURT: State's position on this juror?

6 SOLICITOR GOWDY: May it please the Court.

7 We believe she's qualified, Your Honor.

8 THE COURT: And defense position?

9 MRS. HODGES: Your Honor, subject to our previous
10 objection she's qualified.

11 THE COURT: All right. Court finds that she is
12 qualified. She'll be placed on that list.

13 THE COURT: All right. The next one will be Kenneth
14 Atkins or Akins I believe, excuse me, is that right?

15 KENNETH AKINS, having been previously
16 sworn, testified as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q Good afternoon, Mr. Akins.

20 A Yes, sir.

21 Q Did I say that right?

22 A Yes, sir.

23 Q Okay. I bet you get a lot of Atkins, don't you?

24 A Atkins, Adkins, Adkins.

25 Q I bet you do.

Individual Juror Qualification

1 All right. Mr. Akins, well, I want to thank you very
2 much for your participation thus far in our jury selection
3 process and, and for coming back today. I, I recognize this
4 is an inconvenience for you, and we're trying to do
5 everything we can to lessen that, but that's just the way
6 jury service is.

7 Now, sir, I also understand that where you're sitting
8 is not the place you're use to being. You're not use to
9 being in a courtroom with a microphone in front of you being
10 questioned by people. And I understand that. I do want to
11 let you know, however, that we're gonna do everything that,
12 to make you feel as comfortable as possible about, about the
13 process.

14 what's gonna happen is I'm going to ask you some
15 questions to determine some of your beliefs and opinions
16 concerning certain things. I will allow the attorneys to
17 ask follow-up questions to mine concerning those beliefs.
18 And, and I will tell you, however, that there are no right
19 or wrong answers to the questions I'm about to ask. You
20 have -- you should just express your opinions. And if, at
21 anytime, you feel that we are trying to change your
22 opinions, or, or something of that nature, you let me know
23 and we'll take the appropriate action.

24 Do you understand what we're doing, sir?

25 A Yes, sir.

1 Q All right. Now, my first question has to do with since
2 we discussed this case yesterday, has anyone contacted you
3 about the case?

4 A No, sir.

5 Q Have you gathered any information from any other source
6 including media, Internet, anything of that nature?

7 A No, sir.

8 Q And have you gathered any information that would cause
9 you to form an opinion about this case---

10 A No, sir.

11 Q ---since yesterday?

12 All right. Now, sir, have you ever participated in any
13 Internet site, blog, or any other discussion concerning the
14 imposition of the death penalty?

15 A No, sir.

16 Q Have you ever participated in any political activities
17 such as demonstrations, rallies, or meetings that had to do,
18 where the focus was on the death penalty?

19 A No, sir.

20 Q Now, sir, if you were selected as a juror in any case,
21 could you put aside the things that you already heard or
22 seen previously and decide the case solely based upon what
23 you hear in the courtroom?

24 A Yes, sir.

25 Q Now, sir, while you were back in the jury room, you

Individual Juror Qualification

1 were given a list of individuals, list of names of people
2 who might be or potentially could be witnesses in this case.

3 Did you get to see that list?

4 A Yes, sir.

5 Q Did you have a chance to review it?

6 A Yes, sir.

7 Q I'm going to ask you some, ask you some questions about
8 it. Please don't identify anybody by name off of that list,
9 but I am gonna ask you generally about the list.

10 After having read the list, is there any individual on
11 that list that you believe that you have any social,
12 business, or personal connections with?

13 A No, sir.

14 Q Is there any individual on that list that you believe
15 that you are related to now, either now or previously by
16 marriage or by blood?

17 A No, sir.

18 Q I'm now going to ask you some questions about your
19 opinions. Some of which will involve the questions about
20 the death penalty. Again, we're not trying to invade your
21 privacy. We are trying to determine how you feel on some
22 things, get your opinions that are important to us.

23 You appear to be someone who's secure enough in your
24 opinions and beliefs that you should be able to discuss this
25 with us without feeling threatened in any fashion.

1 Do you understand that, sir?

2 A Yes, sir.

3 Q Now, we're gonna talk to you, and, again, one of the
4 things we're gonna talk about is the death penalty and
5 because that could be an issue in the upcoming trial. I
6 want you to understand though the trial hasn't begun yet.
7 And so, it's fairly premature really to talk about the
8 penalty phase of the trial at this point in time.

9 However, I hope you appreciate that, in this case, the
10 State has sought a conviction for murder, and has also
11 sought imposition of the death penalty for that crime. And
12 since I've explained to you the trial will be handled in two
13 phases, the first phase involving guilt or innocence, the
14 second phase involving the penalty to be imposed, the second
15 phase will only occur if the jury were to return a guilty
16 verdict on the crime for which the death penalty is sought,
17 which is the crime of murder.

18 So, in that sense, by talking about this now, we're
19 kind of putting the cart in front of the horse. But I hope
20 you understand that this is the only opportunity we'll have
21 to talk to you about this because once the trial begins, the
22 same jury considers both issues and we won't have another
23 opportunity to discuss the penalty phase if we get that far.

24 Do you understand that, sir?

25 A Yes, sir.

Individual Juror Qualification

1 Q So, what I'm telling you is that the fact that we're
2 discussing that, that particular issue about the penalty
3 phase of the trial should not be held against the defendant
4 or any defense that he might raise to the, the crimes
5 involved. It's simply the only time we have to talk about
6 those things.

7 Do you understand that, sir?

8 A Yes, sir.

9 Q Okay. Now, if you were selected as a juror in a
10 criminal case, and I'm not talking about this case in
11 particular, would you be willing to listen to the law as
12 instructed by the judge?

13 A Yes, sir.

14 Q Would you be willing to accept the law and apply it to
15 the facts in the case as you find those facts to be?

16 A Yes, sir.

17 Q Now, is that true even though, once you hear the law
18 given to you by the judge, you might disagree with it or you
19 might not like what the law says?

20 Would you still be willing to apply the law as charged
21 by the judge to the facts as you find them to be?

22 A Yes, sir.

23 Q Now, we're gonna talk about the Torres case, and
24 because there has been, as you gathered from our questioning
25 yesterday, some mention of this case in the media, if you

Individual Juror Qualification

1 were selected as a juror in this case, would you be able to
2 set aside any information or knowledge that might have come
3 to you from any source at all including things you've read,
4 seen, or heard outside of the courtroom, and decide the case
5 purely upon the evidence presented during the trial in this
6 courtroom?

7 A Yes, sir.

8 Q I'm gonna go over a couple of different issues and we
9 talked about them briefly yesterday. But I want to be sure
10 you understand the concepts.

11 First of all, in South Carolina, a criminal defendant
12 is always presumed to be innocent. A criminal defendant,
13 therefore, does not have to prove his innocence.

14 Do you understand that concept of the law?

15 A Yes, sir.

16 Q Also, in this state, and in the nation as well, the
17 State always has the burden of proving the defendant guilty
18 beyond a reasonable doubt. So, the burden of proof always
19 is upon the State.

20 Do you understand that concept?

21 A Yes, sir.

22 Q And would you be willing to apply those two concepts to
23 this particular case if you were selected as a juror?

24 A Yes, sir.

25 Q Now, is it your belief that just because someone is

Individual Juror Qualification

1 accused of a crime that they must automatically be guilty of
2 that crime?

3 A No, sir.

4 Q So, I take it then that you would be willing to listen
5 to the law and the evidence presented to you, and based upon
6 what your finding of what those things are and based upon
7 the circumstances, that you could find someone not guilty of
8 a crime.

9 Is that true?

10 A Yes, sir.

11 Q Also, by the same token, if you find that the State has
12 proven the person's guilt beyond a reasonable doubt, you
13 would be able to also render a, a verdict of guilty against
14 that person.

15 Is that also true?

16 A Yes, sir.

17 Q So, tell me if I'm describing you correctly, that
18 depending upon the strength of the evidence and what the
19 testimony and evidence showed and what the law was charged
20 by the judge, you could either find a person guilty or not
21 guilty.

22 Is that true?

23 A Yes, sir.

24 Q Now, again, we're gonna talk about, as I indicated
25 earlier, the penalty phase of the trial, and I hope you

Individual Juror Qualification

1 understand, in South Carolina, generally the judge sets the
2 penalty to be imposed for any crime. The exception to that
3 rule is for the case wherein a murder is alleged and the
4 State seeks the penalty of death. And in that case, the
5 jury determines the appropriate sentence in a separate
6 sentencing trial.

7 So, there would be a trial on the guilty phase. Then a
8 trial, if the person's found guilty of the murder, a trial
9 on the penalty phase. New evidence and information would be
10 presented at the second trial concerning the issues of the
11 penalty. And there's only two choices in that particular
12 phase. Either life imprisonment or death.

13 Do you understand that procedure?

14 A Yes, sir.

15 Q Now, back in the jury, jury room where you were
16 waiting, I provide you, provided you with a, some scenarios
17 concerning a jury, a juror.

18 Did you read those?

19 A Yes, sir.

20 Q Right now I want you to, for you to put yourself
21 theoretically in the position of the following person. You
22 have been selected to serve on a jury. You and your fellow
23 jurors -- and this was in a trial for murder in which the
24 State sought the death penalty. You and your fellow jurors
25 have determined that the defendant is guilty of the crime of

Individual Juror Qualification

1 murder. And for that reason you're about to come back to
2 the courtroom and go through the second phase of the trial
3 or the sentencing phase of the trial where evidence will be
4 presented on that issue.

5 Do you understand that, sir?

6 A Yes, sir.

7 Q Now, that sheet of paper I gave you described three
8 different jurors.

9 Do you remember that?

10 A Yes, sir.

11 Q The first one it described is the person who is coming
12 back into the courtroom, and that person has already, knows
13 how that person is going to vote. That person's gonna vote
14 for the death penalty, because that person believes that the
15 most appropriate penalty any time someone has been convicted
16 of murder, is the death penalty. So, that juror has
17 already, has decided the appropriate penalty.

18 The second juror I described to you is a person who
19 also has already decided how they're going to vote because
20 they have a belief or their opinion is that the State never
21 has the right to choose, to, excuse me, to take someone's
22 life because of the conviction, the, their conviction of the
23 commission of a crime. So, they do not believe the State
24 has the right to impose a death penalty for any crime. That
25 jury, individual has made up their mind to vote for the life

Individual Juror Qualification

1 sentence.

2 The third type of juror described on that paper doesn't
3 know what he or she is going to do yet. That juror has not
4 made up his, his or her mind as to whether they're going to
5 vote for life imprisonment or death. That juror will have
6 to wait and listen to the evidence and testimony and then
7 decide as to the appropriate sentence.

8 Now, do you understand those three types of jurors I
9 just described?

10 A Yes, sir.

11 Q Now, again, theoretically, you're in the jury and
12 you're coming back to the courtroom for the sentencing
13 phase.

14 Which of those three types of jurors do you believe
15 would best describe you?

16 A That would be the last one, sir.

17 Q Number three?

18 A Yes, sir.

19 Q So, under those circumstances, keeping in mind now that
20 the defendant is already been found guilty of murder, and
21 the issue of guilt is no longer a concern, would you be
22 willing to listen to the facts and evidence, and if the
23 evidence justified it, would you be willing to sentence
24 someone to death?

25 A Yes, sir.

Individual Juror Qualification

1 Q And by the same token, if you thought the evidence and
2 facts did not justify a death penalty or if, for any other
3 reason, would you be willing to sentence someone to life
4 imprisonment?

5 A Yes, sir.

6 Q So, you could sentence someone to life or you could
7 sentence someone to death depending on the facts and
8 circumstances?

9 A Yes, sir.

10 Q Is that true?

11 Now, finally, I'm going to ask you one thing about a
12 personal matter. If you were selected to serve on the jury,
13 you would be sequestered with the remainder of the jury
14 until the trial's completed. We've estimated the time of
15 trial for this case to be about a week.

16 So, that means that you would be in a situation where
17 you would have limited contact with people on the outside.
18 Your access to television and media would be limited, and,
19 again, that would go on for about a week. Of course, you'd
20 be housed and you'd be fed and you'd be taken care of.

21 Now, if you were in that situation, while I realize it
22 would be an inconvenience to anyone in that situation, would
23 that situation, however, pose a serious risk of danger to
24 either your health or your well being?

25 A No, sir.

Individual Juror Qualification

1 Q And if you were in that situation, would that situation
2 pose a serious risk of danger to the health or the well
3 being of anybody who's dependent upon you?

4 A No, sir.

5 Q All right. That completes the questions that I'm going
6 to ask you. We allow the attorneys to follow-up.

7 And at this time the defense may proceed.

8 Mr. Allen.

9 MR. ALLEN: Thank you, Your Honor.

10 EXAMINATION

11 BY MR. ALLEN:

12 Q Mr. Akins, my name is Clay Allen. Occasionally I get
13 mistaken with Aiken as well. So -- but I represent Mr.
14 Torres, Tony Torres, along with Mr. Reckenbeil and
15 Mrs. Hodges.

16 I'd like to ask you a few questions. I want to thank
17 you for your being here and answering our questions and also
18 for filling out the questionnaire that we've looked at.

19 I notice that a family member of yours was, as I
20 understand it, the victim in a murder case?

21 A Yes, sir.

22 Q And that was about what, 2001, 2002, or thereabouts?

23 A Right around '02, '03.

24 Q Okay. And it's my understanding that no one's been
25 charged with that.

Individual Juror Qualification

1 Is that a correct statement?

2 A That's correct.

3 Q Okay. Do you recall which agency investigated that
4 case?

5 A No, sir.

6 Q Okay. Is there anything about that experience that
7 would affect you as a juror now?

8 A No, sir.

9 Q You believe that you can be fair and open in this case?

10 A Yes, sir.

11 Q Okay. And let me also say I'm truly sorry for your
12 loss and your family.

13 If you were to serve as a juror in this case, I want to
14 again take you to the point where you and the other 11
15 jurors have already decided that an individual is guilty of
16 murder. By that we're talking about, of course, a willful
17 killing of someone else with malice aforethought. And that
18 you and the other 12 jurors, other 11 jurors, excuse me,
19 decided that there's no justifiable defense to that case.
20 The individual is guilty of that murder. No question about
21 it. There's no issue involving any of the possible
22 defenses. Y'all decided against that.

23 Do you follow where I'm at?

24 A Yes, sir.

25 Q Do you believe that the death penalty, in such, in such

Individual Juror Qualification

1 a case, in such a situation, would be the only appropriate
2 punishment?

3 A No, sir.

4 Q You would be open to life imprisonment?

5 A Yes, sir.

6 Q Of course, this would all depend upon the facts and
7 circumstances of the case, is that right?

8 A Yes, sir.

9 Q Okay. Now, as the judge indicated, in a case like
10 this, if we get to that point that the State would be
11 allowed to bring up what we call facts or evidence in
12 aggravation tending to show that the case would, is worse
13 than other murder cases -- do you follow what I'm saying?

14 A Yes, sir.

15 Q Sort of elevated to where it would qualify for the
16 death penalty.

17 Do you follow what I'm saying?

18 A Yes, sir.

19 Q And the defense would be allowed to present evidence if
20 it chooses in mitigation.

21 Do, do you know what I mean by that?

22 A Yes, sir.

23 Q Okay. That indicates it's not a defense. But some
24 facts or factors, which in fairness or in mercy, would
25 indicate that some sentence other than death would be

Individual Juror Qualification

1 appropriate.

2 Do you follow me?

3 A Yes, sir.

4 Q Could you consider all of these types of evidence,
5 evidence in aggravation, as well as evidence in mitigation?

6 A Yes, sir.

7 Q Okay. Could you vote for a sentence of life
8 imprisonment if you thought that was the appropriate thing
9 to do?

10 A Yes, sir.

11 Q Could you also vote for the death penalty if you
12 thought was appropriate?

13 A Yes, sir.

14 Q Okay. Is there a category of murder, you know, when
15 you consider aggravating circumstances, and, you know, of
16 the whole case, is there a general category of murder cases
17 where you would not or that you could not consider
18 mitigating factors and could only consider the death
19 penalty?

20 A No, sir.

21 Q Okay. I thank you for your answers and for your
22 candor. Of course, others may have different opinions.

23 You understand that?

24 A Yes, sir.

25 Q Do you agree with that?

Individual Juror Qualification

1 And everyone's opinion is entitled to respect.

2 Would you agree with that?

3 A Yes, sir.

4 Q Okay. Just like you would want your opinion treated
5 with respect, correct?

6 A Yes, sir.

7 Q Would you be able to sit in a group to discuss each and
8 every person's opinion as to an appropriate sentence?

9 A Yes, sir.

10 Q Okay. Would you be able to, if you believe that a
11 certain sentence is the appropriate sentence, would you be
12 able to stick with your opinion if others disagreed with
13 you?

14 A Yes, sir.

15 Q No doubt in your mind about that?

16 A No doubt.

17 Q Okay. That's, that's good. Thank you.

18 One, one second please, Your Honor.

19 THE COURT: Yes, sir.

20 (Pause.)

21 MR. ALLEN: Thank you, sir.

22 THE COURT: The State, Mr. Barnette.

23 SOLICITOR BARNETTE: May it please the Court, Your
24 Honor.

25 THE COURT: Yes, sir.

Individual Juror Qualification

1 EXAMINATION2 BY SOLICITOR BARNETTE:

3 Q Mr. Akins, my name is Barry Barnette. This is Trey
4 Gowdy and Cindy Crick. We're representing the State in this
5 case. We appreciate you being here. I know it's taking
6 time away from work and things like that. And appreciate
7 your question and the questionnaire, the answer.

8 One thing I was just wondering, what is your general
9 view of the death penalty or could you tell us what your
10 general view is on it?

11 And I hate to ask you these type of questions. But
12 these types situations, we do ask these questions.

13 A On the death penalty, it -- a crime would have to be
14 very severe and like being proved that without a doubt the
15 person done it.

16 Q And where do you get that view from?

17 A It would be like my own view like from the testimony
18 from everyone.

19 Q So, you think it'd had to be a hundred percent, no
20 question about proving to you that this---

21 A At---

22 Q ---person did it?

23 A At least 98 percent.

24 Q So, in cases -- and I know the judge has talked about
25 it, in cases of aggravation, we give aggravating factors or

Individual Juror Qualification

1 whatever.

2 Is it most likely that you'd give life without parole
3 in those situations?

4 A No, sir, I couldn't determine that.

5 Q Okay. You would look at both the aggravation and the
6 mitigating factors in that situation?

7 A Yes, sir.

8 Q When you're saying the most severe type, what types are
9 you talking about?

10 A It would be like someone just went in and done it,
11 didn't even care, and just carried on their everyday life
12 like nothing ever happened.

13 Q Is that the only time you'd give the death penalty?

14 A No, sir.

15 Q And any circumstances that you would consider anything
16 concerning that?

17 A If anyone would ever kill like a kid or anything.

18 Q Is there types where you would just only give life in
19 those situations?

20 Is there any types that you'd just give life?

21 A No, sir.

22 Q In the -- and I'm sorry to ask you about this.

23 But in the situation involving your cousin at the
24 SuperBike, do you hold anything against law enforcement or
25 anything against them since they haven't been able to solve

Individual Juror Qualification

1 it?

2 A No, sir.

3 Q Do you think they're trying to do everything they can?

4 A Yes, sir.

5 SOLICITOR BARNETTE: One moment, Your Honor, please.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q I appreciate your time. Thank you for answering my
9 questions.

10 A Thank you.

11 THE COURT: Any follow-up questions?

12 MR. ALLEN: Just briefly just to follow-up, Your Honor.

13 EXAMINATION

14 BY MR. ALLEN:

15 Q Mr. Akins, in a situation where a case's been, if the
16 case has been proven to you 98 percent or so sure, this
17 person did it, is it at that point that, that you decide or
18 that, that you would decide that the death penalty is the
19 only appropriate punishment?

20 A No, sir.

21 Q Okay. You would consider other matters?

22 A Yes, sir.

23 Q Okay. Thank you, sir.

24 THE COURT: Mr. Akins, I want to tell you that we thank
25 you for your continued participation in our process. I will

Individual Juror Qualification

1 tell you that we have not yet selected a jury. We're going
2 to go through this with other jurors for a period of time.
3 We'll be summons jurors then once we've completed this
4 process back to the courthouse for jury selection.

5 If you are asked to come back for jury selection, you
6 will need to bring with you whatever you need to stay for a
7 week because, should you be selected, you'll be staying with
8 us for that period of time. So, come prepared to stay
9 should you be asked to come back to the courthouse.

10 Now, the contact information we have for you on your
11 paperwork, is it correct?

12 WITNESS: As far as I know.

13 THE COURT: So, that's how we can get back in touch
14 with you and let you know to be here?

15 WITNESS: Yes, sir.

16 THE COURT: Also, sir, I will caution you that my
17 instructions concerning not gathering any information
18 outside of the courthouse, not discussing the case with
19 anyone, and not allowing anyone to discuss it with you
20 continue throughout this process.

21 Do you understand that, sir?

22 WITNESS: Yes, sir.

23 THE COURT: All right. Thank you very much, sir.
24 You're free to go at this time.

25 (The following takes place outside the presence of the

Individual Juror Qualification

1 juror.)

2 THE COURT: State's position on Mr. Akins?

3 SOLICITOR GOWDY: He's qualified, Your Honor.

4 THE COURT: Defense position I assume subject to your
5 previous objections?

6 MR. ALLEN: Yes, sir, Your Honor, subject to my
7 previous objections.

8 THE COURT: Any objections to his being qualified?

9 MR. ALLEN: Any -- no other objections.

10 THE COURT: Okay, sir. Court determines that he is
11 qualified to serve.

12 All right. The next juror we will consider is Number
13 251, Susan Steiner.

14 Mr. Humphries, step around for just a second please.

15 (Pause.)

16 SUSAN STEINER, having been previously
17 sworn, testified as follows:

18 EXAMINATION

19 BY THE COURT:

20 Q Good afternoon.

21 A Good afternoon.

22 Q Your name is Susan Steiner.

23 Did I get that right?

24 A Yes, sir.

25 Q Mrs. Steiner, first of all, I want to thank you very

Individual Juror Qualification

1 much for your continued participation. I know you've been
2 here for a while, and I do appreciate your being here. I
3 hope you understand that jury service sometimes can be
4 inconvenient.

5 We're going to ask you some questions at this time. I
6 realize that sitting in that seat in this setting can be
7 uncomfortable for people. It's not our intention to make
8 you uncomfortable. We do want to gather some information
9 about your opinions and your beliefs.

10 And I will tell you now, that of the questions that
11 we're going to ask you, there are no right answers and there
12 are no wrong answers. We're simply wanting to gather your
13 opinions about beliefs about certain things. We're not here
14 to threaten you in any way. And so, if you have any
15 problems during the process with what we're asking you
16 about, please let me know and we'll be glad to discuss that
17 at that time.

18 Do you understand that, ma'am?

19 A Yes, sir.

20 Q I'm going to ask you some questions. Then I'll allow
21 the attorneys to follow-up on the questions that I've asked
22 you.

23 Okay. First question I'm gonna ask you has to do with
24 since we talked yesterday, has anyone attempted to discuss
25 this case with you?

Individual Juror Qualification

1 A No, sir.

2 Q Have you discussed the case with anyone?

3 A No, sir.

4 Q Have you gathered any information from any other
5 source, media outlets or any other source that might cause
6 you to form an opinion about this case?

7 A No, sir.

8 Q Have you ever participated in any Internet discussions
9 or blogs concerning the imposition of the death penalty?

10 A No, sir.

11 Q Have you ever participated in any political activities
12 either for or against the death penalty including rallies,
13 meetings, or demonstrations, or anything of that nature?

14 A No, sir.

15 Q Now, ma'am, in describing yourself as a juror, could
16 you put aside anything that you may have heard previously or
17 seen previously about a case and decide the case solely upon
18 what you hear in the courtroom?

19 A Yes, sir.

20 Q Now, ma'am, a couple of concepts I want to go over with
21 you to be sure we understand and I touched on these -- let,
22 let me back up. One other thing I want to go over with you.

23 Back in the jury room, you went over a list of
24 potential witnesses.

25 Do you remember that list?

Individual Juror Qualification

1 A Yes, sir.

2 Q All right. Ma'am, I don't want you to name anyone off
3 of that list by name in this courtroom. But I am gonna ask
4 you generally about the list.

5 In reviewing that list, did you see anyone that you had
6 had any social, business, or personal contact or connection
7 to?

8 A No.

9 Q Are we related by blood or marriage or have you ever
10 been related to anyone who is listed on that list?

11 A No.

12 Q So as far as you know, you have no actual connection
13 with anyone listed as a potential witness, is that true?

14 A That's correct.

15 Q I'm gonna ask you now some more personal questions
16 about your opinions. You seem to be a secure enough person
17 in your beliefs that I can do that without you feeling
18 threatened. One of the things I'm going to ask you about is
19 your belief concerning the death penalty because that's a
20 possible issue in this case.

21 I want you to know that I understand that it's somewhat
22 premature for us to do that because I've explained to you
23 already that this trial will be divided into two, two parts
24 or phases.

25 The first part or phase will be where the State

Individual Juror Qualification

1 attempts to prove the crimes charged, and the jury will
2 decide whether or not the State has met its burden of proof
3 as to those particular crimes. And only if the defendant
4 were found guilty of the crime in this case, murder, where
5 the State is seeking the, the death penalty, would we
6 conduct the second phase of the trial where the jury would
7 decide the appropriate penalty, either life imprisonment or
8 death. So, those are the two possibilities at the second
9 phase of the trial.

10 Now, I'm, I'm telling you that because I realize we may
11 never get to that phase of the trial, and the fact that I'm
12 discussing it with you now should not be, in any way, held
13 against the defense or the defendant in the defense of the
14 case. It's simply that once a jury is selected and we begin
15 the trial, that same jury will hear both phases of the case.

16 So, there won't be another opportunity for us to
17 discuss that final phase of the case except now.

18 Do you understand why we're discussing it now?

19 A Yes, sir.

20 Q All right. Now, ma'am, if you were selected as a juror
21 in any criminal case, and I'm speaking just about this one,
22 but if you were selected as a juror in the criminal case,
23 would you be willing to listen to the law as instructed to
24 you by the judge during the trial?

25 A Yes, sir.

Individual Juror Qualification

1 Q And would you be willing to accept the law as
2 instructed by the judge and apply it to the facts of the
3 case as you find them to be?

4 A Yes, sir.

5 Q Now, is that true, even though you might disagree with
6 the law or you may not like the law, would you still be
7 willing to apply the law as charged to the facts as you find
8 them to be?

9 A Yes, sir.

10 Q All right. Now, ma'am, in this case, and I'm talking
11 specifically about the Torres case because there has been
12 some mention of this case in our local media, are you
13 willing and able to set aside any information or knowledge
14 gathered outside of the courtroom that you might have heard,
15 read, or seen and decide the case purely upon what you hear
16 in the courtroom?

17 Could you do that?

18 A Yes, sir.

19 Q Now, yesterday I mentioned this, but I want to reaffirm
20 this to you and be sure you understand these concepts and be
21 willing to apply them. First of all, in -- a, a criminal
22 defendant in this state and in our nation is always presumed
23 to be innocent. Therefore, he does not have a burden and is
24 not required and doesn't have to prove his innocence.

25 Do you understand that concept?

Individual Juror Qualification

1 A Yes, sir.

2 Q Also, in our state and in your nation, the State has
3 the burden of proving a defendant guilty beyond a reasonable
4 doubt before a conviction can, can occur.

5 Do you understand that concept as well?

6 A Yes, sir.

7 Q Now, are you willing to accept and apply those concepts
8 to any case that you participate in?

9 A Yes, sir.

10 Q Now---

11 A Excuse me.

12 Q Okay. Is it your belief that, just because someone is
13 accused of a crime and they've been actually arrested, that
14 they must automatically be guilty of that crime?

15 A No.

16 Q So, ma'am, is it true then that you could listen to the
17 law and evidence presented to you, and based upon how you
18 find those things to be and the circumstances, that you
19 could find a person not guilty of a crime that they're
20 charged of?

21 A Yes, sir.

22 Q And is it also true that if the evidence convinces you,
23 beyond a reasonable doubt, that a person is guilty that you
24 would be able also to find a person guilty?

25 A Yes, sir.

Individual Juror Qualification

1 Q So, tell me if this describes you or not. You would be
2 able to make up your mind, depending upon the strength of
3 the evidence and what the testimony was and showed, to find
4 a person either guilty or not guilty, is that correct?

5 A Yeah.

6 Q Now, again, we're getting to the point where I do want
7 to discuss with you the death penalty issues and, and how
8 you view those.

9 Normally, in most cases, the judge decides the penalty
10 and the exception to that rule is where the State does seek
11 a conviction of, for murder and does seek the death penalty
12 for that conviction. Then those cases, the jury has the
13 obligation of imposing the appropriate penalty in a separate
14 trial for that purpose.

15 So, the jury comes back in a separate proceeding and at
16 that time you would listen to additional evidence and
17 testimony concerning that issue.

18 Do you understand that, ma'am?

19 A Yeah.

20 Q Now, in the separate proceeding, the only determination
21 made by the jury is the type of sentence that's going to be
22 handed out or passed down, and there's only two choices.
23 Those -- that choice is life imprisonment or death.

24 Do you understand that situation?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, I'm going to ask you to put yourself in a
2 situation theoretically in your mind. Let's assume that you
3 have been selected to serve on a jury where the State is
4 seeking a conviction for murder, and they are also seeking
5 the death penalty in the case. And you and your fellow
6 jurors have already convicted an individual of that murder,
7 and you are now coming back to the courthouse to go back
8 into the second phase of that trial, which is the sentencing
9 phase of that trial.

10 Do you understand the situation that you're in?

11 A Yes, sir.

12 Q Now, ma'am, I gave or placed in the jury room a sheet
13 of paper that described three different kind of jurors.

14 Do you remember that sheet of paper?

15 A Yes, sir.

16 Q And while in that jury room you've had a chance to read
17 the paper that was placed in there, and I'm going to go over
18 with you now the first, the, the three different types of
19 jurors that were described in that.

20 The first type of juror is a juror who is coming back
21 into the second penalty phase and that juror already knows
22 how he is going to vote. He's going to vote for the death
23 penalty every time because he believes that's the most
24 appropriate penalty for someone whose been convicted of
25 murder. So, that juror's mind is made up.

Individual Juror Qualification

1 The second type of juror also has the, his mind made
2 up. He already knows how he's gonna vote before he hears a
3 word. He's going to vote for life imprisonment because that
4 juror believes the State never has the right to take a life
5 in punishment for a crime. So, therefore, he is always
6 going to vote for life imprisonment in every case, every
7 time.

8 The third type of juror coming back into the courtroom
9 at that time doesn't know what he is going to do because he
10 doesn't have his mind made up as to whether he's going to
11 vote for life imprisonment or death. That juror is willing
12 to wait and listen to the evidence and the testimony
13 concerning those issues and then make a decision.

14 Now, do you understand the three different types of
15 jurors I just described?

16 A Yes.

17 Q Now, ma'am, of the three types of jurors that I just
18 described, which of those jurors do you feel best describes
19 you?

20 A The third one.

21 Q Now, ma'am, that means, what you're telling me, is
22 that, under those circumstances, keeping in mind that a
23 defendant has already been found guilty of murder, and the
24 issue of guilt is no longer a concern, you would still be
25 willing to listen to the facts and the evidence in the

Individual Juror Qualification

1 sentencing phase, and if the evidence justified it, you
2 would be willing to sentence to, someone to death.

3 Is that true?

4 A Yes, sir.

5 Q And on the other hand, if you think the facts and
6 circumstances do not justify a death penalty, or for any
7 other reason, you would be willing to sentence someone to
8 life imprisonment.

9 Is that also true?

10 A Yes, sir.

11 Q So, you could sentence someone to either life or you
12 could sentence someone to death depending on the evidence
13 that's shown during that phase of the trial?

14 A Yes, sir.

15 Q Now, ma'am, one thing I want to go over with you that's
16 somewhat personal in nature. But I also think we need to be
17 sure about this before we go further.

18 I've explained that if a jury is selected, and when a
19 jury is selected in this case, that jury will be
20 sequestered, which means you'll be staying in a hotel here.
21 You will be taking your meals together and there will be
22 people there to assist you. Your contact with the outside
23 world will be limited. The types of things that you can see
24 and watch on TV and the types of information that you could
25 read and that sort of thing would be limited.

Individual Juror Qualification

1 We expect that that's, that part of the trial will last
2 about a week. And during that time, obviously it will be
3 very inconvenient for anyone selected in that situation.

4 But my question to you is if you were in that
5 situation, would that pose a serious risk of danger to
6 either your health or your well being?

7 A No, sir.

8 Q And also, if you were in that situation, would it pose,
9 pose a serious risk of danger to the health or well being of
10 anyone who is dependent upon you?

11 A No, sir.

12 Q So, you could handle that situation personally, is that
13 correct, ma'am?

14 A Yes, sir.

15 Q All right. Now, this is the opportunity I told you
16 that I'd give you for attorneys to ask questions or
17 follow-up on mine. We allow the defense to go first.

18 Mr. Allen, are you gonna do that?

19 MR. ALLEN: Thank you, Your Honor.

20 THE COURT: All right. You may proceed.

21 WITNESS: Excuse me.

22 EXAMINATION

23 BY MR. ALLEN:

24 Q Mrs. Steiner?

25 A Yes.

Individual Juror Qualification

1 Q Again, I'm Clay Allen.

2 A I'm sorry. My head's plugged up. So, you're gonna
3 have to -- I can't hear you.

4 Q Okay. I'm also accused of talking too low at times
5 too.

6 A Okay.

7 Q But my name is Clay Allen. And I, along with John
8 Reckenbeil and Kathy Hodges, are representing Tony Torres in
9 this case.

10 We've been provided a copy of your questionnaire and I
11 appreciate your filling it out and I appreciate your being
12 here today and yesterday and your willingness to serve and
13 answer our questions.

14 One thing that was mentioned on your questionnaire and
15 I think you mentioned it again yesterday during the general
16 questioning of the, of that jurors was that you have heard
17 something about this case.

18 A Yes, sir.

19 Q Can you tell me about that, like what you had heard?

20 A I remember seeing Chuck Wright's news conference on TV
21 when he was pretty upset that the defendant had been let out
22 of jail and thought, and thought committed another crime. I
23 think that's all, that's about all I remember about it.

24 Q Okay. And that was around the time that this occurred,
25 right?

Individual Juror Qualification

1 A Right.

2 Q Okay. Is there anything about that that affects you,
3 in any way, as a juror?

4 A I don't think so.

5 Q All right. And in other, in other words, the fact that
6 Sheriff Wright was upset, would that sway your opinion,
7 opinion of how you view the case one way or the other?

8 A No.

9 Q Do you know personally Sheriff Wright?

10 A No, I don't.

11 Q Oh, okay. Just know him as a local figure, right?

12 A Right.

13 Q Okay. And that's about all you've heard about this
14 case?

15 A Yeah.

16 Q Okay. And you did not see the news, or like prior to
17 coming into Court on Monday, you did not notice anything in
18 the news and the newspaper about this case?

19 A No, when I got the summons, you know, the, the name was
20 on there and I was, thought it was weird that they let you
21 know ahead of time about the case, you know. So, I didn't
22 think I wanted to see anything else about it. So, I kind of
23 stayed away from everything.

24 Q Okay. Good. So, so, you intentionally stayed away
25 from any information about the Andres Torres case?

Individual Juror Qualification

1 A Yes.

2 Q Okay. Good and we appreciate that.

3 Of course, as the judge had indicated, we have to talk
4 about certain things even before you heard any evidence and
5 before the jury has made any determination, and I certainly
6 don't want my talking about the penalty or death penalty or
7 life imprisonment insinuating, in any way, as to how I feel
8 this case could or would, should turn out.

9 You understand that?

10 A Uh-huh. (Affirmative).

11 Q But I do have to talk about these matters at this time.
12 What are your views on the death penalty, ma'am, if you
13 have any?

14 A I'm -- I believe that in certain crimes that, you know,
15 the death penalty is warranted, especially a repeat
16 offender, you know, someone that's killed someone more than
17 once or I especially have a problem with people having
18 crimes against children. So, you know, that kind of thing
19 would, would make, be more, tend to lean towards it in cases
20 like that or heinous crimes, you know, like that kind of
21 stuff.

22 Q When you say heinous crimes, what -- do you have -- I
23 mean what, what are you talking about when you're talking
24 about that?

25 A Just, you know, people just do really horrible things.

Individual Juror Qualification

1 You know, I mean I don't -- you know, I don't think
2 everybody deserves to have a death penalty. But you know,
3 like I said, certain, you know, certain crimes that I
4 consider to be horrible towards mankind or whatever, I would
5 agree to it then.

6 Q Okay. In a case -- what we're talking about is a case
7 of, of, you know, when the jury will get to decide the
8 penalty. We're talking about obviously a case of murder,
9 which essentially is a willful, willful killing of another
10 person with malice aforethought. And at that point is where
11 the jury gets to decide. There's already been proven that
12 that person is guilty of murder, and the jury's returned
13 that verdict. They've decided that there is no defense to
14 this case. There's no legal justification. This person is,
15 in fact, guilty of the offense of murder.

16 Do you follow what I'm saying?

17 A (Witness nods affirmatively.)

18 Q And at that point, do you have any belief as to what
19 should be the only appropriate punishment for someone who's
20 been convicted of murder?

21 A No, because I think I, I know, you know, a lot of
22 different ways of murder. I mean I heard of people, you
23 know, they get mad at somebody, they smother them with a
24 pillow or something like that. You know, that's, to me, is
25 not as horrible as some other ways people commit murder. So

Individual Juror Qualification

1 I mean --

2 Q Okay.

3 A To me, it would -- I would just -- it would depend on
4 the facts.

5 Q Okay. So, depending on the facts, when you're talking
6 about facts, are you talking about the facts of the crime
7 itself or are you talking about other facts as well?

8 A Most of the facts of the crimes itself.

9 Q Most of the facts of the crime.

10 In a case where the jury gets to decide the penalty, of
11 course, there's -- the judge is talking about the second
12 phase. And again, nothing erases the fact that a person is
13 been convicted. The person still is been convicted of
14 murder. And they'll be additional evidence presented, what
15 we call evidence in aggravation, evidence that tends to make
16 the case worse than other cases of murder, and there may be
17 also evidence in what's called mitigation.

18 I mean -- do you know what I mean by mitigation?

19 A I'm not sure.

20 Q Okay. Mitigation evidence is evidence which does not,
21 is not rise to the level of a defense. It's not a
22 justification for the crime. Doesn't erase that the
23 person's been convicted.

24 Mitigation is, are, are, is evidence, that in fairness
25 or in mercy, should indicate that a sentence other than

Individual Juror Qualification

1 death would be appropriate.

2 Kind of get an idea?

3 A (Witness nods affirmatively.)

4 Q What I want to know is if you hear a case, and like you
5 were talking about with the heinous facts or something like
6 that, would you be able to consider also matters in
7 mitigation before making that decision about the death
8 penalty or life imprisonment?

9 A Yeah.

10 Q Could you, if, if you were serving on a jury, could
11 you, even if there's evidence of, as you called it, a
12 heinous crime of murder, could you see yourself imposing the
13 sentence of life imprisonment if you think that's
14 appropriate?

15 A Yeah.

16 Q So what I'm hearing you say is that you would remain
17 open and consider other evidence, evidence of mitigation, is
18 that right?

19 A Yes.

20 Q Even if it is, as you, as you called it, a heinous
21 crime, is that right?

22 A Yeah, I would be open to anything other than -- like,
23 like I say, once I hear the facts, I would make me up, up my
24 mind more than anything ahead of, you know, that I can think
25 of ahead of time.

Individual Juror Qualification

1 Q And when we talk about the facts, I want, I want to
2 make sure that I'm, that I understand you.

3 Are you, you're not talking or are you talking just
4 about the facts of the crime itself or are you talking about
5 other facts as well?

6 A Well, I think, during the trial, you listen to the
7 facts, right, and then you said the mitigation doesn't come
8 in until the sentencing phase, right?

9 Q That's correct. That's correct.

10 A So, you know, maybe I would, might have a different
11 opinion after I hear the facts in the trial than I would now
12 cause I don't know what the facts are.

13 Q Yes, ma'am.

14 A You understand?

15 Q And would you remain open as well after you hear the
16 facts of the case itself or of the crime itself, would you
17 also remain open to consider evidence of mitigation if there
18 is any?

19 A Yes.

20 Q And I take it that you've had your opinion of the death
21 penalty and life imprisonment for some time, is that
22 correct?

23 A Yes, sir.

24 Q It's probably developed over a period of time?

25 A Yes, sir.

1 Q Is that right?

2 And of course, have you ever encountered anybody that
3 disagreed with your opinion?

4 A Yeah.

5 Q Okay. Because people have different opinions on this
6 issue, is that correct?

7 A Right. Just about everything in life people have
8 different opinions.

9 Q I'm sorry?

10 A Just about everything in life people have different
11 opinions.

12 Q That's true. That's true.

13 And when you encounter people who have different
14 opinions, of course, do you want your opinion to be treated
15 by respect by them?

16 A Yes.

17 Q I mean -- and, of course, you'd treat their opinion
18 with respect, is that correct?

19 A Yes.

20 Q And you would be willing to listen to what other
21 opinions may be?

22 A Yes.

23 Q May not necessarily follow it, right?

24 A Right.

25 Q Okay. If you had, if you had an opinion as to what the

Individual Juror Qualification

1 appropriate punishment is in this case, even to the extent
2 that everyone else with you disagrees, would you change that
3 opinion if you thought that you had the correct opinion?

4 A That's a tough one.

5 I, you know, as opposed to having a hung jury or
6 whatever, do you finally give in?

7 Is that what you're asking or---

8 Q Well, I'm wanting to know if, if you think that a
9 certain sentence, I'm not gonna say which one, but if you've
10 got a sentence in mind that you believe is the appropriate
11 punishment, and you're the only one that feels that way,
12 would you go along with the others and give up your firmly
13 held position?

14 A Probably.

15 Q And why would that be?

16 A Just, just so -- I mean just so the case could be over
17 and justice could be served I guess. You know, I'm not
18 gonna have, you know, be sitting in a room with 11 other
19 people and have them all mad at me or, you know, I mean even
20 if -- you have to, you have to change your mind about a lot
21 of things. Life is a give and take. I mean, you, you know,
22 you can be adamant about something and still have to
23 compromise and do something. So --.

24 MR. ALLEN: One, one second please, Your Honor.

25 (Pause.)

Individual Juror Qualification

1 Q Thank you, Mrs. Steiner, for your answers.

2 THE COURT: State may proceed, Mr. Barnette.

3 SOLICITOR BARNETTE: Thank you, Your Honor.

4 Please the Court?

5 THE COURT: Yes, sir.

6 EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q Mrs. Steiner, I'm Barry Barnette. I'm part of the
9 prosecution team with Mr. Gowdy and Mrs. Crick in this
10 situation. And I appreciate you being here. I know you've
11 got to be not feeling good with this cold and everything.
12 So, I apologize. But I've got to ask you a couple of
13 questions or whatever.

14 A Okay.

15 Q In follow-up to Mr. Allen's situation where he asked
16 you if you were the only person in the room and the other 11
17 was going the other way, are you the type of person that
18 would listen to other folks and listen to their views as
19 well as have your views?

20 A Yes.

21 Q If it was a situation where both you was adamant that,
22 that life, a life sentence without parole was the possible,
23 was the sentence, would you hold on to that belief if that's
24 something you adamantly believed in?

25 A I just -- you know, I just, I don't -- I can't, I can't

Individual Juror Qualification

1 say whether I -- you know, what I would -- if I was the only
2 one, whether I would hold things up for that, you know.

3 Q Well, would it be a situation where obviously you would
4 listen to the other 11 people and you'd listen to their
5 views and everything.

6 But you'd also tell your view I'm assuming?

7 A Right.

8 Q And it would be a situation where it would be give and
9 take in that situation to decide what the approximate,
10 appropriate verdict would be?

11 So, if it's a verdict that you believed in a hundred
12 percent, would you hold on to that verdict or reverse if all
13 11 was voting for life and you wanted the death penalty,
14 would you, would you hold out for that?

15 The same way with the life way, would you hold out for
16 your own beliefs in that situation if you're adamantly a
17 hundred percent right in your mind?

18 A Probably I -- less if I was the only wanting the death
19 penalty and the others wanted life imprisonment. I would
20 probably give in. But would -- you know, if everybody else
21 wanted death and I was the only who didn't, and, you know, I
22 don't know that I would.

23 Q But if you was somebody in your situation?

24 A If it was eleven to one versus one to eleven, I would
25 probably go with the eleven to one. But I can't say for

Individual Juror Qualification

1 sure.

2 Q But if it's a situation where, where you in your every
3 day life and you're firmly convinced that you are, you're
4 correct in this situation, do you just automatically change
5 your mind in those situations?

6 A No, I mean I fight for what I believe in. But you come
7 to a point where sometimes you question, you know, your
8 beliefs there or whatever.

9 Q Right.

10 A And especially in a case like this, I would think, you
11 know.

12 Q But the reason why you'd change your mind is based off
13 the evidence and the arguments being made in the jury room?

14 A Right.

15 Q Just not because you're just giving in to get along
16 with everybody else?

17 A Right.

18 Q So, it would be a situation where you would listen to
19 the facts of the case?

20 A Yes.

21 Q And you'd listen to the law given by the judge?

22 A Yes.

23 Q And it would be a situation where you -- and you'd talk
24 to your fellow jurors in the jury room just like you do -- I
25 assume you talk to your husband about things or your

Individual Juror Qualification

1 children or people you'll work with.

2 A (Witness nods affirmatively.)

3 Q And you would -- would you talk to those folks and
4 listen to their views?

5 A Yes.

6 Q Has there been times where you disagreed with your
7 husband and your husband changed his mind and vice versa?

8 A More my side I'd say.

9 Q So, he's changed his view more than your side of it?

10 A No, I changed mine. I give in to him more than he
11 gives in to me I would say.

12 Q So, there's -- but, but there's -- but you do it both
13 ways?

14 A Yeah.

15 Q And in fact, you discuss the situation and he has his
16 point of view and you have your point of view?

17 A Yes, sir.

18 Q And that would -- that would be the way of the jury,
19 you would listen to their point of view and you'd also take,
20 stay with your point of view?

21 A Yes.

22 Q So, if you did change your mind, it would be based off
23 the arguments being made by the other jurors as well as the
24 facts and evidence in the case?

25 A Yes.

Individual Juror Qualification

1 Q And it wouldn't be just cause you just wanted to give
2 in just to give in?

3 A No.

4 SOLICITOR BARNETTE: Excuse me for one second, Your
5 Honor.

6 (Pause.)

7 Q Thank you, ma'am, and I hope you, I hope you feel
8 better. I do.

9 A Thank you.

10 THE COURT: Anything further from the defense?

11 MR. ALLEN: No, Your Honor.

12 THE COURT: All right. Ma'am, at this point in time, a
13 couple of things I want to go over with you.

14 Is the information you have given us correct concerning
15 how to contact you?

16 WITNESS: Yes.

17 THE COURT: All right. We're in the process still of
18 qualifying the jury. I will tell you that we expect that
19 process to go on perhaps through tomorrow. I don't know
20 exactly when. But in the -- when we're ready to select the
21 jury, we'll be back in touch with those jurors who are to be
22 summoned back to the courthouse.

23 If you are called and asked to come back, be prepared
24 to stay with us for up to a, a week. So, bring with you
25 whatever you need in that regard.

Individual Juror Qualification

1 Also, I will tell you that my former instruction
2 concerning contact outside of the courtroom or gathering
3 information continues at this time, and you are still under
4 that obligation.

5 You understand that, ma'am?

6 (Witness nods affirmatively.)

7 THE COURT: You have to answer verbally. She can't
8 take down a head nod.

9 WITNESS: Oh, yes.

10 THE COURT: I'm sorry.

11 So, at this point in time I'm going to allow you to go.
12 Thank you very much for coming today.

13 WITNESS: Okay. Thank you.

14 (The following takes place outside the hearing of the
15 juror.)

16 THE COURT: State's position?

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

18 From a, from a Whitt, Waynewright standpoint she's
19 qualified. From a Bennett standpoint for being a hold out,
20 the answers admittedly were different depending on which
21 advocate posed them. You can cite to points in the record
22 where she said she would cave in. You can cite points in
23 the record where she said she would not.

24 Before this juror was disqualified on the Bennett
25 issue, I, I would respectfully ask the Court, who's not an

Individual Juror Qualification

1 advocate, who's impartial, to phrase the question in such a
2 way, I'm not suggesting it hadn't already been done, but,
3 but she is qualified. On the issue of whether or not she
4 would be the hold out, she's given answers on both sides.
5 And, and I just think it would make a difference if, if a,
6 if a neutral, impartial, non-advocate asked the questions.

7 THE COURT: Defense position.

8 MR. ALLEN: Your Honor, it's my position that---

9 THE COURT: Of course, subject to your previous
10 objections.

11 MR. ALLEN: Subject to my previous objections, which I
12 appreciate.

13 But, more specifically, as to the, essentially the
14 holding on to her opinion and belief, and I am very
15 concerned about that, and I would submit that she is not
16 qualified on that basis because she is indicated, and I was
17 asking the questions so that I wasn't trying to favor one
18 form of the verdict or the other, but that it was clear to
19 me that she indicated that if she believed that a certain
20 sentence was the appropriate sentence, that she would go
21 along with the other 11. And, and I wasn't even asking
22 about whichever one it was.

23 So, I don't think that she's qualified because of that
24 reason, that she would not hold on to her strongly held
25 opinion and belief when it comes to sentence if she believes

Individual Juror Qualification

1 something is the appropriate sentence and if she disagrees
2 with the other 11, and I would move to disqualify her.

3 THE COURT: All right. I'm gonna find that the juror
4 is disqualified for that reason.

5 (Pause.)

6 THE COURT: Lunch is here.

7 All right. Before we take lunch, the bailiff just
8 informed me that Juror Number 155, Contessa Jones, for some
9 reason has asked to be allowed to speak with me. So, I'm
10 gonna ask her to step into the courtroom, and we'll find out
11 what that issue might be before we break for lunch.

12 If you'll ask her to step in.

13 (The following takes place within the presence of the
14 juror.)

15 THE COURT: Yes, ma'am, you are Contessa Jones?

16 JUROR: Yes, sir.

17 THE COURT: You asked to speak to me.

18 JUROR: Uh-huh. (Affirmative).

19 well, I enlisted in the Army or whatever. And so, I
20 wouldn't be able to do it cause I don't know when I'm
21 leaving for basic training.

22 THE COURT: Have you received orders at this time?

23 JUROR: Yes, sir.

24 THE COURT: To be where when?

25 JUROR: For basic training?

Individual Juror Qualification

1 THE COURT: Yes.

2 JUROR: At Fort Jackson.

3 THE COURT: At what, on what date?

4 JUROR: I don't know. I have to go back down to Nelson
5 to find out.

6 THE COURT: When are you suppose to do that?

7 JUROR: I don't know.

8 THE COURT: All right, ma'am. I'm gonna let you stay
9 with us. You step back into the jury room. Thank you very
10 much.

11 JUROR: Okay.

12 (Whereupon, the following takes place outside the
13 presence of the juror.)

14 THE COURT: All right. We'll break for lunch. Let's
15 see. Let's try to get started back about two o'clock.
16 Thank you very much.

17 (Whereupon, a short recess was taken at this time.)

18 THE COURT: Mr. Campbell, how are you doing?
19 Have a seat in the witness stand for me please.

20 (Juror complies.)

21 THE COURT: Raise your right hand.

22 TONEY W. CAMPBELL, having been
23 previously sworn, testified as follows:

24 EXAMINATION

25 BY THE COURT:

Individual Juror Qualification

1 Q Have a seat, Mr. Campbell.

2 Your name is Toney W. Campbell, is that correct?

3 A Yes, sir.

4 Q And you received a summons from the Clerk's Office to
5 be present for Court, is that correct?

6 A Yes, sir.

7 Q Did you appear yesterday?

8 A I did not appear yesterday. When -- I, I applied to
9 get excused or exempted from the jury duty based on the fact
10 that I am a felon several weeks prior. And when I got the
11 letter back saying there was no excuse or no excuse, I put
12 the wrong date in my book.

13 Q Well, sir, I'm gonna show you a copy of the information
14 sheet, you want to hand that to him, Mr. Turley, that you
15 sent in.

16 In that particular information sheet, while it does
17 have checked on it that you were a convicted felon, it also
18 asked you to state the offense and other information to
19 identify that conviction.

20 Do you see that on the form?

21 A No, sir, I do not yet.

22 THE COURT: Mr. Humphries, if you'll help him. He
23 checked it over there on the left side down at the bottom
24 where it says I'm---

25 BAILIFF: Okay. I've been convicted.

Individual Juror Qualification

1 A Yes, sir, I do.

2 Q Do you see on there where it indicates that you have to
3 indicate the nature of the offense?

4 A I do now.

5 Q Did you do that?

6 A No, sir, I did not.

7 Q Okay. And so, you were then expected to -- you were
8 told by the clerk to be here, is that correct?

9 A And I intended to be.

10 Q And tell me what happened.

11 A When I rewrote this date back on my planner, I wrote it
12 on the wrong day.

13 Q So, you did not write the correct date down.

14 Is that what you're saying?

15 A That's correct.

16 Q All right. Now, under oath, I'm asking you just what
17 offense were you convicted of?

18 A Possession of marijuana.

19 Q Simple possession first offense?

20 A It -- I don't know about offense wise. I know it was
21 more quantity that they could bear without it being a
22 felony.

23 Q So, did you plead guilty or were you found guilty of
24 that offense?

25 A I pled guilty.

Individual Juror Qualification

1 Q Was that in Circuit Court or in the Magistrate's Court?

2 A I don't -- I couldn't say. It was a long time ago.

3 THE COURT: I don't know if you have that information
4 still available to you, Mr. Solicitor.

5 Do you have it, the list that indicates---

6 SOLICITOR GOWDY: Yes, sir. Yes, sir, Your Honor. I,
7 I have our summary of his record. I'm happy to pass it up
8 or however---

9 THE COURT: Just tell me about it.

10 SOLICITOR GOWDY: We show a 1992 disqualifying
11 conviction, possession with intent to distribute marijuana.
12 The other convictions that we show are magistrate level.
13 But the PWID marijuana would be a qualifying---

14 THE COURT: Disqualifying.

15 SOLICITOR GOWDY: ---or a disqualifying conviction.

16 THE COURT: All right, sir. Then I would order you to
17 come back for jury service, but you are disqualified for
18 that reason. Hope you understand why you were ordered or
19 asked to come down since you didn't put the proper
20 information on the form.

21 JUROR: Yes, sir.

22 THE COURT: Do you understand that?

23 JUROR: I do.

24 THE COURT: Okay, sir. I'm gonna allow you to leave at
25 this time. Thank you very much. You're free to go.

1 JUROR: Is it possible for me to not get called again
2 based on that?

3 THE COURT: Sir, I have no control over who they place
4 on that list. I can not do that for me. Thank you, sir.

5 JUROR: Thank you.

6 THE COURT: Next time fill out the form more
7 completely.

8 JUROR: Yes, sir.

9 (The following takes place outside the presence of the
10 juror.)

11 THE COURT: All right. Ladies and gentlemen, for your
12 information, I am rearranging the schedule of people to come
13 in.

14 Let's see. We are going to go through what time today?

15 BAILIFF: Two o'clock.

16 THE COURT: The two o'clock group will be, will --
17 we're gonna keep them here through the two o'clock group.
18 Everybody else after two o'clock I've instructed to be here,
19 here at nine o'clock. So, the three o'clock group will be
20 here at nine o'clock in the morning, and then we're backing
21 everybody off from that.

22 So, I'll just make you aware I am having the clerk get
23 in touch with those jurors for tomorrow and give them new
24 times to be here. And then after that, we're going to
25 inform jurors to call in and we'll be assigned times using

Individual Juror Qualification

1 the call in number. I just wanted to make you aware that we
2 are making those adjustments since we're not quite keeping
3 up with the schedule I had hoped we would keep up.

4 Now, let's see. We finished with Mrs. Steiner.

5 Marva Bunche, would be Number 43, would be our next
6 one.

7 BAILIFF: Okay.

8 MARVA BUNCHE, having been previously
9 sworn, testified as follows:

10 EXAMINATION

11 BY THE COURT:

12 Q All right, ma'am. Your name is Marva Bunche, is that
13 correct?

14 A Yes, sir.

15 Q And Mrs. Bunche, I'm going to remind you that yesterday
16 you were placed under oath to tell the truth.

17 Do you recall that?

18 A Yes, sir.

19 Q And ma'am, I'm telling you that because I want to
20 remind you that you're still under oath for purposes of our
21 questioning at this time.

22 Do you understand that as well?

23 A Yes, sir.

24 Q I want to apologize to you for the inconvenience we're
25 causing you. I understand that. Unfortunately, courts and

Individual Juror Qualification

1 jury systems sometimes do that. And again, I apologize for
2 the inconvenience that you might be occasioned.

3 I do want to tell you, however, that I realize that
4 you're in a very unusual situation. You probably are not
5 use to sitting in a courtroom in a chair behind the
6 microphone. I understand that it can be an uncomfortable
7 situation and we're gonna do everything that we can to make
8 this move along for you and be as comfortable as possible.

9 But it is necessary that we ask you some questions
10 concerning your views on several subjects, and there are no
11 right or wrong answers to the questions we're about to ask.
12 We simply are trying to gather information for jury
13 selection purposes.

14 I do, will -- I will tell you that I'll be asking you a
15 series of questions. The attorneys will be allowed to
16 follow-up on that once I've finished.

17 The first question I have, since you and I talked last,
18 last week, has anyone talked to you about this case,
19 contacted you about this case, in any way?

20 A No, sir.

21 Q Have you read or seen any information or heard anything
22 that would cause you to form any opinions about this case
23 since we talked yesterday?

24 A No, sir.

25 Q Now, ma'am, have you ever participated or responded to

Individual Juror Qualification

1 any blog or other Internet site concerning the death
2 penalty?

3 A No, sir.

4 Q Have you ever participated in any political activities,
5 rallies, demonstrations, concerning the imposition of the
6 death penalty?

7 A No, sir.

8 Q Now, ma'am, if I were describing you as a juror, would
9 it be safe to say that you can put aside anything that you
10 may have heard prior to this trial and decide the case
11 solely upon what you hear in the courtroom?

12 A Yes, sir.

13 Q Now, ma'am, while you were waiting you were shown a
14 list of potential witnesses.

15 Do you remember that list?

16 A I remember that list, yes, sir.

17 Q A list of individual's names?

18 A Yes, sir.

19 Q About two and a half pages long I believe?

20 A Yes, sir.

21 Q All right. Did you get a chance to look at those
22 names?

23 A Yes, sir.

24 Q Now, ma'am, after looking at that list and going over
25 those names, do you have any social, business, or personal

1 connection with anyone named on that list?

2 A No, sir.

3 Q Do you -- are you related, by either blood or marriage,
4 or have you ever been related by blood or marriage to anyone
5 listed on that list?

6 A No, sir.

7 Q Now, ma'am, I'm going to ask you a series of more
8 personal questions now that have to do with certain topics
9 involving in this case. Obviously we're not trying to
10 invade your privacy. We're trying to find out your
11 opinions. You seem to be a strong enough individual that if
12 you have opinions on subjects you'll be able to talk to me
13 about those without feeling threatened.

14 Is that true?

15 A Yes, sir.

16 Q All right. Now, ma'am, I do want to make you aware
17 that we are gonna, some of the things I'm gonna ask you
18 about will involve the death penalty. I've explained to you
19 yesterday this trial will involve two stages. A trial on
20 guilt or innocence on the charges. If the defendant were
21 found guilty of the alleged offense of murder, they'll be a
22 separate trial concerning the penalty. The same jury will
23 be involved in both of those cases.

24 I'm going to talk to you about the death penalty among
25 other things today. I know that's kind of like putting the

Individual Juror Qualification

1 cart before the horse cause we don't know if we'll ever get
2 to that trial depending on the decision in the first case.
3 But you understand this will be the only opportunity, prior
4 to trial, that we'll be able to talk to the jurors about
5 their views on the subject.

6 So, the fact that we're talking about the penalty issue
7 shouldn't be held against the defendant or against any
8 defenses that he is raising. It's simply the only
9 opportunity we'll have to do that.

10 Do you understand what I'm saying, ma'am?

11 A Yes, sir.

12 Q All right. Now, if you were a juror in a criminal
13 case, would you be willing to listen to the law as
14 instructed to you by the judge?

15 A Yes, sir.

16 Q would you be willing to accept the law as given to you
17 by Court and apply it to the facts of the case as you find
18 them to be?

19 A Yes, sir.

20 Q Now, ma'am, is that true even though you might not like
21 the law the judge describes to you or even though you might
22 disagree with the law, would you still be willing to accept
23 the law and apply it to the facts in the case?

24 A Yes, sir.

25 Q Well, you hesitated somewhat.

1 Is there some reason for that hesitation?

2 A I don't believe in the death penalty.

3 Q Okay. So, what I -- well, you're probably getting
4 ahead of my questions.

5 A Okay.

6 Q But I'll go ahead and go to that.

7 A Okay. I'm sorry.

8 Q That's okay.

9 My, my question to you about that, let's just go
10 straight to that, I gave you a sheet of paper also that
11 described three different kinds of jurors.

12 A Right.

13 Q Do you remember that paper?

14 A Yes, sir.

15 Q And did you read that?

16 A Yes, sir.

17 Q All right, ma'am. What I would ask you to do is that
18 you place yourself in the position of someone who was on a
19 jury in a murder case where the death penalty is being
20 sought, and you and your fellow jurors have found the
21 defendant guilty of the murder. And you're about to go back
22 into the Court to determine the question of the appropriate
23 penalty, either life imprisonment or death, are the only two
24 choices.

25 And just as before you walked back into that courtroom,

Individual Juror Qualification

1 I'd like for you to apply those three different examples
2 that I gave. One was a gentleman or a person who would be
3 going back, going back into the room who believes that death
4 is the only appropriate sentence or punishment for someone
5 who's found guilty of murder. So, that juror has already
6 made up their mind, before we even start the sentencing
7 process, that they would vote for the death penalty.

8 The other juror, the second juror would be someone who
9 believes that the State never has a right to take a life in
10 punishment of a crime, and, therefore, that person also has
11 already made up their mind, before they walked into the
12 sentencing phase of the trial, to vote for life
13 imprisonment.

14 The third person is someone who hasn't made up their
15 mind either way. They want to listen to the facts and
16 circumstances as presented during the sentencing phase, and
17 then make a decision as to what the most appropriate penalty
18 would be, either life or death.

19 Now, ma'am, among those three difference choices, which
20 one best describes yourself?

21 A Life sentences.

22 Q Beg, beg your pardon?

23 A Life sentences.

24 Q So, you would already have your mind made up for life
25 sentencing?

1 A Yes, sir.

2 Q Is that correct, ma'am?

3 A Yes, sir.

4 Q All right. I'm gonna allow the attorneys to ask any
5 questions that they'd like to ask. I'll go first to the
6 defense.

7 MRS. HODGES: Thank you, Your Honor.

8 May it please the Court?

9 EXAMINATION

10 BY MRS. HODGES:

11 Q Mrs. Bunche, I'm Kathy Hodges, and I represent Mr.
12 Torres along with Mr. Reckenbeil and Mr. Allen.

13 Even though you may not agree with the death penalty,
14 the, the judge would basically or the Court would instruct
15 you basically that, that even though you may not agree with
16 the law, the question would be whether you think you could
17 follow the law.

18 And so, I guess my question to you is is there ever a
19 circumstance that, that, that you could consider in which
20 you might be able to impose a death sentence?

21 A Where I might oppose a death sentence?

22 Q Right. where, where you might, where you might
23 actually be able to vote for the death penalty.

24 A Well, I might be able to vote for it---

25 Q Yeah.

Individual Juror Qualification

1 A ---if I oppose it?

2 Q Even though you may, you may not personally agree with
3 the death penalty---

4 A Right.

5 Q ---can you impose, imagine a situation, for example,
6 somebody's convicted of murder and, and the State's able to
7 produce some evidence to you that it's a very particularly
8 gruesome murder or very, you know, the kind of, more severe
9 type case, do you believe, that in that instance, that you
10 would actually consider that evidence and vote for the death
11 penalty---

12 A No.

13 Q ---in that particular situation?

14 A No. No, ma'am.

15 Q Okay. So, there's no situation where you could
16 actually vote for the death penalty?

17 Is that what I'm hearing you tell me?

18 A Right.

19 Q Okay.

20 THE COURT: State wish to ask any questions?

21 SOLICITOR GOWDY: Thank you for your time.

22 But no, sir.

23 THE COURT: All right. Ma'am, at this point in time
24 I'm going to release you.

25 Is the contact information you've given us correct?

1 WITNESS: Yes, sir.

2 THE COURT: All right, ma'am. And if -- we are going
3 to go through qualifying additional individuals. Once we
4 finish that, we would be in touch with the individuals we've
5 gone over to let you know whether you need to report back or
6 not. So, we'll be calling you in the not too distant
7 future.

8 WITNESS: All right.

9 THE COURT: Okay.

10 WITNESS: Thank you.

11 THE COURT: Thank you, ma'am. You're free to go.

12 (The following takes place outside the hearing of the
13 juror.)

14 THE COURT: State's position?

15 SOLICITOR GOWDY: Your Honor, I think she's
16 disqualified.

17 THE COURT: Defense position?

18 MRS. HODGES: I'm not entirely sure I can find any
19 reason to disagree with Mr., the solicitor.

20 THE COURT: All right. The Court would also find that
21 she is disqualified.

22 All right. Mrs. Contessa Jones please.

23 CONTESSA JONES, having been previously
24 sworn, testified as follows:

25 EXAMINATION

Individual Juror Qualification

1 BY THE COURT:

2 Q All right, ma'am. Your name is Contessa Jones, is that
3 correct?

4 A Uh-huh. (Affirmative).

5 Q And you're gonna have to answer verbally. Shaking your
6 head and saying uh-huh is not gonna be---

7 A Yes.

8 Q We can't get that down on the record. You have to
9 answer yes or no and speak up for me.

10 Okay?

11 A Yes, sir.

12 Q Okay.

13 A Uh-huh. (Affirmative).

14 Yes, sir.

15 Q You understand?

16 Thank you.

17 Now, Mrs. Jones, you were before me yesterday and at
18 that time you took an oath to tell the Court the truth.

19 Do you remember that?

20 A Yes, sir.

21 Q I'm reminding you of that fact because you're still
22 under oath to tell the Court the truth.

23 Are you aware of that?

24 A Yes, sir.

25 Q Now, ma'am, I know it's usual for you to be -- you want

Individual Juror Qualification

1 to slide a little closer to the microphone for me.

2 All right. I know it's not a usual thing for you to be
3 in a courtroom sitting behind a microphone. I understand it
4 can be uncomfortable. What we're going to do though is just
5 ask some questions concerning your opinions. There are no
6 right answers. There are no wrong answers to the questions.
7 We're just trying to understand how you feel about certain
8 things.

9 Do you understand that, ma'am?

10 A Yes, sir.

11 Q If, at any time during my questioning, you feel
12 uncomfortable or you wish for us to, you wish to discuss
13 something with me, you let me know and we'll see if we can't
14 arrange that.

15 Okay, ma'am?

16 A Okay.

17 Q All right. Now, the first thing I'm going to ask you,
18 since we talked yesterday, has anybody contacted you about
19 this case or have you read, heard, or seen anything about
20 the case?

21 A No, sir.

22 Q Have you been exposed to any information about this
23 case since yesterday that might cause you to form an opinion
24 about this case one way or the other?

25 A No, sir.

Individual Juror Qualification

1 Q Have you ever participated in any type of blog or
2 other, other Internet site that has to do with imposing the
3 death penalty?

4 A No, sir.

5 Q Have you ever participated in any political activities
6 such as demonstrations, rallies, or meetings where the death
7 penalty was discussed or was the issue?

8 A No, sir.

9 Q Now, if you were selected to be on a jury, could you
10 put aside anything that you may have heard, read, or seen
11 previously and decide the case solely upon what goes on in
12 the courtroom?

13 A Yes, sir.

14 Q Now, ma'am, you were shown a witness list before you
15 came in here, is that right?

16 A Yes, sir.

17 Q And I don't want you to identify anyone on that list by
18 name, but I would like for you to tell me whether or not you
19 have any social, business, or personal connection with
20 anybody listed on that list?

21 A No, sir.

22 Q And are you related, in any way, by blood or marriage
23 to anyone who was listed on that list?

24 A No, sir.

25 Q So, as far as you know, you have no connection with the

1 people who were listed, is that correct?

2 A That's correct.

3 Q All right. Now, ma'am, I'm going to go over some
4 matters with you about your opinions now. We've been
5 talking kind of generally about some stuff. But I want to
6 go over some opinions that you have. And as I told you,
7 there's no right answers or wrong answers to my questions.
8 We're trying to find out how you feel about certain matters
9 that are important in selecting a jury.

10 You appear that you would be willing to tell me your
11 opinions and not feel threatened by that.

12 Is that true?

13 A That's correct.

14 Q All right. Now, I explained yesterday, if you were
15 selected on the jury, the trial will have two phases.
16 They'll be one trial where the guilt or innocence is
17 decided. And if the defendant, during that, at the end of
18 that trial, is found guilty of the offense of murder, the
19 state is asked for the death penalty. There would be a
20 separate trial concerning the penalty to be imposed, either
21 a life sentence or death.

22 Do you understand that?

23 A Yes, sir.

24 Q The same jury will handle both trials, and there will
25 be separate evidence given on the second trial. And I'm

Individual Juror Qualification

1 telling you that because the reason we're discussing penalty
2 now is because, if you're selected on a jury, there will not
3 be another opportunity to go over those matters with you.

4 So, please don't think, because we're talking about
5 penalties, that that is anything against the defendant or
6 against any defense he may have to the original charge.
7 It's simply this is the only chance we have to do that.

8 Do you understand that?

9 A Yes, sir.

10 Q All right. Now, ma'am, if you were selected to be on a
11 jury, would you be willing to listen to the law as
12 instructed to you by the judge?

13 A Yes, sir.

14 Q Would you be willing to accept that law and apply it to
15 the facts of the case?

16 A Yes, sir.

17 Q And would you be willing to apply that law even though
18 you might disagree with the law or you might not like the
19 law?

20 Would you still take the law as the judge gave it to
21 you and apply it to the facts as you find them to be?

22 A Yes, sir.

23 Q Now, ma'am, in this particular case there has been some
24 information in the press about this case, and I want to ask
25 you specifically about this case.

Individual Juror Qualification

1 Are you willing to set aside any information or
2 knowledge that may of been gained from this case, about this
3 case from any source, and decide the case purely upon what
4 you hear in the courtroom?

5 A Yes, sir.

6 Q Yesterday we talked about a couple of concepts and I
7 want to be sure that you understand them, and that we have a
8 understanding about them.

9 First of all, in this state and in this nation,
10 everyone who is charged with the commission of a crime is
11 presumed to be innocent, and those defendants have no
12 obligation or no burden whatsoever to prove themself
13 innocent.

14 Do you understand that?

15 A Yes, sir.

16 Q Also, in this state and in this nation, the State has
17 the burden of proving the defendant's guilt beyond a
18 reasonable doubt. So, the State has the only burden of
19 proof in the case.

20 Do you understand that?

21 A Yes, sir.

22 Q And would you be willing to apply both of those
23 concepts to this case if you were selected on the jury?

24 A Yes, sir.

25 Q Now, do you believe that just because someone has been

Individual Juror Qualification

1 accused of a crime and arrested that they must automatically
2 be guilty of that crime?

3 A No, sir.

4 Q So, do you believe then that you would be willing to
5 listen to the law and the evidence, and based on your view
6 of those matters, that you could possibly find somebody not
7 guilty of a crime charged, that they were charged with?

8 A Yes, sir.

9 Q By the same token, if you were convinced, beyond a
10 reasonable doubt, that the person charged was guilty of the
11 crime, could you or would you be willing to find someone
12 guilty of a crime?

13 A Yes, sir.

14 Q So, tell me if this describes then how you would feel
15 if you were on a jury.

16 Based upon the strength of the evidence, and what the
17 testimony showed and what the law, as given to you, was,
18 that you could either find a person guilty or not guilty?

19 Is that true?

20 A Yes, sir.

21 Q Now, I'm going to talk about the penalty as I indicated
22 to you in a little more detail. In South Carolina, normally
23 the judge sets the penalty if somebody's found guilty. The
24 exception to that is in the case of a murder trial where the
25 state seeks the death penalty, and in that case we have that

Individual Juror Qualification

1 separate trial, should the defendant be found guilty of the
2 murder, to determine the penalty to be imposed.

3 So, under those circumstances, if a jury convicts a
4 defendant of the crime of murder so that the guilt has been
5 determined, the same jury comes back, in a separate
6 sentencing procedure, and listens to additional evidence,
7 more testimony concerning the issue of the appropriate
8 penalty.

9 Do you understand that, ma'am?

10 A Yes, sir.

11 Q Now, I want you, I want you to put yourself in this
12 situation. Let's assume that you were selected on a jury in
13 a murder trial, and you and your fellow jurors find the
14 defendant guilty of the murder. The State, in that case,
15 has sought the death penalty.

16 So, the same jury that found him guilty of the murder
17 will be coming back in a separate trial to determine the
18 penalty, what penalty is appropriate. And you're on that
19 jury and you're about to walk back into that courtroom to
20 start the penalty phase of the trial.

21 Now, I gave you a sheet of paper to read before you
22 came in here describing three different types of jurors.

23 Do you remember that sheet of paper?

24 A Yes, sir.

25 Q All right. There were three jurors described and I'm

Individual Juror Qualification

1 going to go over those jurors with you. The first type of
2 juror in that situation is a juror, juror who is already
3 made up their mind before they walk in for the second trial.
4 It's their belief that the only appropriate penalty for
5 someone who commits murder is the death penalty. So that
6 particular juror has already made up his or her mind to vote
7 for the death penalty.

8 The second juror I'll describe to you has also already
9 made up his or her mind. That person believes that the
10 State has no right to take anyone's life in punishment for a
11 crime and is opposed to the death penalty, and, therefore,
12 has already made up his or her mind to vote against the
13 death penalty and in favor of the life sentence.

14 The third juror is someone who has not made up their
15 mind already. That juror wants to come back into the jury
16 room and listen to the evidence and will have to then, after
17 listening to the evidence, determine whether or not that
18 juror is gonna vote for imposition of the life sentence or
19 whether or not that juror is gonna vote for imposition of
20 the death penalty.

21 Now, do you understand those three different types of
22 jurors?

23 A Yes, sir.

24 Q Now, which of those three types of jurors do you think
25 would describe you if you were in that situation?

Individual Juror Qualification

1 A I think it will be the third one.

2 Q So, you would be willing to walk in and listen to the
3 evidence, review the evidence, and make a decision as to the
4 proper penalty?

5 A Yes, sir.

6 Q Now, ma'am, if you -- would you be willing then to
7 listen to the facts and the evidence in the second phase of
8 the trial, and if the evidence justified it, would you be
9 willing to sentence someone to death?

10 A Oh, yes, sir.

11 Q And also if the facts and the evidence do not justify
12 imposition of the death penalty, or for any other reason,
13 you decide that the death penalty is not appropriate, would
14 you be willing to sentence someone to life imprisonment?

15 A Yes, sir.

16 Q So, that means, given whatever the facts and
17 circumstances are, you would be willing, under some
18 circumstances, to sentence someone to death or to life
19 depending on those facts.

20 Is that true?

21 A Yes, sir.

22 Q Now, I want to go over with you one thing that would be
23 personal in nature, and you've explained to me the problem
24 that you have with the military that's potentially coming
25 up. And I realize that jury service is an inconvenience. I

Individual Juror Qualification

1 know that.

2 But the question I want to ask you is if you're
3 selected on a jury, you would be sequestered for a period of
4 time of about five to seven days. We don't know exactly how
5 long. About a week you would be in, in the trial. And
6 during that time you would be staying in a hotel and you
7 would be given your meals, and you would be, have limited
8 access to the outside world.

9 And my question to you is if you were in that
10 situation, would that pose a serious risk of danger to your
11 health or your well being?

12 A No, sir.

13 Q Or would it, would it, if you were in that situation,
14 would it pose a serious risk of danger to the health or well
15 being of anyone who is dependent upon you?

16 A No, sir.

17 Q All right. At this time I told you I was gonna, I was
18 gonna let the lawyers follow-up on my questions. We allow
19 the defense to go first.

20 And Mrs. Hodges, I believe it's gonna be you, is that
21 right?

22 MRS. HODGES: Yes, sir.

23 THE COURT: You may proceed.

24 MRS. HODGES: Thank you, Your Honor.

25 EXAMINATION

Individual Juror Qualification

1 BY MRS. HODGES:

2 Q Mrs. Jones, I appreciate your time being here with us.
3 You had not indicated on your form that you've heard
4 anything about this case.

5 Do you remember hearing anything about the case when it
6 actually happened about a year and a half ago?

7 A No, ma'am.

8 Q Okay. You indicated that you were, graduated from
9 Spartanburg High School?

10 A Yes, ma'am.

11 Q Is that right?
12 When did you graduate?

13 A Last year.

14 Q Last year.
15 2007?

16 A (Witness nods affirmatively.)

17 Q Okay. Are you working anywhere right now?

18 A No, ma'am.

19 Q Okay. Is that part of the reason why you enlisted in
20 the Army?

21 A Yes, ma'am.

22 Q Okay. Is there a particular area that you're
23 interested in going into in the Army?

24 A Army.

25 Q I mean any particular division that you know of?

Individual Juror Qualification

1 A My job?

2 Q Uh-huh. (Affirmative).

3 A Supply.

4 Q Supply.

5 Okay. So, back in May of 2007 you were still in high
6 school, is that right?

7 A Yes, ma'am.

8 Q Okay. Based on what you've heard in this courtroom
9 today and yesterday, have you formed an opinion about this
10 case?

11 A No, ma'am.

12 Q Okay. In these types of cases, basically, as the judge
13 has told, we sort of have two parts. One is the situation
14 where the people sitting on the jury actually listen to the
15 evidence, listen to the law as the judge tells them what the
16 law is, and then they apply the law to the facts that they
17 find, and then they write their verdict in the case. In
18 this type of case somebody would have to be found guilty of
19 murder before we can go forward with anything else.

20 You understand that?

21 A Yes, ma'am.

22 Q Okay. And when we're talking murder, we're talking
23 about basically the willful killing of another human being
24 by somebody that has malice aforethought. Basically malice
25 means that they kind of got a ill will, kind of a, a

Individual Juror Qualification

1 depraved, depraved heart, kind of evil thinking.

2 Do you understand what I mean?

3 A Yes, ma'am.

4 Q Okay. So, in this particular case, situation, the
5 person whose been found guilty of murder, malice murder, no
6 lawful excuse or reason for them to, to, you know, to have
7 done the killing, basically they're responsible for killing
8 another human being, do you believe that the death penalty
9 is the only appropriate sentence in that kind of case?

10 A Oh, no, ma'am.

11 Q Okay. Some murder cases just are, are worse than
12 others and that's why we're involved in this whole process
13 is because the State feels that, in this particular case,
14 there may be some aggravating circumstances, and the, the,
15 the theoretical case that the judge is talking to you about
16 kind of where, you know, the person is found guilty of
17 murder, and the State's able to prove aggravating
18 circumstances, do you believe that, once we have an
19 aggravating circumstance, something that makes this case
20 worse than any other case, that the only appropriate penalty
21 in that case, in that particular kind of case is the death
22 penalty?

23 A Yes, ma'am.

24 Q You do?

25 A (Witness nods affirmatively.)

Individual Juror Qualification

1 Q Okay. Also, in these types of cases, you're able to,
2 the defense is able to bring in what we call mitigating
3 factors. Something that basically would lessen the severity
4 of the punishment. Something that either says, you know,
5 either in fairness or in mercy, kind of justifies giving a
6 life imprisonment sentence instead of the death penalty.

7 In that kind of case that we just talked about, that
8 kind of case where there's a murder, somebody did a willful
9 killing of another person, and there's an aggravating
10 circumstance, would you be able to listen to the mitigating
11 evidence and consider giving a life sentence or do you still
12 think that the death penalty is the only appropriate
13 penalty?

14 A I'll listen.

15 Q Okay. You'll listen.

16 But do you think, do you think that the death penalty
17 would still be the only appropriate penalty?

18 A No, ma'am.

19 Q Okay. So, you're telling me that you can listen to
20 both what the aggravating circumstances are and what the
21 mitigating circumstances are and then be able to, to, to, to
22 consider a life sentence?

23 A Yes, ma'am.

24 Q Okay. Talking about your Army situation, I understand
25 that you're suppose to be going to Fort Jackson, is that

1 right?

2 A Yes, ma'am.

3 Q Do you have an idea as to when they're suppose to be
4 letting you know when you're suppose to go?

5 A No, ma'am.

6 Q Okay. So, they haven't given you any, any sort of
7 range of, of notification?

8 A No, ma'am.

9 Q Okay. I mean are you anticipating that it's gonna be
10 soon?

11 A My recruiter said it might be. I don't know.

12 Q But the recruiter wasn't able to give you anything
13 other than, than it might be soon?

14 A No, ma'am.

15 Q Okay. When did you last talk to your recruiter?

16 A Last night.

17 Q Last night.

18 okay. All right. Can you think of any sort of
19 situation or circumstance where or type of case where you
20 would think that the death penalty would be the only
21 possible sentence or the only appropriate sentence?

22 A Beating someone.

23 Q Okay. Have you talked with other friends or family
24 members or, or people about the, about the death penalty?

25 A No, ma'am.

Individual Juror Qualification

1 Q Okay. And when you say beating someone, just to make
2 sure that I understand what you mean by that---

3 A Like beating them to death, but like if you shoot them.

4 Q Uh-huh. (Affirmative).

5 A You should serve life in prison. But like brutally
6 beating them---

7 Q Uh-huh. (Affirmative).

8 A ---I think you probably should get the death penalty,
9 yeah.

10 Q Okay. And is that something that, that you feel pretty
11 strongly?

12 A Yes, ma'am.

13 Q Okay. Is that something, an opinion that you've kind
14 of had for, for a while?

15 A I mean yeah.

16 Q Okay. I mean just trying to find out -- like the judge
17 says, there's no right or wrong answer. Just trying to make
18 sure we understand what your opinions are.

19 In a case in the situation that you're just talking
20 about, the beating cases, is there any sort of evidence that
21 you could consider that might change your opinion as to
22 whether that's an appropriate, whether the death penalty is
23 the only appropriate sentence?

24 A No.

25 Q Okay. So, nothing could change your mind in that, in

Individual Juror Qualification

1 that type of situation?

2 A No.

3 Q Okay. Thank you, Mrs. Jones. That's all I have.

4 THE COURT: State.

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

6 EXAMINATION

7 BY SOLICITOR GOWDY:

8 Q Good afternoon, Mrs. Jones.

9 A Good afternoon.

10 Q My name is Trey Gowdy. I'm part of the prosecution
11 team.

12 You were at Spartanburg High this time last year?

13 A Yes, sir.

14 Q You graduated last year?

15 A Yes, sir.

16 Q Did you take any history or philosophy or political
17 science classes where the death penalty might have been
18 discussed?

19 A No, sir.

20 Q What is -- well, before I get to the basis of your
21 views on capital punishment, just tell me what -- when you
22 hear death penalty, tell me what you think.

23 Tell me what you feel.

24 A The killing of another person.

25 Q Pardon me?

Individual Juror Qualification

1 A The killing of another person.

2 Q Right.

3 But I mean from a, from a moral or a political or, or
4 theological standpoint, when you think about the death
5 penalty, what kind of process do you go through?

6 A I mean---

7 Q Have you thought about the -- I know you're young.

8 But have you thought about it that much?

9 A No, sir.

10 Q Probably doesn't come up in, in many conversations I
11 guess in high school?

12 A No, sir.

13 Q I think you told the Court, when His Honor was asking
14 you, that you considered yourself a type three juror?

15 A Yes, sir.

16 Q Which means you could impose the death penalty?

17 A Yes, sir.

18 Q What makes you believe that you could?

19 A It depends on like I have to hear his side of the
20 story.

21 Q Are there certain categories of cases where you would
22 automatically vote death no matter what?

23 A Yes.

24 Q Give me those.

25 Tell me, tell me what those might be.

1 A Like if he was found guilty of like brutally beating
2 somebody and he can't back it up, then yes.

3 Q And you would automatically, without respect to any
4 other evidence in mitigation or extenuation, you would
5 automatically vote for death in that scenario?

6 A Yes, sir.

7 Q Okay. Thank you.

8 THE COURT: Any other questions to follow-up?

9 MRS. HODGES: Briefly, Your Honor.

10 EXAMINATION

11 BY MRS. HODGES:

12 Q Mrs. Jones, when you said you'd have to hear his side
13 of the story, are you talking about the person that's
14 accused of the crime?

15 A Yes, ma'am.

16 Q Okay. And, and would you basically have to have him
17 produce you some sort of evidence before you'd be able to,
18 to, to, to change your mind---

19 A Yes, ma'am.

20 Q ---from the death penalty?

21 All right. And you'd pretty much require him to do
22 that?

23 I mean you'd basically -- I mean you wouldn't really
24 change your mind unless he was able to produce something to,
25 he or she was able to produce something to you?

Individual Juror Qualification

1 A Yes, ma'am.

2 Q Is that right?

3 okay. All right. Thank you, Your Honor.

4 THE COURT: All right, ma'am. We -- is the contact
5 you've given us correct?

6 WITNESS: Yes, sir.

7 THE COURT: How to get in touch with you?

8 WITNESS: All right. I will tell you now that if
9 you're called back to the courthouse, that will be for jury
10 selection. You should bring enough personal belongings to
11 stay with us for about a week.

12 Do you understand that, ma'am?

13 WITNESS: Yes, sir.

14 THE COURT: And we'll be contacting you within the next
15 few days letting you know how to proceed with your jury
16 service.

17 Thank you very much. You're free to go.

18 WITNESS: You're welcome.

19 THE COURT: And ma'am, one other thing.

20 My instructions concerning gathering information
21 outside the courtroom or listening to any news reports and
22 that sort of thing continues until such time as we tell you
23 otherwise.

24 WITNESS: Oh, okay.

25 THE COURT: Thank you.

1 (The following takes place outside the hearing of the
2 juror.)

3 THE COURT: The State's position concerning Mrs. Jones?

4 SOLICITOR GOWDY: Your Honor, based on her responses to
5 the questions, I can not argue to the Court in good faith
6 that she is qualified.

7 MRS. HODGES: We concur, Your Honor.

8 THE COURT: I find her to be disqualified as well.

9 All right. The next juror is Melissa Ballard.

10 MELISSA BALLARD, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Your name is Melissa Ballard, is that right?

15 A Yes, sir.

16 Q Mrs. Ballard, I am going to remind you that yesterday
17 you, with your other jurors, took an oath to tell the truth
18 during our qualification process.

19 Do you recall that?

20 A Yes, sir.

21 Q I'm reminding you of that fact because you're still
22 under oath for purposes of our discussion now.

23 Do you understand that as well?

24 A Yes, sir.

25 Q All right. Now, ma'am, I'm going to go over some

Individual Juror Qualification

1 matters with you of importance to us. This will involve
2 going over some of your beliefs and, and opinions concerning
3 certain things.

4 I realize that sitting in a witness stand in front of a
5 microphone with this group around is sometimes
6 uncomfortable, and certainly we don't intend for it to be
7 that way. So, if, at any time during our questioning, you
8 feel that, you feel like that we're doing something improper
9 or asking you questions that we shouldn't not, should do
10 that, please let me know and we'll take that up at the time.

11 Okay, ma'am?

12 A Okay.

13 Q I'm going to ask you some questions about your beliefs
14 and your, your situation, and that will be followed up by
15 the attorneys. I will tell you now that there are no right
16 answers. There are no wrong answers to our questions.
17 Simple we're trying to gather some information that will
18 allow the attorneys and the Court to make proper decisions
19 concerning jury selection in this case.

20 Okay?

21 A Okay.

22 Q All right. The first question I'm going to ask you
23 about, since yesterday, has anybody contacted you about the
24 case?

25 Have you seen or heard or read anything about the case

Individual Juror Qualification

1 or has there been any information given to you about the
2 case that might cause you to begin to formulate an opinion
3 in this case?

4 A No, sir.

5 Q Now, have you ever participated in or responded to any
6 blog or Internet site concerning the death penalty?

7 A No, sir.

8 Q Have you ever participated in any political activity
9 such as demonstrations, meetings, or rallies where the death
10 penalty was the issue that was in focus?

11 A No, sir.

12 Q Now, ma'am, there has been some information about this
13 case in our local media, and I'm asking you, if you were
14 selected as a juror, could you put aside anything that you
15 might have heard or read previously and decide this case
16 based upon what you might hear in the courtroom during the
17 trial of the case?

18 A Yes, sir.

19 Q Now, ma'am, while you were waiting to come in, you were
20 given a list of individuals who are potential witnesses in
21 the case.

22 A Yes, sir.

23 Q I don't want you to identify any of those people by
24 name at this time. I will ask you generally about that
25 list.

Individual Juror Qualification

1 And my first question is, after having reviewed the
2 list, is there anyone on that list that you have had a
3 social, business, or personal connection in the past?

4 A No, sir.

5 Q Are you related by blood or marriage or have you ever
6 been related by marriage to any individual listed on that
7 list?

8 A No, sir.

9 Q So, I take it then, as far as you know, you have no
10 connection with any of the potential witnesses?

11 A No.

12 Q Is that correct?

13 A Correct.

14 Q All right. Now, I'm going to go over some questions
15 now that are a little more personal in nature talking about
16 your opinions on certain topics. Obviously, again, we're
17 not trying to invade your privacy here. But what we are
18 trying to do is to determine your opinions and so far, from
19 my questioning, I've pretty much decided you are a strong
20 enough individual that if you have an opinion you and I can
21 discuss that without that being a threat to you.

22 Is that correct?

23 A Yes, sir.

24 Q Okay. Now, I will mention to you that we -- and, and
25 part of what I'm asking you about is the death penalty. And

Individual Juror Qualification

1 I explained yesterday that this trial will have two phases.
2 They'll be a first phrase where the issue of guilt or
3 innocence is determined.

4 One of the charges in the case is murder, and the State
5 has sought the death penalty. And if the defendant were
6 found guilty of that charge, we would then conduct a
7 separate trial concerning the appropriate penalty to be
8 assessed.

9 Now -- so, so, you might think for us to discuss a
10 penalty phase that we may never get to might be premature.
11 But I hope you understand that once the trial begins, the
12 same jury will decide the first issue that decide the
13 penalty phase of the case, and there won't be another
14 opportunity for us to discuss these matters with you. So,
15 this is really the only chance we have to do that.

16 You should not think any less of the defendant or any
17 defense that he will place before the Court simply because
18 we have discussed penalty because this is the only chance we
19 get to do that.

20 Do you understand that, ma'am?

21 A Yes, sir.

22 Q Okay. Now, if you were a juror in any criminal case,
23 would you be willing to listen to and apply the law as given
24 to you by the Court?

25 A Yes, sir.

Individual Juror Qualification

1 Q would you be willing to accept the law as the Court
2 gives you and apply it to the facts as you find them to be?

3 A Yes, sir.

4 Q would that still be true should you disagree with the
5 law or you don't like the law?

6 would you still though take the law, as given by the
7 Court, and apply it to the facts?

8 A Yes, sir.

9 Q Now, as I indicated in this case, there has been some
10 pretrial publicity.

11 And my question to you, even though you may have heard
12 or read or seen something outside of the courtroom, could
13 you decide this case purely upon what you hear in the
14 courtroom during trial?

15 A Yes, sir.

16 Q Now, I went over some concepts with you yesterday in
17 passing, but I want to go over these to be sure you have an
18 understanding and would apply these as well.

19 In South Carolina, as in every state in the union and,
20 and our nation, a criminal defendant is always presumed to
21 be innocent of the crime for which a charge is being issued.
22 Therefore, a criminal defendant does not have to prove his
23 innocence. So, the, the defense has no burden of proof
24 concerning the issue of innocence or guilt.

25 Do you understand that?

Individual Juror Qualification

1 A Yes, sir.

2 Q Since there's a presumption of innocence.

3 A Correct.

4 Q The other concept I want to go over with you is that,
5 under our laws, the State always has the burden of proof in
6 a criminal case, and that burden is to prove the defendant's
7 guilt of the crime charged beyond a reasonable doubt.

8 Now, do you understand that concept?

9 A Yes, sir.

10 Q And are you willing and able to apply those two
11 concepts to a trial in this case?

12 A Yes, sir.

13 Q Now, do you believe that, because a person has been
14 charged and arrested and accused of a crime, that they must
15 automatically be guilty of that crime?

16 A No, sir.

17 Q So, is it true of you that you would be willing to
18 listen to the law, listen to the evidence presented to you,
19 and based upon what those things were, showed you, and based
20 upon the law given to you in the circumstances, that you
21 could find a person not guilty of a charge?

22 A Yes, sir.

23 Q Is the same true though if you were convinced, beyond a
24 reasonable doubt, that a person was guilty of a crime that
25 they were charged of, would you be able to find that person

Individual Juror Qualification

1 guilty of that crime?

2 A Yes, sir.

3 Q Now, I'm gonna ask you if this correctly then describes
4 your position if you were in a, a jury, that you would
5 listen to the evidence, and based upon the strength of that
6 evidence, and what the testimony of the, and evidence showed
7 and what the law was, that you could find a person either
8 guilty or not guilty of the crime that was charged?

9 A Yes, sir.

10 Q Now, we're gonna talk now specifically about the death
11 penalty. I told you we'd get to this point in my
12 questioning.

13 And I'll tell you now that normally, in South Carolina,
14 the judge imposes penalties when someone is found guilty of
15 a crime. The exception to that rule is where the State is
16 seeking a conviction for murder, and they're also seeking
17 the imposition of the death penalty.

18 And in that case, again, we have a separate trial, a
19 trial on guilt or innocence. If the defendant is found
20 guilty of the murder, we have a separate trial concerning
21 the proper penalty. They're two choices at that stage.
22 Either life imprisonment or the death penalty.

23 Do you understand that procedure?

24 A Yes, sir.

25 Q Okay. Now -- and under those circumstances, if a jury

1 convicts that defendant of the murder, that same jury comes
2 back and hears additional evidence. At that second trial
3 there would be additional, additional testimony and
4 additional information, information presented to the jury on
5 that subject.

6 Do you understand that as well?

7 A Yes, sir.

8 Q All right. Now, I want to, I want you to put yourself
9 in a situation theoretically. Let's assume that you are a
10 juror, that you have been selected to serve on a jury in a
11 murder trial where the State is seeking the death penalty,
12 and you and your fellow jurors have determined the defendant
13 was guilty of the murder. So, that issue has now been ended
14 and there's no longer an issue concerning the guilt or the
15 innocence of the defendant concerning the murder itself.

16 That means that you then would go to the second phase
17 of the trial where you would determine the penalty. And
18 let's assume then that you're with your fellow jurors and
19 you're about to walk back into the courtroom to begin the
20 second phase of the trial.

21 Now, while you're back in the jury room, there was a
22 sheet of paper that describes three different jurors.

23 Do you remember reading that?

24 A Yes, sir.

25 Q All right. And I'm going to go over those with you

Individual Juror Qualification

1 again and be sure you understand what that said.

2 The first type of juror, in that same situation that
3 I've asked you put you, put yourself in, the first juror
4 comes back into the courtroom already with their mind made
5 up. That juror believes that the only appropriate penalty
6 for a, someone whose committed a murder is death. And so,
7 that juror has already made up their mind before they walk
8 into that hearing to, to vote for the death penalty.

9 The second juror, the second type of juror is someone
10 who also has already made up their mind before they walk
11 back into the courtroom. That juror does not believe the
12 State has any right whatsoever to take anyone's life in, in
13 punishment of a crime. So, that juror has already made up
14 his or her mind to vote for life imprisonment every time.

15 The third type of juror doesn't know what that juror is
16 going to do yet. That juror comes in. He -- they do not
17 have their mind made up as to whether they're going to vote
18 for life imprisonment or death. That juror will have to
19 wait and listen to the evidence during the sentencing phase,
20 and the testimony given at that time and then make a
21 decision as to what the appropriate sentence would be, what
22 the appropriate sentence would be.

23 Do you understand those three types of jurors I've
24 described?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, of those three types of jurors I've just
2 described, which of those three most closely would reflect
3 how you would feel in that situation?

4 A Type three.

5 Q All right. Now, ma'am, that means that, under those
6 circumstances that I've described, and keeping in mind the
7 defendant is already been, been found guilty, so the issue
8 of, of guilt or innocence is no longer a concern, you would
9 be willing to listen to the facts and evidence presented
10 during the sentencing phase and then, if you found the
11 evidence justified it, then you would be willing to sentence
12 someone to death.

13 Is that true?

14 A Yes, sir.

15 Q And also the converse would be true I assume, that if
16 you thought the facts and the evidence presented during the
17 penalty phase of the trial did not justify a death penalty,
18 or for some other reason, you would be willing to sentence
19 someone to life imprisonment.

20 Is that true?

21 A Yes, sir.

22 Q So, that means, that given the facts and circumstances
23 presented, you could either sentence someone to life or
24 death.

25 A Yes, sir.

Individual Juror Qualification

1 Q Is that true?

2 A Yes, sir.

3 Q Now, ma'am, my last thing I want to ask you about is
4 well, more of a personal nature to you. I've explained and
5 I've mentioned yesterday that the jury will be sequestered
6 during this trial. That means that if you were selected to
7 serve on the jury, you would be staying with us for about
8 one week. That's what we estimate the trial time to take.

9 During that time, you would be in a hotel at night and
10 after the Court proceedings. You would be given meals and,
11 and then transported back and forth to the courthouse.
12 You'd have limited contact with the outside world, and we
13 would also limit your contact with news media outlets and
14 things of that nature.

15 Do you understand that, that procedure?

16 A Yes, sir.

17 Q Now, my question to you about that -- and I realize
18 that that situation would be an inconvenience in anybody's
19 life. I understand that fully.

20 But my real question is if you were in that situation,
21 would that situation pose any type of serious risk or danger
22 to either, to your health or your well being?

23 A No, sir.

24 Q And my next question is if you were in that situation,
25 would that situation pose a serious risk of danger to

Individual Juror Qualification

1 someone's health or well being to anyone who is dependent
2 upon you?

3 A No, sir.

4 Q All right. Now we've gotten to the point where I've
5 completed the questions I wanted to ask you. I'm going to
6 allow the attorneys now to go over the matters they would
7 like to discuss with you, and we allow the defense to go
8 first.

9 In this case, Mr. Reckenbeil.

10 MR. RECKENBEIL: Thank you, Your Honor.

11 THE COURT: Yes, sir.

12 EXAMINATION

13 BY MR. RECKENBEIL:

14 Q Mrs. Ballard, thank you so much for being here. My
15 name's John Reckenbeil. I'm one of the defense lawyers
16 representing Mr. Torres. I appreciate your answers as well
17 as filling out the questionnaire and also I appreciate your
18 willingness to do your duty. I've had an opportunity to
19 review your jury questionnaire as well as listen to the
20 judge, and it says that you're single and you have a young
21 child.

22 A Yes, sir.

23 Q And you're willing to accept your responsibility as an
24 American to do jury duty even though you might be away from
25 your child for a period of time.

Individual Juror Qualification

1 A Yes, sir.

2 Q I commend that and I thank you for doing that.

3 Ma'am, also I just -- one other thing is SealedAir
4 Corp., I noticed that. I just wanted to make sure---

5 A Yes, sir.

6 Q ---you haven't seen my name come across any paperwork
7 coming in there.

8 A No, sir.

9 Q Good. Making sure, just making sure no labor law cases
10 were coming before you that they would be talking about John
11 Reckenbeil. We just wanted to make sure that that's---

12 A No.

13 Q Fair enough.

14 A I don't see that, that paperwork.

15 Q Okay. Just making sure.

16 A Okay.

17 Q Also is, is that I noticed on your questionnaire that
18 you didn't check where you said that you knew anything about
19 this case.

20 A I don't.

21 Q Okay. And in -- since the time that you filled out
22 that questionnaire, have you heard anything on the news
23 media?

24 A No, I have not.

25 Q Okay.

1 A I just heard, when we were in here yesterday, people
2 saying that it was on TV and stuff.

3 Q Okay.

4 A But other than that, nothing.

5 Q And nothing that was told to you in passing gave you
6 any predisposition of an, of an inquiry of what actually you
7 would decide in this case?

8 A No, sir.

9 Q All right. So, fair and impartial coming into this
10 matter?

11 A Exactly.

12 Q All right. Ma'am, do you have a preconceived notion on
13 the death penalty?

14 what's your personal view of the death penalty?

15 A I do believe in it in certain circumstances. I do
16 believe that it's sometimes necessary.

17 Q Sometimes necessary?

18 A Yes.

19 Q Can you give me a for an example?

20 A If it's premeditated or if someone willingly goes into
21 a situation knowing what they plan to do.

22 Q Okay. And in, in those cases that you thought of and
23 that you just described to me on the witness stand---

24 A Uh-huh. (Affirmative).

25 Q ---in those cases, would you be unable to give any

Individual Juror Qualification

1 other sentence than death?

2 A I would have to listen to all the facts, all the
3 evidence, and all that to be able to come to that
4 conclusion.

5 Q So, what I'm understanding is, is that you feel that
6 the death penalty is justified in those cases that you just
7 described. But if you heard facts and circumstances, you
8 could change your mind.

9 A Correct.

10 Q All right. Now, is there a situation where you know
11 that definitively 100 percent that there's no way you could
12 change your mind, that the death penalty would be the only
13 appropriate sentence?

14 A No, sir.

15 Q Okay. And that there's an opportunity again, is
16 there -- well, strike that.

17 Judge Couch has talked to you about the fact that
18 there's going to be a bifurcated trial. There's two
19 separate situations where you're gonna have to be brought in
20 to make a decision if there is a conviction.

21 Now, understand just because the fact that the State is
22 seeking the death penalty, does that give you any sort of
23 preconceived notion of the guilt or innocence of Andres
24 Torres?

25 A No, sir.

Individual Juror Qualification

1 A Yes, sir, I believe so.

2 Q And you could vote either way, for life imprisonment
3 without parole or for death?

4 A Yes, sir.

5 MR. RECKENBEIL: Okay. Bear with me one second.

6 THE COURT: Yes, sir.

7 (Pause.)

8 Q Mrs. Ballard, thank you very much for answering my
9 questions.

10 A Thank you.

11 THE COURT: Mrs. Crick.

12 SOLICITOR CRICK: Thank you, Your Honor.

13 THE COURT: For the State.

14 SOLICITOR CRICK: Yes, sir.

15 EXAMINATION

16 BY SOLICITOR CRICK:

17 Q Mrs. Ballard, thank you for being with us. I'm Cindy
18 Crick and I'm on the prosecution team in this case, and I
19 know you don't know me from Adam's house cat, and I'm about
20 to ask you a little bit of a personal question.

21 Based on the questionnaire that you filled out, one
22 thing I did notice that you noted was that I guess was your
23 ex-husband.

24 A No, it was just a boyfriend.

25 Q Okay. Had had a conviction for a drug offense?

Individual Juror Qualification

1 A Yes, ma'am.

2 Q And do you remember what agency it was, that, what
3 police agency that would of been?

4 A No, ma'am, I do not.

5 Q Was it -- and you may or may not remember this.

6 A Okay.

7 Q Was it the Solicitor's Office that prosecuted him or
8 somebody else?

9 A I, I never, I never came. So, I have no idea who it
10 was.

11 Q Do you know what kind of charge it was, what kind of
12 drugs were alleged?

13 A I want to say it was crack.

14 Q Okay.

15 A If I'm---

16 Q Do you know if he sought any kind of treatment for,
17 addiction treatment?

18 A It was for -- actually he was selling it. Not
19 actually---

20 Q It was distribution?

21 A Yes.

22 Q I got you.

23 Would anything involving that experience and your
24 knowledge of all that, would that impact you, in any way,
25 negatively?

Individual Juror Qualification

1 Did it leave any kind of bad taste in your mouth toward
2 law enforcement?

3 A No, ma'am.

4 SOLICITOR CRICK: Okay. I think that's it, Your Honor.

5 A Okay.

6 Q Thank you.

7 THE COURT: Anything further?

8 MR. RECKENBEIL: Nothing further.

9 THE COURT: All right. Mrs. Ballard, let me just go
10 over a couple of things with you. Again, I want to thank
11 you for your participation thus far in this matter. We're
12 going to be going through these qualification process into
13 tomorrow I know. I don't know exactly when we'll be in a
14 position to draw a jury. But I want to be sure that the
15 contact information we have for you is correct.

16 Is it, what you provided?

17 WITNESS: Yes, sir.

18 THE COURT: It has not changed?

19 WITNESS: No, sir.

20 THE COURT: All right. And what we'll be doing is
21 we'll be contacting you should we require you to come back
22 to the courthouse and let you know when to be here. And if
23 that happens, we will be in the position to begin to select
24 the jury. So, if you're asked to come back to the
25 courthouse, please come prepared to stay for the one week

Individual Juror Qualification

1 that you're going to need to stay.

2 okay?

3 WITNESS: Okay.

4 THE COURT: What I'm saying is pack a bag and have
5 together what you might need because if you are selected,
6 you'll go directly into sequestration and we'll begin the
7 trial shortly after that.

8 Do you understand that, ma'am?

9 WITNESS: Yes, sir.

10 THE COURT: Now, also, ma'am, I will tell you that my
11 instructions concerning not gathering any information
12 outside of the courtroom, not talking to anyone continue
13 until such time as we tell you that those things have ended.

14 okay?

15 WITNESS: Okay.

16 THE COURT: So, don't, don't -- all the instructions I
17 gave you yesterday are still in effect.

18 WITNESS: Okay.

19 THE COURT: All right. Thank you very much for coming,
20 ma'am. At this time you're free to go.

21 WITNESS: Okay. Thank you.

22 (The following takes place outside the presence of the
23 juror.)

24 THE COURT: State's position regarding Mrs. Ballard?

25 SOLICITOR GOWDY: State believes she's qualified, Your

1 Honor.

2 THE COURT: Defense position?

3 MR. RECKENBEIL: As well, we believe she's qualified.

4 THE COURT: I assume subject to your prior objections?

5 MR. RECKENBEIL: Absolutely.

6 THE COURT: We'll just, we'll just say that they
7 continue throughout the qualification process.

8 MR. RECKENBEIL: You can keep that standing. But
9 actually not for that one.

10 THE COURT: Okay. All right. We're gonna find -- I
11 will find also Mr., Mrs. Ballard is qualified.

12 THE COURT: Number 241, William Shields will be next.

13 BAILIFF: Yes, sir.

14 WILLIAM SHIELDS, having been previously
15 sworn, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q Good afternoon, Mr. Shields.

19 A Good afternoon, sir.

20 Q I understand your name is William Shields, is that
21 right?

22 A That's correct.

23 Q Mr. Shields, I want to, first of all, thank you very
24 much for your participation in our process so far. I
25 understand it's an inconvenience, and we're just gonna ask

Individual Juror Qualification

1 you some questions this afternoon about some positions or
2 opinions that you might have. I want to tell you now that I
3 will be asking questions, and then the attorneys will go
4 over some matters with you to follow-up on the things I've
5 talked over with you.

6 I will tell you now that there are no right answers to
7 our questions. There's no wrong answers to our questions.
8 We are simply trying to gather information concerning your
9 position, your opinions concerning the case to assist us in
10 the selection of the jury in this matter.

11 If, at anytime -- and I realize, sitting in a witness
12 stand in front of a microphone with all the people gathered
13 here, is sometimes an uncomfortable situation. You might
14 get a little nervous or something. Please try not to be.
15 We're gonna try to make this as easy as possible.

16 And if, at any time during the process, you'd like to
17 stop and discuss something with me, let me know that and
18 we'll be glad to do that.

19 You understand, sir?

20 A Yes, sir, I do.

21 Q All right. First question I'm going to ask you has to
22 do with your contact concerning this case.

23 Since we talked yesterday, has anybody contacted you
24 about the case or have you heard or read or seen anything
25 about the case or have you been exposed to any information

Individual Juror Qualification

1 that might cause you to form any opinions about the case?

2 A No, I have not.

3 Q Have you ever participated in or responded to any,
4 what's called a blog or Internet site concerning the death
5 penalty?

6 A No, sir.

7 Q Have you ever participated in any political activities,
8 meetings, demonstrations, or rallies in which the issue of
9 the death penalty was the subject?

10 A No.

11 Q Now, sir, I understand that there may have been a
12 little publicity in the news about our case, and I'll ask
13 you this probably on a couple of occasions.

14 Can you or could you set aside any matters that you may
15 have heard outside of the courtroom and decide this case
16 solely based upon the evidence presented during the trial?

17 A Did you say can I set aside anything---

18 Q Yes, sir.

19 A ---that I---

20 Q Can you do that?

21 A Yes, sir, I can.

22 Q All right, sir. Now, while you were waiting to speak
23 with us, there was a list of witnesses given to you, and I
24 don't want you to identify anybody by name during my
25 questioning. But I do want to find out some information

Individual Juror Qualification

1 about those people in relationship to you.

2 And my first question is, after reading the list, do
3 you believe that you have any social, business, or personal
4 connections with any individual or person named on that
5 list?

6 A Yes, sir.

7 Q All right, sir. And can you not -- again, not naming a
8 name, but can you tell me in what respect that would be?

9 A I am---

10 Q How would you know that person or persons?

11 Is it more than one?

12 A One is a neighbor and I'm not sure about the other one.
13 I work with a man that has the same, the same name that's
14 been retired for some time.

15 Q Okay. You worked with him in the past?

16 A Yes, sir, I have.

17 Q All right. So---

18 A I'm not sure it's the same person.

19 Q All right. Now, knowing that you think that you
20 perhaps know two of those people -- and one of them you're
21 sure is a neighbor or you think for sure that is a neighbor
22 or yours?

23 A Yes, he is my neighbor.

24 Q When you say a neighbor, are we talking about living
25 right next door or in the neighborhood?

Individual Juror Qualification

1 A Right next door.

2 Q Okay, sir. Now, would that fact, if that individual
3 appeared as a witness in this case, would that affect your
4 ability to be fair or impartial to either the State or the
5 defense?

6 A No, sir.

7 Q So, you wouldn't take him as any more believable or
8 less believable than any other witness who testified?

9 You would weight his evidence just like anybody else's?

10 A Yes, sir.

11 Q And so, there's no question in your mind on that point?

12 A No question.

13 Q All right, sir. Now, are you related, in any way, by
14 blood or marriage to any of the individuals that were
15 labeled, listed on that list?

16 A No, sir.

17 Q Now, sir, I'm going to start now asking you probably
18 some more personal questions. Some more questions about
19 your beliefs and opinions, and we're not trying to invade
20 your, invade your privacy. We are trying to get your
21 feelings about certain things.

22 It appears to me that you're secure enough in your
23 beliefs and your opinions that you can talk to us about that
24 without feeling threatened.

25 Is that a true statement?

Individual Juror Qualification

1 A I can.

2 Q Okay, sir. Now, one of the things I'm going to talk to
3 you about eventually will be the death penalty. That is an
4 issue in this case. And it is in the trial. But I want you
5 to understand a couple of things about that first.

6 First thing, I told you yesterday, this trial will be
7 divided into two phases. The first phase is guilt or
8 innocence of the charges that, that have been brought. One
9 of those charges is murder and the State's asked for the
10 death penalty in that case.

11 If that, if that, if a verdict of guilty is returned in
12 that charge, then we'll hold the second phase, which is the
13 question of the imposition of the penalty. Either the death
14 penalty or life imprisonment.

15 But I hope you understand that the same jury's gonna
16 hear both sides of that case. They'll be new evidence
17 presented in the second phase that was presented in the
18 first because that has to do with the penalty, and the, the
19 issue of the penalty is not in the first part of the case.
20 So, they'll be new evidence presented at that time.

21 Now, it sounds like we're kind of putting the cart in
22 front of the horse because we might not ever get to that
23 stage of the, of the, of the case. But I want you to
24 understand that this is the only opportunity we'll have to
25 do that. Once the case gets started, we can't stop and

1 rearrange the jury. The same jury hears both sides of the
2 case. So, this is the only time we can discuss that penalty
3 phase even though we haven't got to that point in time.

4 Do you understand what I'm saying?

5 A Yes, sir, I do.

6 Q And you should not think any less of the defendant or
7 any defense that he might put up because we're discussing
8 penalties. This is, again, simply the only convenient time
9 we can do this.

10 Do you understand that as well?

11 A Yes, sir.

12 Q Okay. Now, sir, I'm asking you, in general, about a
13 case.

14 If you are picked as a juror in any case, are you
15 willing to listen to the law as it would be instructed to
16 you by the judge?

17 A Yes, sir.

18 Q Would you be willing to accept and apply the law as the
19 judge gives it to you and apply it to the facts as you find
20 them to be?

21 A Yes, sir.

22 Q Now, is that still true even though, when you hear the
23 judge give you the law, you might not like it, and you might
24 disagree with the law, but would you still be willing to
25 accept it, as given to you, and apply it to the facts as you

Individual Juror Qualification

1 find them to be?

2 A Yes, sir, I would.

3 Q Now, again, I'm gonna ask you about this particular
4 case. There's been some information in our local media
5 about this case, and I just want to be sure that if, if,
6 that you would be able to set aside anything you might of
7 heard, read, or seen outside this courtroom and any
8 information you might get during the trial and decide the
9 case purely upon what you hear in the courtroom, the
10 testimony of the witnesses, and the evidence that comes in
11 through that testimony?

12 Could you decide it purely on that basis?

13 A Yes, sir, I could.

14 Q All right. Now, a couple of concepts I talked about
15 yesterday. I'm gonna go over them with you to be sure you
16 understand them and find out if you can apply them should,
17 were you, if you were selected as a juror.

18 First of all, in all criminal cases in this state and
19 in the United States, a defendant is presumed to be innocent
20 until such time as his proof might be, I mean his guilt
21 might be proven beyond a reasonable doubt. Because the
22 defendant has that presumption of innocence, the defendant
23 is never required to prove himself innocent. In fact, the
24 defendant has no burden of proof whatsoever in a case.

25 Do you understand that concept?

1 A Yes, sir.

2 Q The burden of proof lies with the State. The State has
3 the burden of proving its case, proving the defendant guilty
4 beyond a reasonable doubt.

5 Now, do you understand that concept?

6 A Yes, sir.

7 Q And could you and would you apply those concepts if you
8 were selected in this case?

9 A Yes, sir.

10 Q Now, is it your belief that simply because someone has
11 been arrested or accused of a crime that they must be
12 guilty?

13 A No, sir.

14 Q So, does that mean that if you were sitting as a juror
15 in a criminal case that you would listen to the law, you'd
16 listen to the evidence, and based upon what those things
17 were as you find them to be, you could find a person not
18 guilty of a crime charged.

19 Is that true?

20 A Yes, sir.

21 Q By the same token, if the State proves someone's guilt
22 beyond a reasonable doubt, could you find that person guilty
23 of the crime charged?

24 A Yes.

25 Q So, tell me if I'm describing you right or wrong.

Individual Juror Qualification

1 You're the kind of juror who, depending on the strength of
2 the evidence and what the testimony and evidence showed and
3 what the law was as given to you by the judge, that you
4 could either find someone guilty or not guilty, is that
5 correct?

6 A Yes, sir.

7 Q All right. Now, we're gonna talk specifically about
8 the death penalty. I told you we would get to this point.

9 And as I indicated, generally the judges in this State
10 set the penalties for all defendants. That's, that
11 exception exists in a death penalty case. In that case, the
12 jury decides the penalty. But the choices are life
13 imprisonment or death.

14 Do you understand that, sir, those choices?

15 A (Witness nods affirmatively.)

16 Q Now, I want you to put yourself and imagine yourself
17 being in a certain situation. Let's assume that you were
18 selected as a juror in a murder case, and the State was
19 seeking the death penalty. You and your fellow jurors have
20 completed the guilt part of the trial, and you've determined
21 the defendant was guilty of the crime of murder.

22 So now you and your fellow jurors have gathered and are
23 getting ready to come back into the courtroom to decide the
24 next issue. That is the proper penalty. Be it life
25 imprisonment or death.

1 Now, I gave a sheet of paper to be read back in the
2 waiting room about three different kind of jurors, and I'm
3 gonna go over those with you again to be sure you understand
4 and remember those.

5 The first type of juror on, on that list is an
6 individual who is already made up his mind as he's getting
7 ready to come back into that room for the penalty part of
8 the trial. That juror believes that the only appropriate
9 penalty for someone who is found guilty of murder is the
10 death penalty, and, therefore, that juror is already made up
11 his or her mind to vote for the death penalty before coming
12 into the courtroom to hear the penalty phase of the trial.

13 The second type of juror might be a juror who already
14 has made up their mind as well. That juror believes that
15 the State should never take a life of a person who's
16 responsible for a crime regardless of what the crime is.
17 So, that person also already knows how they're gonna vote.
18 That person is gonna vote for life imprisonment every time
19 in that situation.

20 The third type of juror that was described, that juror
21 doesn't really know what that juror's going to do in that
22 situation yet. That juror hasn't made up his mind or her
23 mind as to whether that juror's gonna vote for life
24 imprisonment or for death. That juror is gonna have to
25 wait, listen to the evidence and the testimony, and then

Individual Juror Qualification

1 make a decision as to what penalty is appropriate.

2 Now, do you understand those three different types of
3 jurors?

4 A Yes, sir.

5 Q Now, if I were to ask you which of those three types of
6 jurors would best describe yourself, which one would it be?

7 A You just want a number or can I add a comment?

8 Q Well, no, you can, you can do both.

9 A I would be number three because I have to sleep with
10 myself at night.

11 Q Okay, sir. I understand that.

12 So, let me, let me clarify this. So, under the
13 circumstances I've described, keeping in mind the
14 defendant's been found guilty of murder, and the issue of
15 guilt is no longer a concern, you would be willing to listen
16 to the facts and evidence as to the appropriate sentence,
17 and if you found that the evidence justified it, you could
18 and would be willing to sentence a defendant to death, is
19 that correct, if you find the evidence justified it?

20 A Yes, sir.

21 Q Now, by the same token, if you go over the facts,
22 listen to the facts, and you find that the evidence does not
23 justify a sentence of death, you, in that situation, would
24 be willing to vote or sentence to, someone to life
25 imprisonment as opposed to death.

1 Is that also true?

2 A Yes.

3 Q So, you could, given the facts and circumstances shown
4 during the sentencing phase of the trial, vote for life
5 imprisonment or you could also vote for death depending on
6 those circumstances?

7 A Yes, sir.

8 Q Now, I want to go over one last thing. It's kind of a
9 personal nature.

10 I've explained that if you're selected on this jury,
11 you'll have, be with us for about a weeks time during the
12 trial. During that week, you'll be sequestered, which means
13 the jury will be staying at a local hotel. They'll be
14 people from law enforcement, from SLED, there to be with
15 you. Your contact with the outside world will be limited.
16 The information that you're able to gather by way of
17 television and other sources would be limited. You'll be
18 eating together and, and coming back and forth to the
19 courthouse together. So, it will be an inconvenience in
20 anybody's life. That will be an inconvenience if that
21 happened.

22 However, my real question to you, if that did happen,
23 could that, in any way, pose any serious risk of danger to
24 your health or your well being if you were in that
25 situation?

Individual Juror Qualification

1 A No, sir.

2 Q And by the same token, if you were in that situation,
3 would that also pose a serious risk or danger to anyone who
4 is dependent upon you?

5 A No, sir.

6 Q All right. That completes all the questions I have to
7 ask you. The lawyers are gonna follow-up. The defense will
8 go first.

9 Mr. Reckenbeil, your witness.

10 MR. RECKENBEIL: Thank you, judge.

11 EXAMINATION

12 BY MR. RECKENBEIL:

13 Q Mr. Shields, thank you very much for your participation
14 in answering the jury questionnaire, answering the judge,
15 and thanks very much for your candor.

16 I want to expand a little bit about that comment that
17 you made as you said that you were a type three juror, and
18 you said to the judge because I want to be able to sleep at
19 night.

20 What do you mean by that when you gave that response?

21 A Because if, if, if I don't make the right decision, my
22 conscious is gonna tell me that, and it's not easy to go to
23 sleep when you knew you mistreated some person in this life.

24 Q Okay.

25 A You see, you see what I'm -- you need to---

Individual Juror Qualification

1 Q I think I understand a little bit and I want to ask a
2 couple follow-up questions of you.

3 A I don't mean to beat around the bush with you.

4 Q No, sir.

5 And I want to ask you is it because you want to
6 consider the facts and evidence?

7 A If that's what we're suppose to do, I can make up my
8 mind when we go in there.

9 Q Right.

10 You understand that, as the judge explained to you,
11 that the law of South Carolina gives you, a juror, in the
12 sentencing phase, if we get there, the discretion to either
13 impose the death sentence or impose life in prison without
14 the possibility of parole.

15 A Yes, that's, that's, that's very important.

16 Q Yes, sir. Yes, sir, it's an -- it's very---

17 A That's very important.

18 Q And we appreciate the fact that you're taking this very
19 seriously.

20 A Yes, sir.

21 Q Now, when we get to that phase, if we get to that
22 phase, you understand that you first have to arrive at a
23 conviction at a, at a death penalty case. The defendant's
24 been convicted of murder. Understanding murder is, in fact,
25 the unlawful killing of an individual, unlawful and

Individual Juror Qualification

1 intentional.

2 You then come back with a conviction. You go back in
3 to that jury room. You then have to come back out for that
4 sentencing phase.

5 Do you, sir, have the ability to be fair and impartial
6 once, in fact, you know you got to come back for that second
7 part of that phase, like a whole new ball game, you got to
8 come back out for that second part of that phase.

9 Do you feel, sir, that you could be fair and impartial
10 when you come back out?

11 A I think that's probably as much as important as the
12 first verdict we did in my opinion. I -- the first, the
13 first one gets you to the second. But that one is really
14 important.

15 Q Okay.

16 A It's listening to why and why, you know, details.
17 Isn't it details and aggravating circumstances that---

18 Q Yes, sir.

19 A -- determine -- that's very important.

20 Q Yes, sir, and I can say you're very insightful as to
21 what you're saying because that's exactly what is gonna be
22 presented and that's what, my next line of questioning.

23 The State's gonna present evidence, what you just
24 talked about, about aggravating factors, about the worsening
25 effect of it.

1 Is there a, is there a fact center that you can
2 envision that the State presents those aggravating factors
3 that you could only see the appropriate punishment as being
4 death?

5 If you take those aggravating factors thinking---

6 A That the only answer would be death?

7 Q Yes, sir.

8 A If they presented it -- I don't know. Mercy is a good
9 word to me.

10 Q Yes, sir.

11 A I've, I've had -- Jesus Christ had mercy on me, and I
12 also have mercy on my brothers and sisters.

13 Q Yes, sir.

14 A We don't know what causes us to do things. Well, we do
15 too. The sin nature in our life causes us to do things bad.
16 I lost my train of thought, but---

17 Q Can I follow-up with a question now?

18 A Please. I'm sorry. I got, I lost my train of thought.
19 I lost where I was at.

20 Q You're, you're fine. I enjoy the fact of listening to
21 you and enjoy what you have to respond cause I think it's
22 pertinent responses.

23 When we're talking about mercy, there's also an
24 opportunity, as I talked to the one side of the, of the
25 spectrum where we're talking about aggravation, there's

Individual Juror Qualification

1 gonna be an opportunity that -- the defense team is gonna
2 have an opportunity to present mitigating factors. Mercy,
3 that's gonna lessen of what you're gonna be able to hear.

4 would you have the opportunity to fairly and
5 impartially take those into consideration and make a
6 determination as to whether or not life would be an
7 appropriate sentence?

8 A I would hope so. I think I could. That's my
9 responsibility is to listen at everything and then make up
10 my mind. Nothing outside here has got anything to do with
11 it. And if I use something else to make my decision, then
12 I'm wrong.

13 Q Yes, sir. We appreciate that.

14 A So --.

15 Q Yes, sir. Thank you for answering my questions.

16 THE COURT: State have any questions of this juror?

17 SOLICITOR GOWDY: Thank you, Your Honor.

18 May it please the Court?

19 THE COURT: Yes, sir, Mr. Gowdy, you may proceed.

20 SOLICITOR GOWDY: Thank you, Your Honor.

21 EXAMINATION

22 BY SOLICITOR GOWDY:

23 Q Good afternoon, Mr. Shields. My name is Trey Gowdy.
24 I'm part of the prosecution team.

25 A Yes, sir.

Individual Juror Qualification

1 Q We thank you for your candor beginning yesterday,
2 continuing to today as you answered His Honor and the
3 defense counsel's questions and in filling out your
4 questionnaire, which I have read, and you were very thorough
5 in your responses and we're grateful to you for you.

6 A Thank you.

7 Q As Judge Couch was telling you, there are no right
8 answers. There are no wrong answers. There are simply your
9 answers and no one is going to cross-examine or take
10 exception with any belief that you have.

11 A Thank you.

12 Q Whether it be spiritual, philosophy, philosophical, or
13 anything else.

14 Having said that, we just have to know how you do feel
15 and clearly it is an important decision when you make
16 decisions based on life and death.

17 A Amen.

18 Q Frankly, guilt or innocence is a very significant
19 question also. Life and death kind of doubles the stakes.

20 Having said all that, South Carolina law never requires
21 you to impose a death sentence. You can go -- you can show
22 mercy to someone for any reason or no reason, and you don't
23 have to explain yourself to anybody.

24 Understanding that, do you still believe there are
25 situations where you would vote to put someone to death?

Individual Juror Qualification

1 A Yes, sir, I do.

2 Q Are those -- are we, are we talking about an Oklahoma
3 City type situation, a 9-11 type situation, or can you
4 envision it in something, I won't say less than that because
5 all of that's important, but is that the kind of scenario or
6 are you thinking about something arguably closer to home?

7 A Those cases -- I have no problem with putting those
8 people to death whatsoever.

9 Q Well, I'm not, I'm not---

10 A They deserve -- they premeditated, they premeditated
11 did what they did. They planned for months and years
12 probably to do what they did.

13 Q Yes, sir, amen.

14 A And if, and if it's beyond a shadow of a doubt I could
15 pull the plug myself.

16 Q Well---

17 A I mean I don't mean to get graphic, but people that
18 hates people that don't even know who they are, just the man
19 down the street and kill him, and just, and don't even know
20 who he is, they deserve to not be in our society.

21 Q Well, you raised three issues with your question, which
22 was a very thoughtful response. So -- but you raised three
23 issues. One of which was they did not belong, that they
24 deserve to be in society.

25 Under South Carolina law life means life. There is no

Individual Juror Qualification

1 parole. So, when someone is sentenced to life, they will
2 literally die in prison. So, they will be separated from
3 society regardless. There's no parole.

4 understanding that life means life, are there still
5 circumstances where you could sentence someone to death?

6 A That's a hard question. I'm sorry.

7 Q No.

8 A That's hard.

9 Q You don't have to apologize to anybody.

10 A That's hard. If, if I knew that he was never gonna be
11 out of prison, this -- could I still send him to death?

12 Q (Nods affirmatively.)

13 A You'd have to look at what was, how he went about
14 whatever he did I guess. You'd have to look at the --
15 everything you'd heard, you'd have to remember all you heard
16 at the trial in the sentencing phase too, and then see if
17 you could separate it. Well, it's just not -- you just have
18 to make up your mind. You certainly don't make it up ahead
19 of time.

20 Q No, sir. You can't. We're asking---

21 A And---

22 Q We're asking you questions that you don't know the
23 first thing about, about the case, and, and it's, it's, it's
24 hard to answer these kind of questions. But by the same
25 token, the, the Court was right. We have to know the

Individual Juror Qualification

1 answers kind of before we get---

2 A I don't mind.

3 Q ---there.

4 A I just -- I need to know myself too. You know, not,
5 not all of us know ourself.

6 Q Sure.

7 A And I need to know a little bit more about myself.

8 Q Yes, sir.

9 You mentioned beyond a shadow of a doubt and that's a
10 phrase that I, I hear a lot in the public. I think what the
11 Court will tell you, at the appropriate time, is that we
12 just have to prove it beyond a reasonable doubt.

13 A Reasonable, I've heard that, yes, sir.

14 Q But, but -- and again, the answer to this question
15 doesn't matter. It's your answer.

16 would you -- is your belief on the death penalty such
17 that you would impose that higher standard of beyond a
18 shadow of a doubt as opposed to beyond a reasonable doubt?

19 A If that's what Your Honor said the law was, I, I think
20 I'd have to go, I'd have to do whatever he said the law was.

21 Q I think he will tell you that it's beyond a reasonable
22 doubt, but one thing he never will tell you is that if you
23 find A and B that you have to sentence someone to death. No
24 one will ever tell you that.

25 A Amen.

Individual Juror Qualification

1 Q You always have life as an option. It's life without
2 parole.

3 And I guess what I'm asking you is, do you really, in
4 your well of souls, still you could sentence someone to
5 death knowing that life means life, and you don't ever have
6 to explain your decisions to anybody ever?

7 A Like I say, it's according to what happened in that
8 second phase, what, what went on, and how, how brutal the,
9 the murder was, and I believe the thing said, the litigating
10 the -- is it -- is that the word?

11 The extenuating -- not -- it don't say extenuating.

12 Q Aggravating.

13 A It don't say that. It says the---

14 Q Aggravating. Aggravating circumstances.

15 A Circumstances.

16 Q Yes, sir. Extenuating is another word for aggravating.

17 A I'd have to wait and hear what I -- because that's,
18 that's a burden to put on a person --

19 Q Yes, sir.

20 A -- to decide whether he gets to live or die, and, and I
21 don't -- I kind of wonder whether man ought to have that
22 responsibility. But our laws, and I believe in our laws,
23 God says lives by man's law and his laws too. As long as
24 they don't contradict his laws I don't have any problem.

25 Q You have referenced your faith on, on a couple of

Individual Juror Qualification

1 occasions, which all of us respect.

2 Do you believe -- and I would assume, you correct me if
3 I'm wrong, but your faith is a large part of why you feel
4 the way you do about these issues?

5 A I would, I would hope, yes, sir.

6 Q Okay. Do you think your faith would impair your
7 ability to give the death sentence?

8 A No, sir, I don't.

9 Q You don't?

10 A No, I don't.

11 Q All right. And I'm about to wind up and I appreciate
12 your patience.

13 You mentioned premeditation and you mentioned brutality
14 as two things that you would look at. And earlier you and I
15 were talking about Oklahoma City and 9-11.

16 would a crime have to be premeditated before you would
17 be able to impose the death sentence?

18 A I'm not sure to tell you the truth. I don't, I don't
19 know about that.

20 would it have to be planned or it, if it, if the crime
21 took place over several hours, then I don't -- you know, if
22 he had time to quit and change his route rather than keep on
23 continuing his, whatever he did. A man has a conscious. It
24 was in built -- it was built in us. We know right from
25 wrong.

Individual Juror Qualification

1 And if, if the crime lasted for hours, then he had time
2 to stop I think. I think a man might do something on a fit
3 of rage. But if it lasts a period of time, then I think I
4 could -- that, that would be -- I'm sorry. I---

5 Q You don't owe---

6 A That's the best I can answer.

7 Q You don't owe anybody an apology, and we appreciate
8 your candor in answering all of our questions.

9 A It's, it's just not easy. I'm 69 years old. I didn't
10 have to serve on this jury. But I just felt led to come. I
11 said what reason do I have not to go serve my country, and
12 I've been in the service, and I didn't have any reason not
13 to come. But I kind of wish I hadn't of come.

14 Q I'm sorry I made you feel that way.

15 A No, no, not this part. It's, it's tough. But it's our
16 responsibility---

17 Q Yes, sir.

18 A ---to our country and somebody's got to do it, and
19 maybe it's gonna be them poor folks back there.

20 Q We thank you for your service today and we thank you
21 for your service in the Navy earlier.

22 A Thank you.

23 THE COURT: All right. Any other questions?

24 MR. RECKENBEIL: Nothing from the defense, Your Honor.

25 THE COURT: All right. Mr. Shields, let me just go

Individual Juror Qualification

1 over a couple of matters with you before I release you
2 today. First of all, thank you for your willingness to come
3 forward and your candor.

4 I will tell you that what we're going to do is continue
5 to go through this process. Looks like we'll be in it
6 tomorrow. Perhaps even into the next day. I'm not sure.
7 we'll see how that goes.

8 But in the very near future we'll be contacting those
9 who we wish to have come back for your selection. So, we're
10 not selecting a jury today, and we won't be doing that until
11 a group is asked to come back and we'll select a jury from
12 that group.

13 Now -- but if you are asked to come back to the
14 courthouse again for this trial, come prepared to stay for a
15 week. Bring your clothes with you. Bring whatever you need
16 to bring with you to do that, and be prepared to be with us
17 for, for that period of time.

18 WITNESS: You bring your wife, Your Honor?

19 THE COURT: No, sir. That -- if, if we gave that
20 option, we might get a lot of different responses. So,
21 we're probably not gonna do that.

22 WITNESS: I shouldn't of said that. I'm sorry.

23 THE COURT: That's all right. So -- and also I will
24 tell you that my instructions concerning contact about the
25 case and discussion about the case continue until such time

Individual Juror Qualification

1 as we've either asked you to come back and you're on the
2 jury or we've told you you're released.

3 WITNESS: Okay.

4 THE COURT: Thank you very much. You're free to go,
5 sir.

6 WITNESS: Thank you.

7 (The following takes place outside the presence of the
8 juror.)

9 THE COURT: State's position as to Mr. Shields?

10 SOLICITOR GOWDY: We believe he's qualified, Your
11 Honor.

12 THE COURT: Defense?

13 MR. RECKENBEIL: We believe he's more than qualified
14 and we do not object.

15 THE COURT: All right. Court will find him to be
16 qualified.

17 All right. Our next juror is Number 219, Mr. James
18 Register.

19 THE COURT: She's passing out the corrected list for
20 tomorrow.

21 Thank you, ma'am.

22 CLERK: You welcome.

23 JAMES REGISTER, having been previously
24 sworn, testified as follows:

25 EXAMINATION

Individual Juror Qualification

1 BY THE COURT:

2 Q All right, sir. Your name is James Register, is that
3 right?

4 A Yes, sir.

5 Q Mr. Register, first of all, I'm going to thank you for
6 your cooperation in our process such thus far. I -- as I
7 told you when this started, I knew jury service is an
8 inconvenience and I'm sure it's been inconvenient for you.
9 Again, sorry that occurs. But that's just the nature of the
10 beast.

11 I will tell you, however, that we are here now today to
12 talk to you about certain things. I know you're not sitting
13 in the most comfortable position you've ever been in. It's,
14 it's not fun to be sitting in a courtroom behind a
15 microphone to be questioned and I appreciate that as well.
16 But there are some matters we need to go over with you to be
17 sure that we have an understanding.

18 Now, I'm gonna ask you some questions. And when I
19 finish, we'll allow the lawyers to ask you some questions.
20 I will tell you now, Mr. Register, there are no right
21 answers to the questions. They're no wrong answers to the
22 questions.

23 What we're going to be asking you today is your beliefs
24 about certain things, your opinions, and your positions on
25 certain things. So, basically you're explaining those

1 things to you. Nobody's gonna argue with you about your
2 positions or your opinions. We're simply trying to discover
3 those so that we'll be in a position to make more
4 intelligent decisions when the jury panel is struck.

5 So, now, if at any point in time during our questioning
6 you want to stop or ask me a question or tell me there's
7 some problem I'll be happy to listen to that at that time.

8 Do you understand that, sir?

9 A Yes, sir.

10 Q And again, I don't know if I'll make you totally
11 comfortable there. But I do want you to understand, again,
12 there's no right answers, no wrong answers. It's simply us
13 gathering information at this point in time.

14 Okay, sir. First question I'm gonna ask you is
15 yesterday when you left here I gave you some instructions,
16 and I want to find out, since the last time I talked to you,
17 has anybody contacted you about the case, have you heard or
18 read or seen anything about the case, or have you been
19 exposed to any information that might cause you to have
20 formed an opinion about this case since yesterday?

21 A No, sir.

22 Q Now, sir, have you ever be, participated in any type of
23 blog or other Internet site concerning the death penalty?

24 A No, sir.

25 Q Have you ever participated in any political activities

Individual Juror Qualification

1 that might involve, the activity might involve the death
2 penalty?

3 That would include such things as demonstrations,
4 rallies, or meetings on that issue.

5 A No, sir.

6 Q Now, this case has had some publicity in the press, and
7 my question to you now have -- is there anything that you
8 have heard outside of the courtroom that you could not put
9 aside and decide the case solely upon the evidence that's
10 presented during the trial?

11 A No, sir.

12 Q All right. Now, you hesitated a little bit.

13 Is there something you could not put aside?

14 Is there something that you could not ignore and---

15 A I don't---

16 Q ---decide the case?

17 A I don't know nothing about case.

18 Q Okay. Well, then there's, there's no problem then?

19 A I drive a truck and I'm gone like two weeks at the
20 time. I watch very little TV.

21 Q Okay.

22 A Read very little newspaper.

23 Q Then that won't be an issue for you. I appreciate
24 that.

25 Now, sir, I gave you, while you were waiting, a list of

1 potential witnesses.

2 Did you see that list?

3 A Yes, sir.

4 Q Did you have a chance to look over it?

5 A Yes, sir.

6 Q Now, I don't want you to name anybody in particular on
7 that list, but I do want to ask you some questions about it.

8 First of all, after you reviewed the list, is there
9 anybody on that list that you believe that you have any
10 social, business, or personal connection with in any fashion
11 whatsoever?

12 A No, sir.

13 Q Do you believe that you are related, in any way, to any
14 individual by blood or marriage that might be on that list?

15 A No, sir.

16 Q So, you don't know of any connection that you have with
17 any witnesses listed on the witness list?

18 A No, sir.

19 Q All right. Now, sir, I'm going to ask you a series of
20 questions now that are a little more personal and go into
21 your opinions or beliefs on certain things. I will caution
22 you, before I do that, that we're not trying to invade your
23 privacy. But we do need to know how you feel on certain
24 things.

25 And so far, to me, you appear to be an individual who

Individual Juror Qualification

1 is secure enough in your opinions and your beliefs that you
2 won't feel threatened by me asking you about these things.
3 You can explain your positions.

4 Is that true?

5 A Yes, sir.

6 Q All right. And also, one of the things I'll eventually
7 get to will be the question of the death penalty since that
8 is a part of this case. It is an issue in the trial. I
9 understand the trial hasn't begun. I hope you understand
10 that as well.

11 And I explained yesterday, the trial will be divided
12 into two phases. One has to do with guilt, guilt or
13 innocence of the crimes charged. And if the jury finds the
14 defendant guilty of murder, the State, in that case, has
15 requested a, a death penalty sentence. Because of that
16 request, we will conduct a second trial if the defendant is
17 found guilty of the murder and determine the appropriate
18 penalty, either the death penalty or life imprisonment.
19 Those will be the two choices that a jury, in that
20 situation, is faced with.

21 Now, we don't even know if we'll get to that phase of
22 the trial because the first issue has not been decided. But
23 the same jury's going to decide, decide both issues. And
24 so, the only time that we can discuss both the first part of
25 the trial and the second part of the trial with jurors is

1 before we pick them. So, that's the reason we're discussing
2 it now.

3 I'm telling you that so that you won't feel any less
4 concerning the defendant or any defense that he puts up or
5 hold this fact against him, that we talked about penalties.
6 I don't have any other time to discuss it but now.

7 Okay, sir. So, again, don't hold that against him.
8 It's just something that we have to do at this point in
9 time.

10 Now, if you were selected as a juror in any case, would
11 you be willing to listen to the law as instructed to you by
12 the judge?

13 A Yes, sir.

14 Q Would you be willing to accept the law given to you by
15 a judge and then apply it to the facts in the case as you
16 determine those facts to be?

17 A Yes, sir.

18 Q Now, is that true even though you might not like the
19 law the judge tells you or you may not agree with the law
20 that the judge tells you, nevertheless, could you take the
21 law as instructed and apply it to the facts in the case?

22 A Yes, sir.

23 Q Now, again, this case has had some, some pretrial
24 publicity and I'm gonna ask that question one more time.
25 You said you haven't heard anything about it.

Individual Juror Qualification

1 And so, is that true, you have not received any
2 information about this case other than what you heard
3 yesterday?

4 A I hadn't never seen it before I come in the courtroom.

5 Q Okay, sir. That's good. I wanted to -- then I won't
6 even bother to ask my next question on that.

7 Now, a couple of, of issues that I or not issues, but
8 concepts or theories under the law that I want to be sure we
9 have a clear understanding on.

10 First is under the laws of this state and the United
11 States, a defendant is always presumed to be innocent. What
12 that means is that the defendant never has the burden of
13 proving himself innocent. He's presumed to be innocent.
14 So, the defendant has no burden of proof in a criminal case.

15 Do you understand that concept?

16 A Yes, sir.

17 Q The next concept under the laws that we follow and our
18 Constitution as set up at the beginning of our country is
19 that the State has the burden of proving a person accused of
20 a crime guilty beyond a reasonable doubt. So, the burden of
21 proof in every criminal case is always upon the State to
22 prove guilt beyond a reasonable doubt.

23 Do you understand that concept?

24 A Yes, sir.

25 Q Would you be, if, if you were selected as a juror in

1 this case, would you have any problem with applying those
2 two concepts to this case?

3 A No, sir.

4 Q All right. Now, my next question is, is it your belief
5 that if a person has been accused of a crime and arrested of
6 a crime and indicted that they must automatically be guilty
7 of that crime?

8 A No, sir.

9 Q So, that -- I take it from what you're telling me, that
10 if you sat through a trial, and you listened to the evidence
11 presented, based upon what that evidence says and what the
12 law says, that you could possibly find somebody not guilty
13 as charged?

14 A Yes, sir, that's possible.

15 Q Okay. So, you could listen to the evidence and decide
16 it on the evidence?

17 A Yes, sir.

18 Q All right. By the same token, if the evidence
19 indicated or proved to you, beyond a reasonable doubt, that
20 a person is guilty, could you issue a verdict of guilty
21 against a defendant?

22 A Yes, sir.

23 Q Now then I take it -- I'm gonna describe what I think
24 you just told me. That means that you're the kind of
25 person, that depending upon the strength of the evidence

Individual Juror Qualification

1 you've heard and upon what the testimony, testimony showed
2 and what the, the law indicated, that you could either find
3 a person guilty or not guilty depending on that evidence?

4 A Yes, sir.

5 Q All right, sir. Now, I told you I'd get to talk to you
6 about the death penalty. We're gonna talk about it right
7 now, and I indicated to you that there are two different
8 phases of the trial. The final one being that sentencing
9 phase should a defendant be found guilty of the murder. So,
10 that means that the defendant would be found guilty and that
11 would no longer be an issue in the case. The only question
12 would be the penalty to be imposed, imposed. And in that
13 circumstance, the choices are life in prison or the death
14 penalty for the jury that comes back in.

15 Now, do you understand that?

16 A Yes, sir.

17 Q All right, sir. Before you came in here you were given
18 a sheet of paper.

19 Do you remember that sheet of paper?

20 A Yes, sir.

21 Q I'm going to talk to you about that in a second. So,
22 what I want you to do is think about yourself in this
23 situation. Put, put yourself in this situation.

24 You've been selected as a juror in a murder trial where
25 the state is seeking the death penalty. You and your fellow

Individual Juror Qualification

1 jurors have finished the, the guilt or innocence phase of
2 the trial, and you have found the defendant guilty of the
3 murder. So, the question of guilt or innocence is no longer
4 before the jury. That's been decided.

5 You're now getting ready to come back into the
6 courtroom with your fellow jurors and begin the second phase
7 of that trial, which is the sentencing phase of the trial,
8 to determine what sentence is the appropriate sentence to be
9 imposed.

10 Now, I -- that paper I gave you had on there three
11 different possible jurors, and I'm gonna go over those with
12 you now to be sure we understand we're talking about the
13 same thing.

14 The first juror is the, a juror, who before he ever
15 comes into the courtroom to start that sentencing phase,
16 already knows how he's going to vote. He's going to vote
17 for the death penalty every time because he believes the
18 most appropriate sentence for anybody convicted of death is
19 the death penalty, convicted of murder is the death penalty.

20 The second type of juror also has already made up his
21 or her mind, and he knows how he's going to vote before he
22 ever hears a word during the sentencing phase. That
23 particular juror believes the State never has the right to
24 take a life in punishment for a crime. And that juror,
25 therefore, regardless of the severity of the crime, will

Individual Juror Qualification

1 always vote for the life sentence, and has already made up
2 his mind and that juror will do that every time because
3 that's that juror's belief.

4 The third type of juror does not know what he or she
5 would do in a situation. He or she does not have their mind
6 made up as to whether they're gonna vote for the death
7 sentence or vote for the life imprisonment. That juror is
8 going to have to wait to listen to the evidence to hear the
9 testimony and then make a decision as to the appropriate
10 penalty.

11 Now, do you understand the three jurors I've just
12 described to you?

13 A Yes, sir.

14 Q Of those three jurors, which one of them best describes
15 you in that situation?

16 A Your last one.

17 Q Number three?

18 A Number three.

19 Q All right. So, now I want to follow-up by saying that,
20 under those circumstances, I think what you're telling me is
21 that, keeping in mind the fact that the defendant has been
22 found guilty of murder and that issue is no longer a
23 concern, you would be willing to listen to the facts and
24 evidence?

25 A Yes, sir.

1 Q And if the evidence justified it, you also would be
2 willing to sentence someone to death in that situation?

3 A Yes, sir.

4 Q And if also the evidence, after you've reviewed it,
5 does not justify the death sentence, you would be willing
6 then to sentence, sentence someone to life imprisonment.

7 Is that also true?

8 A Yes, sir.

9 Q So, you could sentence someone to either life or to
10 death in that situation?

11 A Yes, sir.

12 Q Finally, I'm going to ask you a personal question, and
13 this has to do with the way the case will be handled, and I
14 indicated yesterday, once we start that trial, the jury,
15 once they're selected, will be sequestered. That means that
16 they will be staying with us in a hotel being given their
17 meals, transported back and forth to the court until the
18 case is finally decided.

19 We believe that this trial, once it begins, will take
20 anywhere from five to seven days. About a week in length
21 and it's hard to say exactly how long it will take. But
22 anyway, it will be about that length of time and I realize
23 that anyone who's selected who serves on that jury is going
24 to be inconvenienced. We already know that.

25 Now, that's not my question. My question is if you

Individual Juror Qualification

1 were selected to serve on that jury and you were placed into
2 sequestration, would that fact pose a serious risk of danger
3 to your health or your well being if you were on that jury?

4 A Well it could.

5 Q Can you tell me in what respect?

6 A Because it would cause a lot of hardship on me. I'm
7 owner op. I drive a truck. It's my truck and I get paid by
8 the mile, and me being up here is killing me.

9 Q Uh-huh. (Affirmative).

10 A I don't get no compensation, and if this thing goes
11 into next week, that's gonna be two weeks without a pay
12 check. I know you probably -- you know, that's just life
13 cause I get paid by the mile.

14 Q Yes, sir.

15 A And I did come up here cause I wanted to do my part.
16 But I had no idea it would take this long to get this ball
17 rolling cause it's really been taking a long time. Now I
18 know more. See I had it postponed twice because of my
19 situation and the judge postponed it. I said well, he ain't
20 gonna let me out of it this time. I got to come up here and
21 see what this is all about. So, I been up here all week.
22 I'm gonna be---

23 Q Well, we been, we been here for two days.

24 A I know. But it seems like a week. Let me put it to
25 you like that. But it would cause a lot of hardship me

1 being out of work for two weeks, yeah, cause I, I depend
2 on -- I buy my own fuel, everything. It's my truck.

3 Q Well, so, your business is one that if you're not there
4 it's not in operation?

5 A I'm the only one. I'm the only driver. And when you
6 asked that question yesterday, I thought about it, was
7 anybody in the court had a business that could not survive
8 without it, and the man come up and he said he made pizzas
9 or something, and it dawned on me later on maybe I should of
10 talked to you then.

11 Q You probably should have.

12 A I should have and there's something else too. I'm
13 gonna say this right now. I mean I didn't want to say it in
14 front of everybody. I mean I have Crone's Disease.

15 Q Uh-huh. (Affirmative).

16 A And I didn't know if I could sit up in front of a jury
17 for ten hours cause I don't know if you know anything about
18 Crone's Disease.

19 Q I know little about it.

20 A Well, I have it and it's hard -- when I'm driving I can
21 get out of my truck, take me a break. When I'm up here and
22 y'all in the middle of evidence, well, I just can't say hey,
23 raise my hand and say I have to go use the restroom. That's
24 my story you know.

25 Q Yes, sir, well, I'm gonna, at this point in time, find

Individual Juror Qualification

1 that you should be disqualified because of your employment
2 situation.

3 A well---

4 Q I'm gonna release you. You're free to go.

5 A well, I appreciate it.

6 Q Thank you, sir.

7 (The following takes place outside the presence of the
8 juror.)

9 THE COURT: All right. The Court's gonna take about a
10 five minute break.

11 Thank you very much.

12 (Whereupon, a short recess was taken at this time.)

13 THE COURT: All right. Bring the, in Juror Number 267,
14 Justin Turner.

15 JUSTIN TURNER, having been previously
16 sworn, testified as follows:

17 EXAMINATION

18 BY THE COURT:

19 Q Your name is Justin Turner, is that correct?

20 A That's correct, Your Honor.

21 Q Mr. Turner, you were here yesterday and you took an
22 oath at that time with your fellow jurors to tell the truth
23 in the jury qualification.

24 Do you remember that?

25 A I do.

1 Q I'm just reminding you of that fact because you're
2 still under oath now, that same oath for our questioning.

3 Do you understand that?

4 A I understand.

5 Q I understand that sitting in that seat behind a
6 microphone in a courtroom is not the most comfortable seat
7 in the world, and I hope you understand that I appreciate
8 that. We're gonna ask you some questions about your beliefs
9 and, and the things, your opinions on certain matters.

10 For that reason there are no right or wrong answers to
11 the questions we're going to ask you. You're simply going
12 to explain or gather some, give a, allow us to gather some
13 information about you.

14 Do you understand that?

15 A I understand.

16 Q And if, at any time during the proceeding, you feel
17 uncomfortable or want to discuss something with me, let me
18 know. I'll go over that with you.

19 A Okay.

20 Q The first question I have, I'm gonna ask a set of
21 questions. The attorneys will be allowed to follow-up on my
22 questions.

23 And so, the first thing I'm gonna ask you, has anybody
24 contacted you about the case or discussed the case or have
25 you gotten any information that might cause you to form an

Individual Juror Qualification

1 opinion about this case since our discussions yesterday?

2 A Not since our discussions yesterday.

3 Q Okay, sir. Have you participated, ever participated in
4 any type of Internet discussion or blog concerning the death
5 penalty?

6 A No, sir.

7 Q Have you ever participated in any political activities
8 such as demonstrations, meetings, or rallies concerning the
9 death penalty?

10 A No, sir.

11 Q Sir, there has been some discussion of this case in our
12 local media, and my question to you now, if you were
13 selected on a jury, could you put aside anything that you
14 may have heard or seen previously or prior to this time and
15 decide this case solely upon the evidence that you hear in
16 the courtroom?

17 A To be quite honest, it would be hard, Your Honor.

18 Q All right. Well, let's explore that a little bit
19 further.

20 Did -- have you seen something about this case in the
21 media?

22 A Reading the newspaper. I believe it's Sunday.

23 Q Okay, sir. Now, has that caused you to form opinions
24 about this case that you could not set aside?

25 A It has.

1 Q Okay, sir. So, that has influenced your decision?

2 A Yes, sir, it has.

3 Q Well, now, yesterday I asked you some questions about
4 whether or not those things would cause you to lose your
5 impartiality.

6 A Right.

7 Q Is that the case now?

8 A It is after, I don't know, just the night of thinking
9 about the whole, the whole everything, and yes, sir, I
10 don't -- I'm not sure if I could be impartial.

11 THE COURT: Do the attorneys wish to ask any questions
12 of this juror?

13 SOLICITOR GOWDY: The State does not, Your Honor.

14 MR. ALLEN: No, Your Honor.

15 THE COURT: All right. I'll find him disqualified.
16 You're free to go.

17 (The following takes place outside the hearing of the
18 juror.)

19 THE COURT: Bring in Joshua Hayes please.

20 BAILIFF: Yes, sir.

21 JOSHUA HAYES, having been previously
22 sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q All right, sir. Your name is Joshua Hayes, is that

Individual Juror Qualification

1 right?

2 A Yes, sir.

3 Q And Mr. Hayes, yesterday when you were in front of me
4 you took an oath to tell the truth.

5 A Yes, sir.

6 Q Do you remember that?

7 A Yes, sir.

8 Q And I'm reminding you of that fact because we're still
9 in that same process, and you're still under that same oath.

10 A Okay.

11 Q Do you understand that, sir?

12 A Yes, sir.

13 Q Okay. We're going to go over some matters with you
14 today. I realize sitting where you're sitting is not the
15 most comfortable seat in this room. However, I will tell
16 you that I'm going to ask you some questions. The attorneys
17 will then follow-up on my questions. We're here to learn a
18 little bit more about you and your opinions and views on
19 certain things.

20 There are no right or wrong answers to the questions
21 I'm about to ask. So, don't feel that we're looking for any
22 particular answer. We're simply trying to discover your
23 views on certain matters that might be involved in this
24 case.

25 Do you understand what we're doing?

1 A Yes, sir.

2 Q If, at any time during this process, you feel
3 uncomfortable or wish to discuss something with me, please
4 let me know and we'll stop and talk about it.

5 Now, the first question, have you heard or seen or read
6 anything about this case or been exposed to any information
7 about this case since our discussion yesterday that might
8 cause you to form an opinion about this case?

9 A No, sir.

10 Q Have you participated or ever participated in any
11 Internet or other blog or other source concerning the death
12 penalty?

13 A No, sir.

14 Q Have you ever participated in any, any political
15 activities such as demonstrations, rallies, or meetings that
16 would involve the issue of the death penalty?

17 A No, sir.

18 Q Now, sir, are you the kind of juror, if you were
19 selected in this case, that you could put aside anything
20 that you may have heard, read, or seen previously and decide
21 the case solely based on the information you could hear in
22 the courtroom?

23 A Yes, sir.

24 Q Now, while you were waiting, there was a list of
25 witnesses in that room that you were shown.

Individual Juror Qualification

1 Do you remember that list?

2 A Yes, sir.

3 Q I don't want you to name anybody individually out of,
4 off that list. But I do want to ask you about it.

5 First of all, after reading the list, do you believe
6 that you have any social, business, or personal connections
7 with anyone listed on a witness, on the list, witness list?

8 A No, sir.

9 Q Do you believe that you are related, either by blood or
10 marriage, to anyone who might be on that list?

11 A No, sir.

12 Q So, it's your belief you have no connections with the
13 people identified as witnesses?

14 A That's correct.

15 Q Okay. Now, I'm going to go into some questions that
16 are a little more personal in nature. We're gonna be asking
17 about certain topics that are important in deciding, in
18 deciding how to pick a jury in this case. We're not trying
19 to invade your privacy. We're trying to find out how you
20 feel about some things.

21 Do you understand that, sir?

22 A Yes, sir.

23 Q You appear to be a secure enough individual in your
24 beliefs and your, and your opinions that we can discuss
25 those things without your feeling threatened.

1 Is that true?

2 A Yes, sir.

3 Q All right. Now, one of the things I'll get to
4 eventually in my questions about these things will be the
5 death penalty because it may be an issue in the trial. I
6 explained yesterday, this trial has two parts. The first
7 part is guilt or innocence of the charges that are, that
8 have been filed. The second part, if we get that far, would
9 be the penalty phase.

10 Now, one of the charges that the defendant is facing is
11 murder and the State has sought the death penalty in that
12 case. So, if the defendant were found guilty of murder, we
13 would go to that second phase of the trial to determine the
14 penalty, and the two choices then would be death or life
15 imprisonment, and that would be a separate trial. New
16 evidence and new witnesses would testify concerning those
17 issues as opposed to the first case.

18 Do you understand that that's where we are?

19 A Yes, sir.

20 Q Now, for me to discuss the death penalty with you today
21 kind of puts the cart in front of the horse because we have
22 not yet gotten to that stage of the trial and won't perhaps.
23 However, I hope you realize the same jury will decide both
24 cases. And once we start the case, we won't have another
25 opportunity to discuss with the jury those issues. So, if

Individual Juror Qualification

1 we're gonna discuss those issues we've got to do it now.

2 A I understand.

3 Q And I'm telling you that so that you won't hold this
4 discussion against the defendant in any way in the first
5 part of the trial because of, we've discussed penalty. It's
6 simply the only time that we have a right to do, have a
7 opportunity to do that.

8 Do you understand that, sir?

9 A Yes, sir.

10 Q Okay. Now, the first question has to do, has -- the
11 first questions has to do with your application of the law
12 to the facts. The judge will charge you concerning the law
13 or I will if you're in this case.

14 And my question is if you were a juror in any criminal
15 case, are you willing to listen to the law as instructed by
16 the judge?

17 A Yes, sir.

18 Q And would you be willing to accept the law as the judge
19 gives it to you and apply it to the facts as you find them
20 to be?

21 A Yes, sir.

22 Q Now, is that true even though, once you hear the law
23 from the judge, you might disagree with it or you might not
24 like it, but would you still take it as the judge gives it
25 to you and apply it to the facts?

1 A Yes, sir.

2 Q Okay. Now, there has been some information in our
3 local press about this case. I don't know what the level of
4 your exposure is to that and I'm not asking that at this
5 time. What I am asking you, and it's similar to the first
6 question I asked you about this, but in a little more
7 detail, have you -- is there anything that you have read,
8 heard, or seen about this case outside the courtroom or if
9 you were to hear something during trial, that you could not
10 set aside?

11 In other words, could you decide the case purely upon
12 what you hear in the courtroom?

13 Could you do that?

14 A Yes, sir.

15 Q Now, a couple of concepts we've already talked about.
16 I want to be sure you understand them.

17 The State, the -- first of all, in this state, a
18 criminal defendant is always presumed to be innocent.
19 Therefore, he has no burden of proving himself innocent. In
20 fact, the defendant has no burden of proof in a criminal
21 trial at all.

22 Do you understand that concept?

23 A Yes, sir.

24 Q The second concept is the State, in our system, always
25 has the burden of proving the defendant guilty beyond a

Individual Juror Qualification

1 reasonable doubt. So, the burden of proof always rests with
2 the State.

3 Do you understand that concept?

4 A Yes, sir.

5 Q Are you willing to apply those two concepts to this
6 case if you were selected?

7 A Yes, sir.

8 Q Now, so, I, I take it then -- well, let me, let me ask
9 this next question.

10 Do you think that because someone has been accused of a
11 crime, perhaps arrested or indicted, means that they must
12 automatically be guilty of that charge?

13 A No, sir.

14 Q So, I take it then that you could listen to the
15 evidence, weigh the evidence, review the law as presented to
16 you, and based on what those things are and how you find
17 them, under certain circumstances you could find a person
18 not guilty of the charge.

19 Is that true?

20 A Yes, sir.

21 Q And by the same token, if you find, after weighing all
22 of the evidence and the circumstances in the law, you find
23 that the State has met its burden of proof and proved the
24 defendant guilty beyond a reasonable doubt, you could issue
25 a verdict of guilty in that situation.

1 Is that also true?

2 A Yes, sir.

3 Q So, does this correctly describe you?

4 You're a person who would review the evidence, weigh
5 the evidence, and based on what that evidence tells you,
6 apply it to the law, that you could find a defendant either
7 guilty or not guilty?

8 A Yes, sir.

9 Q Now, my next question has to do, questions have to do
10 with the death penalty. I explained to you earlier the
11 procedure that we would go through. Two, two, two different
12 trials. And I want you to -- I want you to envision
13 yourself or place you, place yourself in a position that you
14 have been selected to serve on a jury in a murder case, that
15 you -- and in that case, the State is seeking the death
16 penalty.

17 You and your fellow jurors have gone through the first
18 part of the trial. And after doing so, having determined
19 and found the defendant guilty of the crime of murder. So,
20 the question of guilt or innocence no longer exist. He's
21 been found guilty of the murder. And as you know then, you
22 and your fellow jurors would then be in a position of coming
23 back to the courtroom to decide the question of the sentence
24 to be imposed. And in this case, that choice is life
25 imprisonment or death is the only two choices.

Individual Juror Qualification

1 Do you understand that situation?

2 A Yes, sir.

3 Q And where I've asked you to put yourself?

4 A Right.

5 Q Now, there was a sheet of paper back in the waiting
6 room that described three different jurors.

7 Do you remember that sheet of paper?

8 A Yes, sir.

9 Q Did you look that over?

10 A Yes, sir.

11 Q All right. I'm going to go over those three possible
12 jurors with you again so that I'm sure you and I have a
13 clear understanding of those three jurors.

14 The first type of juror in that situation is a person
15 who, as they come into the courtroom, has already made up
16 their mind. That person is a person who believes that the
17 only appropriate penalty for someone convicted of murder is
18 the death penalty every time. So, that person, coming into
19 the courtroom, has already made up their mind about that
20 issue before they enter the courtroom.

21 The second type of juror is described as a person who's
22 coming into that courtroom and has also already made up
23 their mind. In other words, that person does not believe
24 the State has the right to take a life in punishment for any
25 crime, and, therefore, every time they come into that

Individual Juror Qualification

1 situation would always vote for life as opposed to death.
2 So, that particular -- the life penalty as opposed to the
3 death penalty. That person has already made up their mind
4 coming into the courtroom as well.

5 The third juror that we described to you was an
6 individual who's coming into the courtroom and doesn't know
7 how he or she is going to vote. Hasn't made up their mind
8 as to how that penalty would be assessed. That individual
9 would have to listen to and understand and weigh the
10 evidence in the sentencing part of the trial and then make a
11 decision as to what the appropriate penalty was.

12 Now, do you understand the three jurors, the
13 differences that I've explained to you?

14 A Yes, sir.

15 Q Now, of those three jurors I just described to you,
16 which one of those three would best describe you if you were
17 in that situation?

18 A The third type.

19 Q All right, sir. Now, I assume that means that, under
20 those circumstances where someone's been found guilty and
21 the issue of guilt is no longer a concern, you would be
22 willing to listen to the facts and the evidence, and if the
23 evidence, according to your review, justifies it, you would
24 be willing to sentence to, someone to death, is that
25 correct?

Individual Juror Qualification

1 A Yes, sir.

2 Q And by the same token, if you reviewed the evidence of
3 the sentencing phase of the trial, and after reviewing that
4 evidence, you find that the evidence does not justify the
5 death penalty, or for any other reason you decide that the
6 person should be given life, you would be willing to give
7 someone the life sentence as well?

8 A Right, yes, sir.

9 Q So, that means that you could, under certain
10 circumstances, give a defendant either a life or a death
11 sentence in that situation?

12 A Yes, sir.

13 Q And I assume that would depend upon the facts and
14 circumstances you heard in that final portion of the trial.
15 Is that true?

16 A Yes, sir.

17 Q Now, the last thing I'm gonna ask you about is a
18 personal issue. I've told you if you were selected on a
19 jury you would be sequestered. You'll be serving for what
20 we estimate to be about a week in trial.

21 During that week, you'll be at a hotel. You'll be
22 traveling in common transportation and you'll be given your
23 meals during that week. You'll have limited contact with
24 the outside world. I realize that's gonna be an
25 inconvenience in anybody's life. I understand that.

Individual Juror Qualification

1 But the question I have, if you were in that situation,
2 would that situation pose a serious risk of danger to your
3 health or well being?

4 A No, sir.

5 Q And if you were in that situation, would it pose a
6 serious danger of risk to the health or well being of anyone
7 who is dependent upon you?

8 A No, sir.

9 Q That completes my questions. I'm going to allow the
10 attorneys to follow-up on my questions at this point in
11 time. We allow the defense to go first. I believe
12 Mr. Allen's standing up.

13 So, Mr. Allen, you may proceed.

14 MR. ALLEN: Yes, Your Honor. Thank you, Your Honor.

15 EXAMINATION

16 BY MR. ALLEN:

17 Q Mr. Hayes, I'm Clay Allen. And I, along with John
18 Reckenbeil and Kathy Hodges, are representing Tony Torres in
19 this case. And we appreciate your filling out the
20 questionnaire and coming today and yesterday to answer our
21 questions. Again, I know it's also uncomfortable for you to
22 come in and be questioned like this, and I will try to ask
23 you questions and see where we go from there.

24 As I understand it, you have not heard anything about
25 this case, is that correct?

Individual Juror Qualification

1 A Correct.

2 Q And you haven't -- you don't, you don't recall hearing
3 or reading anything about this case about a year and a half
4 ago back in May of 2007?

5 A No, sir.

6 Q Okay. And you were living in Spartanburg then, right?

7 A Yes, sir.

8 Q Okay. So, right now you have an open mind about
9 everything in connection with this case?

10 A Yes, sir.

11 Q Okay. Very good.

12 Do, do you know the Emery family, Ray Emery and Ann
13 Emery?

14 A No, sir.

15 Q Okay. And of course, you don't know Tony Torres?

16 A No, sir.

17 Q Okay. Mr. Hayes, I want to ask you some questions
18 specifically about your position on the death penalty. And
19 again, as His Honor has indicated, this is our only
20 opportunity to ask these questions and not---

21 A Right.

22 Q ---presuppose or try to relate to you how we think the
23 case should turn out. We have to cover both phases of the
24 trial in the event we get there.

25 You understand that?

Individual Juror Qualification

1 A Yes, sir, I understand.

2 Q Okay. How do you feel about the death penalty, sir?

3 A I feel like it's necessary, but not necessarily for use
4 all the time.

5 Q Okay. Can you explain that a little bit for me please?

6 A I feel like there's certain circumstances in which it's
7 appropriate and certain circumstances in which it's not
8 appropriate.

9 Q Okay. In a situation where you, if you were to serve
10 on a jury and 11 other jurors found the individual guilty of
11 murder, and again, we're talking about a willful killing of
12 someone else with malice aforethought.

13 A Right.

14 Q It's important to understand that when, when someone's
15 found guilty of murder, the jury is essentially saying
16 there's no defense to this. You know, the person, we're
17 convinced beyond a reasonable doubt that the individual
18 committed this murder and no question that that person did
19 it and that that person is responsible for it.

20 Do you follow what I'm saying?

21 A Right, yes, sir, I understand.

22 Q Okay. And do you believe that any particular sentence
23 is the only appropriate sentence in a situation like that?

24 A I'm, I'm sorry. I'm---

25 Q Let me phrase it slightly differently.

Individual Juror Qualification

1 A Yeah.

2 Q In a situation like a conviction for murder like I've
3 explained---

4 A Right.

5 Q ---do you believe that the death penalty would be the
6 only appropriate sentence in a situation like that?

7 A Not necessarily the only appropriate sentence.

8 Q Okay. You would listen to other factors in making a
9 determination?

10 A Yes, sir.

11 Q Is that what you're saying?

12 A (Witness nods affirmatively.)

13 Q Okay. In these type of cases, and by these type I'm
14 talking about cases that are put up for consideration for
15 the death penalty, the second phrase, as His Honor was
16 explaining, is a, is a, another trial basically in which the
17 State would present additional evidence to show factors of
18 aggravation. That is something to make the, to show that
19 the offense is worse than other murder cases. And please,
20 I'm not trying diminish anyone's life---

21 A Right.

22 Q ---when I say that.

23 A I understand.

24 Q The defense also has an opportunity to present evidence
25 in mitigation.

1 Do you know what I mean by that?

2 A Why don't you -- it'd be better if you'd explain it.

3 Q Okay. Thank you.

4 Of course, it's not a defense. A defense is, is or are
5 facts which would indicate that someone should be found not
6 guilty---

7 A Right.

8 Q ---of an offense. But mitigation evidence is any
9 evidence, which in either fairness or mercy, tends to show
10 that the death penalty would not be an appropriate sentence.

11 A Okay.

12 Q But rather that it should support something other than
13 the death penalty?

14 A Right.

15 Q Do you follow what I'm saying?

16 A Yes, sir, I understand.

17 Q Okay. In a situation where the State presents evidence
18 showing circumstances of aggravation, would you or do you
19 believe that the death penalty would be the only appropriate
20 punishment in those cases?

21 A Do you mean that if the defense hasn't proved, provided
22 the, the mitigating circumstances or do you mean that it---

23 Q I guess what I'm asking is this. If the State presents
24 evidence of aggravation in a murder case---

25 A Right.

Individual Juror Qualification

1 Q ---after the conviction of murder, would you consider
2 only those factors in aggravation and not consider
3 circumstances of mitigation or the mitigation evidence?

4 A I feel like I'd be willing to, to take into
5 consideration all factors---

6 Q Okay.

7 A ---from, from both sides.

8 Q Thank you.

9 A If that's what you, if that's answers -- I don't know
10 if that's the answer that, for, to the question.

11 Q Yes, sir.

12 THE COURT: There are no right or wrong answers. You
13 just need to answer it the way you feel.

14 WITNESS: Okay.

15 THE COURT: He'll ask the next question if he needs to.

16 Q Okay. Yes, sir, I mean I do want to reiterate that
17 there are no right or wrong answers. Just simply how you
18 feel is, is---

19 A Right. I understand.

20 Q ---all we're trying to figure out or trying to find
21 out, and the only right answer is your answer---

22 A Okay.

23 Q ---on how you feel.

24 well -- all right. Is there any kind of category, if
25 you will, or broad category of murder cases in which you

Individual Juror Qualification

1 would, you could not vote for life imprisonment?

2 A Is there any kind where I could not?

3 I'm sorry.

4 Q Could not vote for life imprisonment as an appropriate
5 sentence.

6 A I, I don't think that there's any -- I don't think that
7 there's any particular circumstance where I would be able
8 to, to say absolutely without being able to look at both
9 sides of the evidence that, that, you know, life in prison
10 isn't appropriate.

11 Is that---

12 Q Okay. I'm trying to think back to my question to see
13 if it had too many double negatives.

14 A I think maybe, I think maybe it's---

15 Q Let me---

16 A Can you, can you, can you restate that a little bit
17 differently?

18 I think maybe it would help.

19 Q Let me state it another way.

20 Is there a broad category of murder cases in which you
21 would not consider any mitigation evidence, only consider
22 the aggravating evidence---

23 A No.

24 Q ---in imposing the death penalty?

25 A No.

Individual Juror Qualification

1 Q Okay. That's what I'm getting at.

2 A Okay. I'm sorry.

3 Q So, if, if I understand you correctly, that even in a
4 situation where an individual is guilty of murder and the
5 State can prove aggravating circumstances, and the defense,
6 if it desires to, presents evidence of mitigation, you would
7 not come into their, into this situation with any
8 preconceived notions of the appropriate penalty.

9 Is that what you're saying?

10 A No, I feel like I could, I could sit through the,
11 through the second phase of, of the trial and, and weigh
12 both sides for myself.

13 Q Okay. And not make a decision about the appropriate
14 sentence until you've heard all the evidence?

15 A Correct.

16 Q Is that what you're saying, on both sides?

17 A Yes, sir.

18 Q Okay. And now you, now you -- you come across your or
19 you come to your opinions about the death penalty and how to
20 arrive at the appropriate sentence through I guess your
21 regular experiences in life and that sort of thing, is that
22 correct?

23 A Yes, sir.

24 Q And you've formed these opinions over a period of time?

25 A Yes, sir.

Individual Juror Qualification

1 Q would that be fair to say?

2 A (Witness nods affirmatively.)

3 Q Okay. In the event that you find that someone
4 disagrees with your opinions, of course, you would want your
5 opinions to be treated with respect as it should be,
6 correct?

7 A Correct, yes, sir.

8 Q And if someone should disagree with you in that
9 opinion, would, would you also treat that different opinion
10 with respect?

11 A Yes, sir.

12 Q Okay. And if you've come to an opinion or come to a
13 conclusion that a particular sentence is the appropriate
14 sentence after you've heard all the evidence in the case,
15 and, of course, the individual's been found guilty and
16 you've heard the evidence of aggravation and mitigation, and
17 you come to a decision as to what you think the appropriate
18 sentence is, would you allow anyone else to sway you from
19 that opinion?

20 A I don't believe so, no.

21 Q Now, of course, I understand---

22 A That -- I'm, I mean I'm -- in a situation like that,
23 you know, if, if you're talking about the, the jury being
24 together and talking about the situation, I would be willing
25 to listen to people who don't necessarily have the same

Individual Juror Qualification

1 opinion as mine and give it the same respect as I would
2 expect my opinion to have.

3 Q Yes, sir.

4 And, of course, you know, the jurors do discuss it and
5 they're allowed to discuss it---

6 A Right.

7 Q ---to see if they could come to a common consensus, but
8 I'm talking about a situation where after it, all the
9 discussions, if you come to a conclusion as to the
10 appropriate sentence that's different from anyone else's,
11 essentially what would you do?

12 A I feel like I'm the kind of person who'd want -- I
13 weighed information pretty carefully, and, you know, if I've
14 come, if I've come to a decision, then generally it's after
15 a lot of forethought and I would be pretty convinced in,
16 with my own opinion that it would be right.

17 Q Okay. Thank you, sir. I've got no other questions for
18 you. Thank you, sir.

19 A Thank you.

20 THE COURT: State.

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

22 THE COURT: Yes.

23 SOLICITOR GOWDY: Thank you, Your Honor.

24 EXAMINATION

25 BY SOLICITOR GOWDY:

Individual Juror Qualification

1 Q Good afternoon, Mr. Hayes.

2 A Hello.

3 Q Thank you for your candor and your openness in
4 answering questions that, in ordinary life, wouldn't be any
5 of my business and I wouldn't be asking you. So, thank you
6 and especially for filling out your questionnaire.

7 A You welcome.

8 Q Okay. I noticed that you finished Spartan High.

9 A (Witness nods affirmatively.)

10 Q And then you spent some time in Raleigh.

11 A Right.

12 Q Did you take any classes, be it theology, philosophy,
13 political science, history, where capital punishment was
14 discussed or debated either at Spartan High or N.C. State?

15 A No. No. I mean I, I have taken like a philosophy
16 style course. But I think they were pretty strict on not
17 discussing certain aspects, certain topics in the, in the
18 public school setting that---

19 Q Right.

20 A ---you know, you didn't -- you know what I mean?

21 Q Sure. That are especially volatile.

22 A Right. Exactly.

23 Q Right.

24 I do not want to know who because it's none of my
25 business, but in response to one of the questions someone

Individual Juror Qualification

1 connected to you, loosely connected to you had some
2 involvement with law enforcement on a, what I would consider
3 to be a relatively minor misdemeanor, and you were candid
4 enough to write that in there.

5 would that experience or whatever you know about that
6 influence your opinion of law enforcement?

7 A No, sir.

8 Q Or prosecutors?

9 A No.

10 Q Nothing you know about that situation that, where you
11 think either of those two entities acted inappropriately?

12 A No, sir.

13 Q Okay. Finally, and I'm gonna -- I will finish.

14 If I understand you correctly, you will, you would have
15 an open mind in the guilt phase, you're gonna want to have
16 all the information, and you'll decide whether they're
17 guilty or innocent?

18 A Yes, sir.

19 Q If you think, in the next phase, that life is the right
20 sentence, you're gonna vote for life?

21 A Yes, sir.

22 Q And you'll hear other people's prospective, but if it's
23 your deeply held conviction, then you will hold to that?

24 A If after all the facts have been presented to me, if I
25 feel like that's, if I feel like that's appropriate, then

Individual Juror Qualification

1 that's, then that's what I'll, then that's what I'll go by.

2 Q Fair enough.

3 And so to with a verdict of death?

4 A Yes, sir.

5 Q You will listen to other people's prospective, and if
6 that is what you believe is the proper verdict, that is what
7 you will render?

8 A Yes, sir.

9 Q Thank you, Mr. Hayes.

10 A You welcome.

11 THE COURT: Any follow-up questions?

12 MR. ALLEN: No, Your Honor.

13 THE COURT: Mr. Hayes, a couple of things I want to go
14 over with you at this point in time.

15 First of all, the information that you've given us for
16 contacting you, is it the correct information?

17 WITNESS: Yes, sir.

18 THE COURT: All right. It hasn't changed since you
19 submitted it to the Court?

20 WITNESS: Not since I sent my questionnaire in.

21 THE COURT: Okay. We're in the process still of going
22 through the jurors and qualifying them for service. I will
23 tell you that we will be contacting you in the near future
24 as to your future participation. I will advise you that if
25 you are asked to come back to this courthouse for this case

Individual Juror Qualification

1 that we will be in the process then of selecting the actual
2 jury.

3 You should become, come to that meeting prepared to
4 stay for the week.

5 WITNESS: All right.

6 THE COURT: If you are happen to -- if you happen to be
7 selected on a jury, you would immediately go into the
8 sequestration, sequestration situation, and you need to have
9 with you whatever you need to spend that week.

10 Do you understand that, sir?

11 WITNESS: Yes, sir.

12 THE COURT: All right. Also I will advise you that my
13 previous instructions concerning your contact with others,
14 gathering information outside the courthouse, or listening
15 or watching any media reports continues until such time as
16 you're advised otherwise.

17 Do you understand that, sir?

18 WITNESS: Yes, sir.

19 THE COURT: Thank you very much. You're free to go at
20 this time.

21 WITNESS: Okay. May I ask you a question?

22 THE COURT: Yes, sir.

23 WITNESS: So, you, you said that according -- with my,
24 the contact information you have for me, that's how you're
25 gonna get back in touch with me?

Individual Juror Qualification

1 THE COURT: Yes, we need to know how to get in touch
2 with you once we've -- see, we're in the process of
3 interviewing the jurors. We don't know when that's gonna
4 end.

5 WITNESS: So, you'll contact me whenever the time
6 comes?

7 THE COURT: Yes, sir, we'll, we'll use that contact
8 information to let you know when you need to report back
9 here.

10 WITNESS: Okay. The, the information was sent to my
11 parent's house and I'm, I'm not exactly sure how. It was
12 their---

13 THE COURT: Well, sir, do you have updated contact
14 information?

15 WITNESS: Yeah, and I don't remember if I filled out
16 updated information on the sheet or not.

17 THE COURT: Why don't you step over and see this lady
18 right here right now.

19 WITNESS: Okay.

20 THE COURT: And she'll take care of straightening out
21 that contact information.

22 WITNESS: All right.

23 THE COURT: Okay. Thank you very much, sir.

24 WITNESS: Thank you.

25 (The following takes place outside the presence of the

Individual Juror Qualification

1 juror.)

2 THE COURT: State's position in regard to Mr. Hayes?

3 SOLICITOR GOWDY: We would submit to the Court that
4 he's qualified.

5 THE COURT: Defense position subject to previous
6 objections?

7 MR. ALLEN: No other objections.

8 THE COURT: I find that he is qualified to serve.

9 The next juror is Number 23, Marcella Belzer.

10 MARCELLA BELZER, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Ma'am, your name is Marcella Belzer, is that right?

15 A Yes.

16 Q Mrs. Belzer, you were here yesterday and during that
17 time you took an oath to tell us the truth during the jury
18 qualification process.

19 A Yes, sir.

20 Q Do you remember that?

21 A Yes, sir.

22 Q I'm just reminding you of that fact because that oath
23 continues today during this discussion.

24 A Yes, sir.

25 Q Do you understand that as well?

1 A Yes, sir.

2 Q All right, ma'am. First of all, I want to thank you
3 for your willingness to serve and be involved in the
4 process. I know it's not the most comfortable seat in this
5 room sitting right there and having questions asked of you
6 and I realize that. But I hope you understand that we're
7 just trying to gather information about you.

8 There are no right or wrong answers to any question
9 that we ask. We simply want to gather your opinions
10 concerning matters. And so, if you have any problem during
11 our questioning and you'd like to discuss it with me, you
12 let me know.

13 Okay, ma'am?

14 A Okay.

15 Q First, I'm gonna ask you some questions. When I'm
16 finished, if the attorneys want to follow-up on my
17 questions, I'll give them a chance to do that.

18 The first question is, since yesterday when we talked,
19 have you talked to anyone, discussed the case with anyone,
20 heard anything, seen anything that might cause you to form
21 an opinion about this case?

22 A No, sir.

23 Q Have you ever participated in any blog or Internet site
24 concerning the death penalty?

25 A No, sir.

Individual Juror Qualification

1 Q Have you ever participated in any police, political
2 activities such as demonstrations, meetings, or rallies for
3 or against the death penalty?

4 A No, sir.

5 Q Now, ma'am, are you the type of person, if you were
6 selected on any jury, that you could put aside matters that
7 you may have heard, seen, or read outside of the courtroom
8 and decide the case solely based on evidence presented in
9 the courtroom?

10 A Yes, sir.

11 Q Now, while you were waiting, there was a list of
12 witnesses given to you to review.

13 Did you review the list?

14 A Yes, sir.

15 Q I don't want you to tell me anybody's name on the list
16 during my questioning. But I do want to ask you about that.

17 Based on your review of the list, do you believe that
18 you have any social, business, or personal connections to
19 any potential witness on that list?

20 A No, sir.

21 Q Do you believe that you might be related by blood or
22 marriage to any individual listed on that list?

23 A No, sir.

24 Q Have you ever been related in that fashion to any of
25 those people?

Individual Juror Qualification

1 A No, sir.

2 Q All right. Now, ma'am, I'm going to ask you some more
3 personal questions now about your opinions and beliefs. I'm
4 not trying to invade your privacy. You seem to be a, a
5 confident enough person that you can talk about your
6 opinions without feeling threatened.

7 Is that correct, ma'am?

8 A Yes, sir.

9 Q All right. During our discussions, it will be
10 necessary for me, and I'll eventually get to questions about
11 the death penalty because that is a factor involved in this
12 case. I want you to understand the trial is not yet begun
13 and I've explained to you that a trial will go forward and
14 there's potentially two phases.

15 The first phase will be guilt or innocence on the
16 charges levied by the State. One of those charges is
17 murder. And for that charge, the State is requested the
18 death penalty to be imposed. Because of that request, and
19 if the defendant is found guilty and only if that happens on
20 that charge, will there be held a second trial to determine,
21 to determine the penalty for that, that murder.

22 Now, the choices then would be only two, life or death.
23 But that choice would be made by the jury at a separate
24 hearing, again, in which separate evidence, new testimony on
25 that issue would be accepted in that part of the trial.

Individual Juror Qualification

1 Do you understand that proceeding?

2 A Yes, sir.

3 Q Okay. Now, if you were a juror in any criminal case,
4 would you be willing to listen to the law if you were
5 instructed on the law from the judge?

6 A Yes, sir.

7 Q And would you be willing to accept the law as
8 instructed and apply it to the facts in the case?

9 A Yes, sir.

10 Q Now, is that true even if you might not like the law
11 the judge tells you---

12 A Yes, sir.

13 Q ---and even if you might disagree with the law, would
14 you still take it as the judge gives it to you and apply it
15 to the facts of the case?

16 A Yes, sir.

17 Q All right. Now, I'm going to ask you a little bit
18 about some pretrial publicity. There has been some mention
19 of this case in our local press, and I want to know if you
20 are the kind of juror, if you were selected in this case,
21 that you could put aside anything that you might have heard,
22 read, seen about this case, and anything that you might
23 potentially hear as the case goes on, other than the
24 evidence in the, in the case, the testimony of witnesses,
25 so, could you decide the case purely upon the evidence that

1 you hear in the courtroom?

2 A Yes, sir.

3 Q Now, there's two concepts we talked about yesterday. I
4 want to be sure you understand them and can apply it if you
5 were selected as a juror.

6 The first is, under the laws of this state and the
7 Constitution, a defendant is always presumed to be innocent.
8 The defendant never has the burden of proving his or her
9 innocence. In fact, the defendant has no burden of proof in
10 a criminal case.

11 The second concept, under the same laws that provide
12 for that situation, the State has the total burden of proof,
13 and that burden is to prove the defendant guilty beyond a
14 reasonable doubt.

15 Now, do you understand those two concepts?

16 A Yes, sir.

17 Q And would you be able and willing to apply those
18 concepts to this case if you were selected as a juror in
19 this case?

20 A Yes, sir.

21 Q So, I take it, ma'am, that it's your belief that just
22 because someone is accused of a crime, charged, arrested,
23 indicted does not automatically mean that that person is
24 guilty of that crime?

25 Is that---

Individual Juror Qualification

1 A Yes, sir.

2 Q ---what, the way, the way you believe?

3 A Yes, sir.

4 Q And so, that means that you would be willing to listen
5 to the evidence, to weigh the evidence, consider the law,
6 and based on how you find those things to be, under certain
7 circumstances you could find a person not guilty of a
8 charge.

9 Is that true?

10 A That's true.

11 Q By the same token, if, after weighing all of those
12 factors, you believe the State has proved the defendant
13 guilty beyond a reasonable doubt, could you issue a verdict
14 of guilty against such a defendant?

15 A Yes, sir.

16 Q Now, tell me if this actually describes you.

17 That means that you would listen to the evidence, make
18 up your mind depending on the strength of the evidence, and
19 the testimony, what it showed you, and the law that you've
20 given, and you could find a person either guilty or not
21 guilty of the crime charged.

22 Is that true?

23 A Yes, sir.

24 Q Now, I told you we'd talk about the death penalty
25 eventually. We've gotten to that point where I want to talk

Individual Juror Qualification

1 to you about that. I realize that we may not ever get to
2 that stage of this trial, because as I've told you, the only
3 way we get there is if the defendant is found guilty of the
4 crime of murder. Then we proceed on to that. And again,
5 the same jury would handle both parts of that case.

6 Now, I know it sounds a little bit like we're putting
7 the cart in front of the horse because what we're doing
8 here, we're talking about the penalty and we don't even know
9 if we're going to get there, and I hope you realize though
10 that this is the only chance that we get to do that before
11 the case starts.

12 So, don't hold the, anything against the defendant, the
13 fact that we're talking about the penalty at this stage.

14 A Yeah.

15 Q It's simply the only time we get to do that before the
16 jury is selected.

17 A Uh-huh. (Affirmative).

18 Q Do you understand that, ma'am?

19 A Yes, sir.

20 Q Okay. Now, I'm going to ask you to place yourself in a
21 situation theoretically in your mind. Let's assume that
22 you've gotten selected to serve on a jury in a murder case
23 where the State is seeking the death penalty, and that you
24 and your fellow jurors have gone through the trial,
25 deliberated, and found the defendant guilty of the murder.

Individual Juror Qualification

1 That means the question of guilt or innocence is no longer
2 there. The defendant has been found guilty of the offense
3 of murder. You're with your fellow jurors and you're about
4 to walk into the courtroom to start the sentencing phase of
5 the trial.

6 You understand the situation I've asked you to put
7 yourself in?

8 A Yes, sir.

9 Q All right. Now, back in the jury room I gave you a
10 sheet of paper that had three descriptions of jurors on it,
11 and I'm gonna go over those with you again to be sure that
12 we're on the same page here.

13 The first juror that was described on that sheet of
14 paper -- do you remember reading that paper?

15 A Yes, sir.

16 Q The first juror described on that sheet of paper is a
17 juror, who before they walk into the courtroom door, has
18 already made up his or her mind. That individual believes
19 that the only appropriate punishment for someone convicted
20 of murder is the death penalty. So, that means every time
21 that person was placed, placed in a position of making that
22 decision that individual would vote for or impose the death
23 penalty on someone convicted of murder.

24 The second person I described to you or juror I
25 described to you also has already made up his or her mind

Individual Juror Qualification

1 before coming in for the sentencing part of the trial. And
2 that's a juror who believes that the death penalty is never
3 appropriate in any case because the State has, does not have
4 the right to take anyone's life in punishment for the
5 commission of a crime. That person would always vote, in
6 every case similarly situated, for life imprisonment because
7 they do not believe the State has the right to, to carry out
8 a death sentence.

9 The third individual would be coming into that
10 courtroom without having made up his or her mind. That
11 particular juror doesn't know exactly how he or she is going
12 to vote. That juror would have to listen to the evidence
13 and the testimony during the sentencing phase of the trial,
14 the information presented at that time, and then make a
15 decision as to whether or not the death penalty should or
16 should not be imposed or whether the life sentence should be
17 the sentence handed down.

18 Now, do you understand the difference between those
19 three jurors I just described?

20 A Yes, sir.

21 Q Of those three jurors, which one would most closely
22 describe yourself?

23 A Number three.

24 Q So, you're one of those jurors who would consider the
25 evidence, get, have in mind already the defendant is been

Individual Juror Qualification

1 found guilty of murder, so that's no longer a concern, but
2 you would be willing to listen though to the facts and
3 circumstances in the subsequent trial on the, on the penalty
4 and then I think you're telling me that if you find the
5 evidence justified it at that, that trial, you would be
6 willing to sentence someone to death if they, if you felt
7 that was appropriate?

8 A Yes.

9 Q By the same token, if you reviewed that same evidence
10 in the sentencing phase of the trial, if you found that the
11 evidence did not warrant or justify the death penalty, then
12 you would be willing to sentence someone to life
13 imprisonment in that circumstance?

14 A Yes, sir.

15 Q So, that means that, depending on the facts and the
16 circumstances, you could sentence someone to either life
17 imprisonment or death if it was appropriate?

18 A Yes, sir.

19 Q Now, ma'am, one final thing I want to discuss with you,
20 be sure I understand it, you understand it. The jury in
21 this case, if selected, would be sequestered.

22 A Yes, sir.

23 Q That means that, during the period of the trial, the
24 jury will be housed at a hotel, eat their meals together,
25 have limited access to the outside communications, and to

1 outside sources of information.

2 A Yes, sir.

3 Q That -- we expect the trial will last about a week.

4 Somewhere between five to seven days. We don't know exactly
5 how long that would last.

6 Now, ma'am, my real question to you -- and I realize
7 that that would be an inconvenience in anybody's life.

8 A Yes.

9 Q We understand that.

10 But if you were selected and served on that jury, would
11 that fact pose a serious risk of danger to either your
12 health or well being?

13 A No, sir.

14 Q Would that fact pose a serious risk of danger to the
15 health or well being of anyone dependent upon you?

16 A No, sir.

17 Q Ma'am, that completes my questions at this point in
18 time. I'm gonna allow the attorneys to follow-up. We allow
19 the defense to go first.

20 A Okay.

21 THE COURT: Mr. Allen.

22 MR. ALLEN: Thank you, Your Honor.

23 EXAMINATION

24 BY MR. ALLEN:

25 Q Mrs. Belzer, I'm Clay Allen and I, along with John

Individual Juror Qualification

1 Reckenbeil and Kathy Hodges, are representing Tony Torres in
2 this matter.

3 A Uh-huh. (Affirmative).

4 Q We appreciate your attendance, we appreciate your
5 attention, and your filling out the questionnaire, and I
6 would like to ask you a few questions if you don't mind.

7 A Okay.

8 Q First of all, if my notes are correct, I believe you
9 indicated yesterday in the, when the courtroom was big, that
10 you may of heard something about this case.

11 A The first time I heard it was on TV when the news
12 started and I did go out of the room.

13 Q And you did---

14 A I did leave the room.

15 Q You did leave the room?

16 A My husband was there and I left the room.

17 Q Okay. And I presume that was over the weekend?

18 A Yes, sir.

19 Q That would be correct?

20 Okay. Probably Sunday night?

21 A Yeah, it was.

22 Q Okay. And that was before you came to Court?

23 A Yeah, that was before I came to court the first time.
24 I know, you know, after getting the letters and everything,
25 but I didn't expect it to be on TV.

Individual Juror Qualification

1 Q Right.

2 A So, I'm like -- when I saw it, I did go out of the
3 room.

4 Q Okay.

5 A And my husband found it in the paper and he said oh,
6 ha, and I said don't show me.

7 Q He said -- so, he didn't tell you anything about it?

8 A No, he didn't.

9 Q Cause you wouldn't let him tell you?

10 A No, I wouldn't.

11 Q And we appreciate that.

12 The fact that it has received that kind of news
13 attention, first of all, I mean I guess from what you're
14 telling me, you -- did you hear anything?

15 A No, not before that. I didn't know anything about it
16 even happening.

17 Q Okay. And apparently, if it received any news coverage
18 in May of '07, you don't, you didn't see that or don't
19 remember it?

20 A No, sir.

21 Q Okay. The fact that it has received some recent news
22 coverage, does that have any affect on you in any way,
23 shape, or form?

24 A No, sir.

25 Q Okay. And even though it's received some coverage and

Individual Juror Qualification

1 your husband said uh oh or words to that effect, you can
2 still come in here and be fair and impartial?

3 A Yes, sir.

4 Q Okay. And render a verdict based only on what you---

5 A Only the evidence.

6 Q Only on the evidence.

7 what you see, hear, see and hear in this courtroom?

8 A Yes, sir.

9 Q Is that right?

10 We appreciate that.

11 Now, as the judge had indicated, this is our time to
12 ask you about questions on your views on the death penalty.
13 We have to ask these at this time.

14 A Right.

15 Q And of course, I'm not trying to insinuate how I
16 believe or think this case will or should turn out. I hope
17 you understand that.

18 A I understand.

19 Q All right. Thank you.

20 I'm just gonna ask you point blank, what are your views
21 on the death penalty if you have any?

22 A If the evidence shows that his crime deserved the
23 punishment of death, yes. If it shows that it doesn't, then
24 no. It depends on what's brought to the floor what the, the
25 decision would be and that's when I make my decision.

1 Q Okay. And when you're -- when you say if the evidence
2 shows, like do you have in mind any particular---

3 A No, I don't make my mind up before then.

4 Q Okay. But you don't have in mind---

5 A I have no preconceived notions.

6 Q Okay. Very good.

7 The, the, the jury, if it gets to the point of the jury
8 being allowed to determine on the death sentence, sentence
9 or life imprisonment---

10 A Yeah.

11 Q ---sent to the jury based on the evidence---

12 A Yeah.

13 Q ---the jury will always have an opportunity to, if they
14 so desire, to choose life imprisonment.

15 A Uh-huh. (Affirmative).

16 Q You understand that?

17 A Yes.

18 Q And of course, that means basically what it says --

19 A Yes.

20 Q -- life in prison without the possibility of parole?

21 A Yes.

22 Q How do you feel about that as a potential sentence
23 where you---

24 A Again, if, from what we hear and what we talk about in
25 the jury room together, that comes to the point that that's

Individual Juror Qualification

1 what we decide, then that's acceptable. But it has to be a
2 joint of all 12 jurors, and that would be our decision.

3 Q Okay.

4 A It has to be made jointly and it has to be acceptable
5 and it has to be according to the evidence.

6 Q So, do I understand you to say that you believe that
7 depending on the case---

8 A Yes.

9 Q ---that life imprisonment could be an appropriate
10 sentence for murder?

11 A If the evidence goes that way.

12 Q Now, when we get to this point if we get to this point,
13 we're talking about where a jury has already found an
14 individual guilty of the murder---

15 A Yes.

16 Q ---and that means, you know, guilty of the willful
17 killing---

18 A Uh-huh. (Affirmative).

19 Q ---of another with malice aforethought.

20 A Yes, sir.

21 Q And the jury's already decided that there's no defense
22 to it.

23 A Yes.

24 Q And that there's essentially no question that the
25 individual did it.

Individual Juror Qualification

1 A Yes.

2 Q Found guilty beyond a reasonable doubt.

3 A Yes.

4 Q And you believe that the death penalty would or would
5 not be the only appropriate punishment in a situation like
6 that?

7 A Yes, in other words---

8 Q Either or?

9 A Either or. One or the other.

10 Q Okay. One or the other. Okay.

11 A If that's what the evidence leads it to me.

12 Q Yes, ma'am.

13 In a situation like that, they'll be -- in other words,
14 if the jury makes a determination that the individual is
15 guilty of the murder, and guilty beyond a reasonable doubt
16 we're talking about---

17 A Uh-huh. (Affirmative).

18 Q ---the State would be allowed to present evidence, what
19 we call evidence in aggravation. That would be information
20 indicating that the crime is more serious or more deserving,
21 if you will, of the death penalty.

22 Do you follow what I'm saying?

23 A Uh-huh. (Affirmative).

24 Q And there will also be allowed evidence of mitigation.
25 Do you know what I mean by evidence in mitigation?

Individual Juror Qualification

1 A More evidence from the prosecution.

2 Q Right.

3 A Is that what you're saying?

4 Q It could be evidence from the prosecution. It could be
5 evidence from the defense if they put up any.

6 A Okay.

7 Q And really it, it, it goes to show, to lessen the
8 severity---

9 A Uh-huh. (Affirmative).

10 Q ---of the offense. It also goes to, to present -- I
11 mean it's not a defense. A defense means that some facts
12 indicating that an individual is not guilty. Of course,
13 mitigation doesn't rise to that level.

14 A Right.

15 Q Because that determination's been made by this point.

16 A Yes.

17 Q You understand?

18 A Yes.

19 Q Mitigation really is information or evidence, which in
20 fairness or in mercy, would indicate that death is not the
21 appropriate sentence.

22 A Okay.

23 Q You follow what I'm saying?

24 A I understand that.

25 Q It could be a number of different things.

1 So, I guess my question is would you be able to
2 consider not only the evidence in aggravation, but also
3 evidence in mitigation in determination of an appropriate
4 sentence?

5 A Yes, I believe I'd be willing to consider it.

6 Q Thank you.

7 Is there a, in particular, a broad category of murder
8 cases which you would not or you could not, excuse me,
9 consider life imprisonment as an appropriate punishment?

10 A At this time I really couldn't answer that yes or no
11 because I've never participated in any kind of a jury
12 selection or even talked about any in my life. This is my
13 first time.

14 Q First time on a jury?

15 A On a jury. And so, I can't honestly say to anyone
16 about anything that like because I don't know.

17 Q Okay. Well---

18 A Right now, what I can tell you is I'll be as fair as I
19 can with the information that I receive, and the
20 circumstance that happened that, if -- information as given
21 to us as jurors---

22 Q Okay.

23 A ---we take back and deliberate over it and bring
24 back---

25 Q A verdict.

Individual Juror Qualification

1 You've come to your opinions about the death penalty
2 and -- in general I'm talking about. I mean your feelings
3 about the death penalty, your feelings about life
4 imprisonment over a period of time.

5 A I know what the law says. I feel like I know what the
6 law means.

7 Q Okay.

8 A And I do have, do not have any preconceived feelings on
9 who should or shouldn't be killed for something because it
10 all depends on the individual and the, the, the type of
11 situation.

12 Q I see.

13 A I'm not gonna say so long somebody needs to be killed
14 because he killed so and so. That does, that does not
15 determine what happened. I wasn't there sitting on his
16 shoulder. I wasn't the one laying on the ground. I want to
17 see and hear what happened or be told, told the situation,
18 the circumstances before I will make a decision.

19 Q Now, do -- you, you indicated that you feel like you
20 know what the law is.

21 Of course, you understand that the judge is---

22 A The judge is the law.

23 Q ---will tell you what the law is.

24 A Yeah.

25 Q And that I think you've indicated to him, and that, of

Individual Juror Qualification

1 course, you'd take the law as he explains it to you---

2 A Yes.

3 Q ---even if it might differ---

4 A Yes.

5 Q ---with what you thought the law was.

6 A I understand, yes.

7 Q Okay. But if I -- what I hear you, if I hear you
8 correctly, what you're saying is that you're gonna look at
9 all the evidence?

10 A Yes, sir.

11 Q And then make a determination and not come in here with
12 a preconceived notion---

13 A No, sir.

14 Q ---as to any particular penalty?

15 A No, sir.

16 Q And that you are open to both penalties, the death
17 penalty and life in prison without the possibility of
18 parole, if he's convicted of murder.

19 Is that what you're saying?

20 A Yes, sir.

21 Q Okay. In the event you come to an opinion and, and you
22 believe that opinion or, or let me see if I can rephrase it.

23 In the event that you determine what, in your mind, is
24 the appropriate sentence, and if what you believe is the
25 appropriate sentence differs from what other people may say,

Individual Juror Qualification

1 how likely are you to stay with that opinion?

2 And again, this is if you believe that your opinion is
3 the one that---

4 A If---

5 Q ---is correct.

6 A If my judgment of the circumstances, of the information
7 given to the jury solidifies my judgment of it, then, then
8 if -- they would have to talk awful hard and show me black
9 and white why I should change.

10 Q Yes, ma'am.

11 A So, that's where I would be.

12 Q Okay. And if your---

13 A And the same way. I'd probably have to talk black and
14 white to them so they could understand why I felt the way I
15 did.

16 Q Okay. So, some give and take?

17 A Yes.

18 Q Now, you're gonna talk awfully hard why you believe it
19 is correct?

20 A Yes, sir.

21 Q And you expect that they will do the same---

22 A To me.

23 Q ---to you?

24 And if you believe that you are correct---

25 A I'll show them why I believe I'm correct.

Individual Juror Qualification

1 Q Okay. In an intent to convince them?

2 A Yes.

3 Q And in the event that you're the only one that thinks
4 that way, would you stick with that opinion if you're not
5 convinced that they're right?

6 A If I'm not convinced that they're right, then I will
7 talk further with them---

8 Q Yes, ma'am.

9 A ---to me, help them to make me understand and me help
10 them make them understand me.

11 Q Okay.

12 A I'm not going to give you any black and white answer at
13 this point.

14 Q Sure.

15 A Because I don't know what's gonna happen at that point.

16 Q Sure.

17 A I have -- I don't want you to put me in a position that
18 what I say here is going to be taken point blank as the
19 answer as to what I'm going to do at, at the trial, at the
20 trial when the judgment goes on. If I'm chosen, my, my
21 position would be made in the, in the jury room, a
22 deliberation in the jury room. Not now.

23 Q I understand where you're coming from. I hope you
24 understand that we're asking questions to---

25 A I understand.

Individual Juror Qualification

1 Q ---to understand your feelings---

2 A And I want you to understand me too. I just don't want
3 to be put in the position where you're gonna get a yes or no
4 answer out of me.

5 Q I'm not gonna do that. I know that.

6 A Okay.

7 Q But again, that -- we're looking for your opinions and
8 we are talking in generalities.

9 A Yes, I understand.

10 Q We're not talking about specific cases because you
11 don't have a specific case---

12 A No, I don't.

13 Q ---in front of you at this point.

14 A I don't.

15 Q And I appreciate you answering my questions.

16 A You welcome.

17 Q If you'll just bear with me one moment.

18 (Pause.)

19 Q Ma'am, just one final subject if you, if you don't
20 mind.

21 A Yes.

22 Q And again, we've been provided a copy of your
23 questionnaire.

24 A Yes, sir.

25 Q And I'm not gonna ask you -- I don't intend to ask you

1 any questions to embarrass you or anything.

2 A Yes, sir.

3 Q But I'm not gonna go into any detail.

4 But I do notice, in your questionnaire, that there was
5 some indications that you may of had some physical illnesses
6 in the, in the past.

7 A Yes, sir, I had three strokes.

8 Q Does that, in any way -- do you have any concern, in
9 any way, that that might affect your ability to serve---

10 A No, sir.

11 Q ---as a juror?

12 A Not at this time.

13 Q I mean you, you're---

14 A Completely -- everything is gone. It happened in '99.

15 Q Okay. And so, you're back and---

16 A I'm ten years past that, everything. I'm back to, I'm
17 back to health.

18 Q That is great. That is great. Thank you.

19 A You welcome.

20 THE COURT: State may question.

21 SOLICITOR GOWDY: Thank you, Your Honor.

22 May it please the Court?

23 THE COURT: Yes, sir.

24 EXAMINATION

25 BY SOLICITOR GOWDY:

Individual Juror Qualification

1 Q Good evening, Mrs. Belzer.

2 A Hello.

3 Q I will be brief. Let me first thank you for the
4 thoughtfulness of and the candor with which you have
5 answered not only defense counsel's questions, but also the
6 questionnaire that you filled out. It's---

7 A Thank you.

8 Q ---tremendously helpful to us.

9 And as a result of your candor, I don't, I don't have
10 that many questions.

11 A Okay.

12 Q I notice your father's a physician. I could not help
13 but notice that you are or either were or still are an LPN.

14 A And I retired.

15 Q Which field of medicine did you specialize in as an
16 LPN?

17 A All of them.

18 Q All of them?

19 A I took care of everything from the ER to the---

20 Q Pediatrics?

21 A ---ICU---

22 Q Obstetrics and everything?

23 A ---home health, home respiratory. I did phlebotomy. I
24 taught. I did the whole works.

25 Q Sounds like you did everything.

Individual Juror Qualification

1 A Yes, I did.

2 Q All right. To wrap it up, if I understood you
3 correctly when you were talking to His Honor, you were the
4 kind of person that needs to have all the evidence brought
5 to you, and, in the guilt phase where guilt or innocence is
6 determined, you're gonna make your mind up based on what
7 happened in this courtroom---

8 A Yes, sir.

9 Q ---from this witness stand?

10 A Yes, sir.

11 Q And if there is a conviction or a guilty verdict, you
12 go to the penalty phase.

13 You're gonna want to hear all the evidence---

14 A Everything.

15 Q ---from whatever source?

16 A Yes, sir.

17 Q If you think, upon hearing all of that, that life
18 without parole is the proper verdict, then that's what
19 you're gonna come back with?

20 A Yes, sir.

21 Q On the other hand, if you think that the facts and the
22 circumstances of this crime warrant the death penalty, you
23 would be able to vote to impose the death sentence?

24 A Yes, sir.

25 Q All right. Thank you, Mrs. Belzer.

Individual Juror Qualification

1 A Thank you.

2 THE COURT: Ma'am, just a couple of things that I want
3 to go over with you at this point in time.

4 First of all, we're in the process of still qualifying
5 the jury.

6 WITNESS: Yes, sir.

7 THE COURT: We will be making a decision in the not too
8 distant future as to the individuals who will be summoned
9 back for jury selection.

10 WITNESS: Yes, sir.

11 THE COURT: If you're among the individuals who is
12 asked to come back for jury selection, I've told you the,
13 the sequestration would be in effect. Come prepared to stay
14 for a week.

15 WITNESS: Okay.

16 THE COURT: Bring with you whatever you need at that
17 point in time.

18 WITNESS: Okay.

19 THE COURT: Because if you were selected to serve on
20 the jury, you'll be staying with us from that point until
21 the case is ended.

22 WITNESS: Okay.

23 THE COURT: Do you understand that, ma'am?

24 WITNESS: Well, I've got my clothes washed and dried.

25 THE COURT: All right. Your, your contact information

Individual Juror Qualification

1 you've given us, is it correct and up-to-date?

2 WITNESS: Yes, it is.

3 THE COURT: So, that's how we can get in touch with
4 you?

5 WITNESS: Yes, sir.

6 THE COURT: Ma'am, I'll remind you that my instructions
7 concerning gathering information about the case continue---

8 WITNESS: Yes, sir.

9 THE COURT: ---until we advise you otherwise.

10 WITNESS: Yes, sir.

11 THE COURT: You're free to go. Thank you very much,
12 ma'am.

13 WITNESS: Thank you, sir.

14 (The following takes place outside the presence of the
15 juror.)

16 THE COURT: State's position regarding Mrs. Belzer?

17 SOLICITOR GOWDY: The State would submit that she's
18 qualified, Your Honor.

19 THE COURT: Defense, subject to any objections?

20 MR. ALLEN: Subject to any earlier objections, she's
21 qualified.

22 THE COURT: All right. I'll find her to be so.

23 All right. Benjamin Fricks, if you would show him in,
24 Number 101.

25 BENJAMIN FRICKS, having been previously

Individual Juror Qualification

1 sworn, testified as follows:

2 EXAMINATION

3 BY THE COURT:

4 Q Good afternoon.

5 A Afternoon, sir.

6 Q You are Benjamin Fricks I believe, is that correct?

7 A Yes, sir.

8 Q Mr. Fricks, I'm going to remind you that you took an
9 oath yesterday to tell me the truth during qualification.
10 That oath continues for our discussion now.

11 Do you understand that, sir?

12 A Yes, sir.

13 Q All right. What we're going to do at this time is ask
14 you some questions, go over some matters with you. I know
15 sitting in that chair in this room is not the most
16 comfortable seat in the house, and I hope you understand,
17 however, that what we're going to ask you about today are
18 your opinions or beliefs on certain matters.

19 There are no right or wrong answers. There are no
20 wrong answers to our questions. But we are trying to gather
21 information that will assist us in ultimately selecting a
22 jury in this case.

23 Do you understand what we're doing?

24 A Yes, sir.

25 Q If, at any time, you feel uncomfortable about the

Individual Juror Qualification

1 questions that are being asked or what's going on, let me
2 know and I'll be happy to consider those things at that
3 time.

4 Do you understand that, sir?

5 A Yes, sir.

6 Q All right. Now, the first question I'm going to ask
7 you is, since we talked yesterday, has anybody contacted
8 you?

9 Have you read or heard or seen anything about the case
10 or have you been exposed to any information which might
11 cause you to form an opinion about this case?

12 A No, sir.

13 Q Have you ever participated in any Internet or blog
14 sites that might discuss or go over the issue of the death
15 penalty?

16 A No, sir.

17 Q Have you ever participated in any political activities,
18 such as demonstrations, rallies, or meetings, either for or
19 against the death penalty?

20 A No, sir.

21 Q I realize that in this case there's been some mention
22 of this case in the news media.

23 I want to ask you if you were a juror in a case, any
24 case, are you the kind of person who could set aside matters
25 that you may have heard outside of the courtroom and decide

Individual Juror Qualification

1 the case strictly upon the evidence as presented during the
2 trial?

3 A Yes, sir.

4 Q Now, when you were waiting, there was a list of
5 witnesses shown to you.

6 Did you look over that list?

7 A Yes, sir.

8 Q I don't want you to identify anybody by name. But I'm
9 gonna ask a couple of questions that apply to that list.

10 The first one, after reading the list, is there anyone
11 on the list that you believe that you have any social,
12 business, or personal connection with?

13 A No, sir.

14 Q Do you believe that you have been related by blood or
15 marriage to any of those individuals named?

16 A No, sir.

17 Q So, are you aware of any connections that you have with
18 any of the potential witnesses in this case?

19 A No, sir.

20 Q The next questions are going to be about, about some
21 matters concerning the death penalty. I want you to
22 understand that we're not trying to invade your privacy.
23 Again, we're trying to delve into your opinions concerning
24 certain matters that may be of issue in this case.

25 The death penalty, as I indicated to you yesterday,

Individual Juror Qualification

1 would only come up should the defendant be found guilty of
2 the charge of murder, and in this case, the State is sought
3 the death penalty, it would only come up after that guilty
4 verdict at a second trial.

5 Now, the same jury will participate in both of those
6 trials. So, I hope you appreciate that the only time that
7 we will have to discuss this question or this issue with you
8 is at this time because once the case starts the same jury
9 participants in both cases. I realize it's quite possible
10 that the defendant might be found not guilty of the crime
11 for which the death penalty is sought, and in that case we
12 would never get to that issue. It would not come up.

13 So, in that sense I guess we're putting the cart in
14 front of the horse in talking about that today. But this is
15 the only time we'll have to talk about it. So, we have to
16 do it at this time.

17 Please don't hold the fact that we're talking about
18 penalties against the defendant or any defense he may raise,
19 raise to the main charges. Because again, this should not
20 serve as any prejudice against him. This is simply our only
21 time to discuss this.

22 Do you understand what I mean about that?

23 A Yes, sir, I understand.

24 Q All right. Now, concerning your application of the law
25 if you were a juror, if you're a juror in any case, would

Individual Juror Qualification

1 you be willing to accept and listen to the law as instructed
2 to you by a judge?

3 A Yes, sir.

4 Q And would you be willing to accept the law as given to
5 you by a judge and apply it to the facts in any case you
6 were sitting in judgment on?

7 A Yes, sir.

8 Q Is that true even though you may disagree with the law
9 or may not like the law the judge tells you?

10 A Yes, sir.

11 Q You still would take the law and apply it to the facts?

12 A Yes, sir.

13 Q Now, sir, as far as this particular case is concerned,
14 there's been some mention of this case in our local media.

15 I want to find out if, are, are you in a position to
16 put aside anything you may have heard, read, or seen about
17 this case or any information you might gather during the
18 trial outside of the courtroom and decide the case purely
19 upon the evidence presented during the trial in the
20 courtroom?

21 A Yes, sir, I have no problem with that. I actually know
22 nothing about the case at all.

23 Q All right. I appreciate you volunteering that
24 information.

25 A couple of, a couple of concepts I want to be sure you

Individual Juror Qualification

1 understand, and I want to understand how you would handle
2 those.

3 The first concept is, under our law, our Court system
4 and our Constitution, our laws, all defendants, any
5 defendant charged with the commission of a crime is presumed
6 to be innocent. Those defendants have no burden of proof
7 whatsoever, therefore, because they are presumed to be
8 innocent throughout the trial.

9 Do you understand that concept?

10 A Yes, sir.

11 Q Also, the same law that provides for that situation
12 also provides the State has the burden of proof in criminal
13 trials. That means the State has the burden of proving the
14 defendant guilty beyond a reasonable doubt.

15 So, do you understand those two concepts?

16 A Yes, sir.

17 Q And would you be willing to apply those concepts to a
18 trial in which you were sitting as a juror on it?

19 A Yes, sir.

20 Q So, I take it that also means that, and you could tell
21 me if I'm wrong, is it your belief that just because
22 someone's been arrested for a crime, perhaps incarcerated,
23 perhaps indicted, do you believe that those facts would mean
24 that someone is automatically guilty of a crime?

25 A No, sir.

Individual Juror Qualification

1 Q So, I take it from your answers that you, as a juror,
2 would be willing to weigh the evidence and listen to the
3 evidence and, presented to you, and based upon what those
4 things were if you find them to be, you could find a person
5 not guilty of a crime that they were charged of.

6 Is that correct?

7 A Yes, sir.

8 Q By the same token, if you believe the State met its
9 burden of proof and proved someone guilty beyond a
10 reasonable doubt, would you have any problem with finding
11 someone guilty of the crime that they were charged with?

12 A No, sir.

13 Q So, I take it then that this would describe you, that
14 you're the type of juror who could listen to the facts and
15 circumstances, based on those findings and the law that
16 you've been given, you could find a person either guilty or
17 not guilty depending on those findings?

18 A Yes, sir.

19 Q Now, I told you we'd talk about the death penalty and
20 we've got to that point, gotten to that point in this, my
21 questioning. I hope you understand that, in this situation,
22 the same jury will be hearing the, the penalty phase as the
23 guilt and innocence phase if we get to that point.

24 Now, the, the -- if we get to the penalty phase, there
25 will be new evidence presented at that time and new

Individual Juror Qualification

1 testimony from other witnesses perhaps concerning the
2 imposition of that penalty.

3 Do you understand that, sir?

4 A Yes, sir.

5 Q And it will be the jury's responsibility to weigh that
6 separate evidence and make a decision as to what penalty to
7 be imposed and there's two choices, either the life without
8 parole or the death penalty.

9 Do you understand that?

10 A Yes, sir.

11 Q Now, in the separate sentencing procedure, the only
12 determination by the jury is that penalty and I want you to
13 place yourself theoretically into a situation. Let's -- the
14 situation I want you to place yourself in is the situation
15 where you've been selected to serve on a jury in a murder
16 trial in which the death penalty is being sought. You and
17 your fellow jurors have completed the guilty phase of that
18 trial and you have found the defendant guilty of, of the
19 offense charged. So, the question of guilt or innocence is
20 no longer an issue in the case. That same jury, because the
21 death penalty is being sought, is coming back to the
22 courtroom at this time to begin the sentencing phase of the
23 trial.

24 So, do you understand the situation I've asked you to
25 put yourself in?

Individual Juror Qualification

1 A Yes, sir.

2 Q Now, I gave you a sheet of paper back in the waiting
3 room to look at, to go over. It described three different
4 possible jurors, and I'm gonna go over those with you so
5 that we all understand what those were.

6 The first juror who would be with you coming back into
7 that courtroom perhaps would be someone who'd already made
8 up their mind before they walked into the courtroom because
9 that juror believes that in the case of someone whose been
10 found guilty of a murder, the only appropriate punishment is
11 the death penalty. That means that juror would, in any case
12 no matter what the situation, impose the death penalty in
13 that situation.

14 The second juror is someone whose also already made up
15 their mind, but that juror believes the State has no right
16 to impose the death penalty upon anyone no matter what the
17 seriousness of the crime. So, that particular juror would
18 always vote for the life sentence, and, therefore, that
19 juror has already made up its mind or her mind or your mind,
20 his mind.

21 The third juror is someone who is walking back to that
22 courtroom to begin the sentencing phase and that particular
23 juror has not yet made up his or her mind as to whether,
24 whatever they're going to do. They haven't decided as to
25 whether or not to impose life or death. That juror is gonna

Individual Juror Qualification

1 have to wait, listen to the evidence presented during that
2 phase of the trial, listen to the testimony, and then based
3 on those factors, make a decision as to what penalty is the
4 proper penalty to be imposed.

5 Now, do you understand what I mean by three types of
6 jurors?

7 A Yes, sir.

8 Q Now, if I were to ask you, you're in that situation,
9 which one of those three jurors would most closely describe
10 how you would feel in that situation?

11 A I believe, I believe I'd be the third one.

12 Q Okay. So, you're telling me then that you would be
13 entering the courtroom having found the defendant guilty of
14 murder, therefore, that's no longer an issue, and you would
15 be willing to listen to the facts and circumstances and the
16 evidence in that case, that situation, is that correct?

17 A Yes, sir.

18 Q Now, if you were to determine, after listening to that
19 evidence, that it justified the imposition of the death
20 sentence, would you be willing to vote or impose that
21 sentence?

22 A Yes, sir.

23 Q And if, after reviewing that same facts and evidence,
24 you believe that the State has not justified the imposition
25 of the death penalty, or for any other reason, would you be

Individual Juror Qualification

1 willing also to sentence someone to life in prison in that
2 circumstance?

3 A Yes, sir.

4 Q So, you could sentence someone to either life or death
5 depending on the proof and evidence shown to you at the
6 sentencing phase of the trial?

7 A Yes, sir.

8 Q Now, sir, I've got one other question and it's kind of
9 a personal question. I told you, if you were selected on
10 the jury, you would be in a situation where you'd be
11 sequestered. That means that you would be, for about one
12 week, is how, how long we estimate, anywhere five to seven
13 days, the trial to take. You'd be in a situation where you
14 would have limited contact with the outside world. You
15 would have limited access to media and other sources of
16 information. You'd be eating together with the jury,
17 traveling with the jury, and spending your time in the
18 courtroom primarily.

19 You understand that that's the situation, is that
20 correct?

21 A Yes, sir.

22 Q Now, I understand that's an inconvenience to anybody.
23 I, I understand that.

24 My real question to you is, however, if you were in
25 that situation, would that situation pose a serious risk of

Individual Juror Qualification

1 danger to either your health or your well being?

2 A No, sir.

3 Q And my next question is if you were in that situation,
4 would it pose a serious risk of danger to the health or well
5 being of anyone who is dependent upon you?

6 A No, sir.

7 Q Now, we've reached the stage where I'm going to allow
8 the attorneys to discuss the matter with you. We allow the
9 defense to go first.

10 Mrs. Hodges is standing up. So, she'll be going first.

11 MRS. HODGES: Thank you, Your Honor.

12 EXAMINATION

13 BY MRS. HODGES:

14 Q Mr. Fricks, good afternoon.

15 A Hello.

16 Q You'd indicated that, I think yesterday when the, the,
17 kind of the whole large group of panel that stood up in
18 responses to the Judge's question about had they heard
19 anything about this case, but I understood from answers
20 today that you, that you have not heard anything about this
21 particular case.

22 Is that, is that right?

23 A No, ma'am, I didn't stand up yesterday for that.

24 Q Okay. All right. Well, it's -- I was in -- a bunch
25 of, a bunch of people stood up, and it's a big courtroom.

Individual Juror Qualification

1 So, it's hard for me to hear all the numbers. So, I wanted
2 to make sure I didn't misunderstand you, which apparently I
3 did. So, that's why I was just trying to clarify it.

4 So, you don't know anything about the case, don't have
5 any sort of preconceived ideas about what evidence is in
6 this case or have an opinion about the case?

7 A No, ma'am.

8 Q Is that fair?

9 A I did not even know the name until I received the, the
10 letter in the mail---

11 Q Okay.

12 A ---of the questionnaire.

13 Q Okay.

14 A And knew nothing of the case until I came to the
15 courtroom yesterday.

16 A Okay. So, you didn't see any of the TV coverage or
17 anything like that over the weekend or that you remember?

18 A I don't watch -- actually -- I've, I've had my cable
19 turned off for about six months at the house. I've got
20 where I don't watch TV. It's, it's sort of depressing right
21 now with the, the economy the way it is.

22 Q Well, and I---

23 A So---

24 Q ---I understand that. I understand that.

25 You had mentioned that you had some friends at the

Individual Juror Qualification

1 probation office.

2 Any, any of the friendships that you have that you
3 think would affect you in the trial of the case of this,
4 this crime, crime that's been charged?

5 A No, ma'am.

6 Q Okay. We spent a lot of time kind of talking around
7 the death penalty, and I was just gonna ask, gonna ask you
8 point blank, do you have any views about the death penalty?

9 A No, ma'am.

10 Q Okay.

11 A Not, not really views, no.

12 Q Any talk about it with anybody, have any discussions,
13 have any opinions about the death penalty?

14 A No, ma'am, I think it's a big responsibility as a juror
15 though. I mean that's something if you do get picked as a
16 juror and it comes down to that decision, that's -- it's not
17 something to be taken lightly---

18 Q Sure.

19 A ---by no means.

20 Q Just to make sure that, that, that you and I are both
21 kind of on the same page, when we talk about a death penalty
22 case, we're talking about a case where somebody has been
23 convicted of murder. And by murder, we're talking about the
24 willful killing of another human being that's been done with
25 malice aforethought. Basically somebody's done it with an

Individual Juror Qualification

1 evil intent. Kind of a heart bent on mischief.

2 And there's -- basically the jury has found a person
3 guilty meaning that, you know, if there was any sort of
4 defense offered, that basically the jury has found that
5 there's no evidence that really excuses the, that particular
6 killing.

7 Is -- does that make sense to you?

8 A Yes.

9 Q Okay. So, when we're talking about, talking about
10 actually been convicted of a willful killing of another
11 human being with malice, do you have an opinion that the
12 death penalty is the only appropriate sentence in a case
13 like that?

14 A No, I don't think it's the only appropriate.

15 Q Okay. When you get into the death penalty situation,
16 you've gotten not only that, that murder, that killing of a
17 person, but then you also have -- the State has the
18 opportunity to bring in aggravating circumstances.
19 Something that basically says that this particular crime and
20 this or this particular murder is, is more severe or worse
21 than, you know, the other, the other murders.

22 And if the State's able to prove those aggravating
23 circumstances, you know, the theoretical case that the judge
24 kind of put you in the situation in, would you feel that,
25 that if the State's able to prove those aggravating

1 circumstances, would the death penalty be the only
2 appropriate penalty?

3 A without hearing all the facts that's hard to say.
4 That's, that's speculation on my part. I wouldn't know. I
5 would -- like the judge said, do you -- I would like to -- I
6 would have to hear all the facts and then make a decision.
7 I don't think I could make a decision and just say, yeah,
8 that's the right way to go or not.

9 Q Okay. And that's fair.

10 would you consider mitigating factors, things that,
11 that might lessen the severity of those, of the sentence
12 either, because in fairness or in mercy, you know, those
13 factors just kind of tell you that, you know, that something
14 less than the death penalty, like, for example, the life
15 without parole sentence is the more, the more appropriate
16 sentence?

17 would you be willing to consider those factors---

18 A Yes.

19 Q ---in making your decision?

20 A Consider, yes.

21 Q Okay. Can you think of any sort of category of cases
22 where, where you would think that the death penalty is the
23 only, just based on your experience, that the death penalty
24 is the only appropriate sentence?

25 Can you think of any sort of category of choices like

Individual Juror Qualification

1 that?

2 A No, not right offhand, no.

3 Q Okay. I know you said you didn't really have a
4 particular opinion.

5 Have you done much thinking about the death penalty as,
6 as a sentence since you got the jury questionnaire or, you
7 know, the last couple, couple of days?

8 A Just in last day or so since yesterday I guess.

9 Q Okay. Anything in that experience that, that kind of
10 have, you know, caused you to form an opinion about, about
11 that as the death penalty as a penalty?

12 A No. Opinion, no.

13 Q Okay. Now, you qualified as an opinion.

14 Now, I mean do you have -- I'm asking you, you know,
15 what did I trigger?

16 what thought did I trigger in you?

17 A Well, like I said earlier, to, to sit down and have to
18 decide that for another person, you know, to decide whether
19 that person lives or dies, that's, it's a big
20 responsibility. So, yeah, that's something that I've sat
21 down and thought about would I be able to do that.

22 Q Okay.

23 A And if the case, if -- like the judge says, if all the
24 factors are there and the, and the law meets that, then that
25 would be a decision that I believe I could make. But it

Individual Juror Qualification

1 would, it would be something that I, I would definitely have
2 to think about.

3 Q Okay. And then that's fair. I mean in, in, in -- and
4 I think that's probably very, very accurate perception of
5 the position you would be in.

6 Is that a decision that you think that you could make?

7 A Yes.

8 Q Okay. So, you think that -- so, that is a decision
9 that you could make that, if the factors were there, that
10 you could render a, a death sentence if the appropriate
11 factors were there?

12 A If the appropriate factors were there.

13 Q Okay. And that you also, if I'm understanding you,
14 that you could also consider mitigation or other evidence
15 and also, if the factors were appropriate, you could also
16 render a life sentence?

17 A Yes.

18 Q Okay. Have you ever been in a situation -- and my
19 understanding from your questionnaire is you've not served
20 on a, on a jury before?

21 A No, I've been called for jury duty. But never served.

22 Q Okay. And nothing in your military experience in terms
23 of serving in a court marshal or anything like that?

24 A No.

25 Q Okay. Been in a situation -- have you ever been in a

Individual Juror Qualification

1 situation where you basically kind of had to kind of like
2 make group decisions or even a unanimous decisions or, you
3 know, in, in terms of kind of give and take?

4 I would, I would presume so, in the building industry,
5 you at least had some, some experience in that, that realm?

6 A Yeah. Well, you have to, you have other people that
7 base their opinion and you have to make a group decision on
8 something, of course, yeah.

9 Q Any problems in, with you feeling like you couldn't
10 articulate your decision or your opinions to other people?

11 I mean did you feel comfortable in articulating your
12 opinion and the reasons for your opinion---

13 A Oh, yeah.

14 Q ---in, in those settings?

15 A Yes.

16 Q Any feelings that you were intimidated by anybody or
17 coerced by anybody to change your opinion in that type of a
18 situation?

19 A No.

20 Q Okay. If you get back into a, a jury situation, and
21 you have a, considered all the evidence, weighed all the,
22 the factors, the law as the judge has charged you, and you
23 come to a particular decision as to what you feel, the
24 appropriate sentence, would you feel comfortable in holding
25 on to that opinion and holding steadfast in that opinion

Individual Juror Qualification

1 even though that might be different than the opinion of your
2 other jurors?

3 A Yes.

4 Q Okay. So, you wouldn't feel intimidated in the
5 courtroom to change your opinion just---

6 A Just to meet somebody else's?

7 Q ---to get along?

8 A No.

9 Q Okay. All right. And by the same token, while you ask
10 others to respect your opinion, you can respect other
11 opinions as well?

12 A Yes.

13 Q Okay. I believe that's all I have.
14 Wait just a minute, sir.

15 (Pause.)

16 Q Thank you, sir.

17 A Thank you.

18 THE COURT: State.

19 SOLICITOR BARNETTE: May it please the Court, Your
20 Honor?

21 THE COURT: Mr. Barnette, you may proceed.

22 EXAMINATION

23 BY SOLICITOR BARNETTE:

24 Q Mr. Fricks, good evening by the way.

25 A Good evening.

Individual Juror Qualification

1 How are you today?

2 Q It seems like it's a little bit later than---

3 A I believe your---

4 Q ---what it is.

5 A I believe your day's been a little longer than mine
6 though. But thank you.

7 Q Yeah.

8 Well, we appreciate all the time you coming up here and
9 spend the time on the questionnaire and talking to us, and,
10 again -- and thank you for your Naval service too. I saw
11 that too on the questionnaire.

12 A All right.

13 Q Just a couple of questions to follow-up.

14 One thing you'll have to be asked to do perhaps, if you
15 go back, and I know you'll be weighing all the factors, the
16 judge will be giving you the law and everything, but let's
17 say that you're coming down to the sentencing part, and 11
18 jurors have signed the death sentence on it, and you was the
19 12th juror.

20 Could you do that?

21 A Could I stand out from the others?

22 Q No.

23 Could you---

24 A Is that what you're---

25 Q Let's say the first 11 had said they was gonna vote for

Individual Juror Qualification

1 a death verdict, and you was gonna be the 12th person to
2 sign what we call the death warrant, the indictment to
3 sentence.

4 Could you do that?

5 A If that's the way I felt, yes.

6 Q And when you say you felt, that's based on what you
7 hear and all the evidence?

8 A That's based on all the facts and opinions, yeah.

9 Q All the facts and everything.

10 And like I said, you'd take what the judge gives you
11 and apply that law to the facts you hear in the case?

12 A Yes.

13 Q And there, and there would be circumstances given by
14 the State to aggravate the situation and there's also
15 mitigating circumstances.

16 But if you felt like the State met all the aggravating
17 circumstances, could you vote for a death verdict in that
18 situation for the death penalty?

19 A Yes.

20 Q And at the same time, you would take the mitigating
21 factors too and you'd look at those also, but if you felt
22 like the aggravating circumstances reached that level, you
23 could vote for that?

24 A Yes.

25 Q And for mitigation?

Individual Juror Qualification

1 A Yes.

2 Q Thank you, sir, for your time.

3 THE COURT: All right. Mrs. Hodges, anything further?

4 MRS. HODGES: No, sir. Thank you.

5 THE COURT: All right. Mr. Fricks, just a couple of
6 things I want to go over with you.

7 First of all, you provided us some information as to
8 how to get in touch with you on your juror questionnaire.

9 Is that still the same?

10 WITNESS: Yes, sir.

11 THE COURT: So, if we needed to get in touch with you,
12 we could use that information?

13 WITNESS: Yes, sir.

14 THE COURT: All right, sir. We're still in the
15 qualification process. I expect it to go through tomorrow.
16 Don't know how much further beyond that we'll go. But we'll
17 see how that works out. I can't make a definite prediction
18 on that.

19 But we will be, in the not too distant future, calling
20 people back to the courthouse for jury selection. If you're
21 one of the individuals asked to come back, I will tell you
22 now come prepared to stay for the full week because if
23 you're selected you'll immediately go into sequestration and
24 be a part of the jury. And so, you need to be prepared to
25 stay with us. We won't be sending anybody home or anything

Individual Juror Qualification

1 from that particular meeting.

2 Do you understand that, sir?

3 WITNESS: Yes, sir.

4 THE COURT: I will also caution you that my previous
5 instructions concerning gathering information about the case
6 or talking to anyone about it continue until such time as we
7 tell you that that has ended.

8 Do you understand that as well?

9 WITNESS: Yes, sir.

10 THE COURT: All right, sir. That completes our
11 questioning today. You're free to go at this time.

12 Thank you very much.

13 WITNESS: Thank you.

14 (The following takes place outside the presence of the
15 juror.)

16 THE COURT: All right. State's position on Mr. Fricks?

17 SOLICITOR GOWDY: May it please the Court.

18 The State believes he's qualified.

19 THE COURT: And the defense?

20 I understand you have your previous objections.

21 But are there other objections to this particular?

22 MRS. HODGES: No, sir, no other objections to Mr.
23 Fricks.

24 THE COURT: I find that he is qualified as well and
25 will list him as such.

Individual Juror Qualification

1 All right. We're gonna try to do one more before we
2 end today.

3 Let's see. We are down to Anne McKinney.

4 BAILIFF: You just, you just are going to do one more?

5 THE COURT: We are going to do one more. Now, if there
6 are others waiting, tell them to be back here at nine
7 o'clock in the morning.

8 Okay. Tell them that my instructions concerning
9 contacting and that sort of thing continue as well.

10 BAILIFF: All right.

11 THE COURT: Thank you.

12 ANNE MCKINNEY, having been previously
13 sworn, testified as follows:

14 EXAMINATION

15 BY THE COURT:

16 Q All right, ma'am. I believe your name is Anne
17 McKinney, is that correct?

18 A Yes, it is.

19 Q All right. Mrs. McKinney, first thing I want to do is
20 to thank you for your continued participation in our
21 process. I realize serving on a jury is an inconvenience
22 and it's difficult, and I hope you understand we're doing
23 our best to try to minimize that. But it's just the nature
24 of the way things are sometimes.

25 Do you understand that, ma'am?

Individual Juror Qualification

1 A I do.

2 Q All right. Now, ma'am, you're here to go over some
3 things with us, and I want to tell you what's gonna happen.
4 I'm gonna ask you some questions. Once I finish, we'll
5 allow the defense and the State to follow-up on those
6 questions if they wish to.

7 I will tell you now that the purpose here is to gather
8 information about your opinions and how you might view
9 certain matters. For that reason, there are no right
10 answers. There are no wrong answers to the questions that
11 we're going to ask you. We're simply here to gather some
12 information to assist us in, intelligently deciding how to
13 select a jury in the not too distant future.

14 Do you understand that, ma'am?

15 A Yes, sir.

16 Q All right. So, if at any point in time during our
17 questioning that you feel like there's a problem or someone
18 is badgering you, I don't think that's gonna happen, but if
19 it does, let me know and I'll be glad to try to see what we
20 can do about that.

21 Okay?

22 A (Witness nods affirmatively.)

23 Q And I understand that's not the most comfortable seat
24 in the house to be there with people asking you questions.
25 I appreciate that fact.

Individual Juror Qualification

1 okay?

2 A Okay.

3 Q Now, ma'am, the first question I have, since we've
4 talked yesterday, has anybody contacted you about the case?

5 Have you gathered any information from any other source
6 or have you been exposed to any information that somehow
7 might cause you to form an opinion about this case?

8 A No, sir.

9 Q Now, have you ever participated in or responded to any
10 blogs or Internet site concerning the death penalty?

11 A No.

12 Q Have you ever participated in any political activities
13 such as demonstrations, rallies, or meetings involving the
14 issue of the death penalty?

15 A No.

16 Q Now, ma'am, I do understand that there has been some
17 information in our media about this case, and, and I guess
18 what I'm gonna ask you now is whether or not you, if you
19 were selected as a juror on any case, are you the kind of
20 person that could put aside anything that you might of heard
21 previously, and decide the case solely based on the evidence
22 that, and the law that's presented during the trial of that
23 case?

24 A I'd hope so. I'm the kind of person -- I've never been
25 in that situation before. But I would hope so.

Individual Juror Qualification

1 Q All right. Well -- and I might want to ask you
2 specifically, have you been exposed to any information about
3 this case?

4 A No.

5 Q So, that's not really a concern right now, is that
6 correct?

7 A Right.

8 Q Okay. That gets me over that hump.

9 Okay. Now, ma'am, also while you were waiting in the
10 waiting room, you had some information provided to you. One
11 of which was a list of people who are potential witnesses in
12 this trial.

13 Did you see that list?

14 A I did.

15 Q Did you have a chance to review it?

16 A I did.

17 Q Now, ma'am, I'm gonna ask you a couple, just about
18 three or four questions about that matter. I don't want you
19 to identify anybody on that list by name.

20 The first question I have, after reviewing the list, is
21 it your belief that you have any social, business, or
22 professional connection with any individual who is named on
23 that list?

24 A No, I have no --.

25 Q All right. And do you -- are you related by blood or

Individual Juror Qualification

1 marriage or have you ever been related by blood or marriage
2 to anyone who you saw listed on that list?

3 A No.

4 Q So, I take it then you don't believe you have any
5 connection with anyone who may be a potential witness in the
6 trial?

7 A You're correct.

8 Q That's correct.

9 All right. Now, ma'am, I'm going to go over now some
10 more personal matters concerning your beliefs on certain
11 things. We're not trying to invade your privacy. But,
12 again, we think we need -- we believe we need to know how
13 you feel on certain things that are, might be issues in this
14 case.

15 You appear to be someone who's secure enough that you
16 would be able to discuss your opinions and beliefs without
17 feeling threatened by those questions.

18 Is that true?

19 A True.

20 Q Okay. Now, ma'am, one of the things I'm going to talk
21 to you about obviously is going to be the death penalty.
22 That's because it may be an issue in the trial, and I
23 explained yesterday that this case is going to involve
24 basically two phases of trial.

25 The first phase involved the question of guilt or

Individual Juror Qualification

1 innocence as to the main charges that have been brought
2 against the defendant. One of those charges is a charge of
3 murder. And for that particular offense, the State is
4 seeking the imposition of the death penalty.

5 When that occurs, and should the defendant be found
6 guilty of that particular offense, it would be necessary to
7 hold a separate trial or a second phase of the trial
8 concerning the appropriate, the appropriate penalty to be
9 imposed. The same jury will hear both cases.

10 The reason I'm telling you this is that obviously if
11 we're going to discuss this question or this issue with you,
12 we have to do it now before the trial starts even though we
13 may never get to this part of the trial. And I want you to
14 understand and appreciate the fact that you should not hold
15 against the defendant, in any fashion, the fact that we're
16 discussing penalties already before we decided, decided the
17 issue of guilt or innocence. We're doing that because this
18 is the only opportunity that we will have to do that.

19 Do you understand that?

20 A I do.

21 Q Okay. Now, ma'am, the first thing I want to talk to
22 you about is the application of the law should you be
23 selected in this case.

24 And if you were selected as a juror in, on any case,
25 would you be someone who is willing to listen to the law as

Individual Juror Qualification

1 you were instructed by the judge?

2 A Yes.

3 Q And would you be willing to accept the law as
4 instructed by the judge and apply it to the facts of the
5 case as you, a juror, find them to be?

6 A Yes.

7 Q Now, is that true, even though once you hear the law,
8 you may disagree with it or you may not like it, but would
9 you still then be willing to take the law as the judge gives
10 it to you and apply it to the facts in the case?

11 A Yes.

12 Q All right. Now, this case has been in, in the news
13 somewhat and you have indicated that you've not been exposed
14 to any of that. So, I'm going to move on to some issues
15 that we talked about yesterday. And that was, first of all,
16 a couple of legal concepts that I want to be sure we all
17 understand and, and your views on those.

18 First of all, in this state, under our Constitution and
19 under the Constitution of the United States, a defendant is
20 always presumed to be innocent. Because the defendant is
21 always presumed to be innocent, the defendant has no burden
22 to prove himself innocent of anything. So, the defendant is
23 never required to prove his innocence. He's already
24 presumed to be such.

25 The same law that provides for that presumption also

Individual Juror Qualification

1 provides that the State has the burden of proof in a
2 criminal trial. That burden of proof is to prove the
3 defendant's guilt of the crime charged beyond a reasonable
4 doubt.

5 So, do you understand the burdens of proof in the case
6 and who has those burdens?

7 A Yes.

8 Q Do you -- are you -- would you be willing to apply
9 those principles to this case if you were selected as a
10 juror in this case?

11 A Yes.

12 Q All right. So, I take it, ma'am, from your answers,
13 and tell me if I'm wrong, do you think that because someone
14 has been accused of a crime, arrested, and even indicted
15 that that person is automatically guilty of the crime?

16 You want me to repeat the question?

17 A No, I do not think they're automatically guilty.

18 Q Okay. So, I take it, ma'am, that you would be willing
19 to listen to the law, listen to the evidence presented, and
20 based on how you determine those things to be, you could
21 possibly find someone not guilty of a crime that they were
22 charged with.

23 Is that true?

24 A Yes.

25 Q And the same, the converse is true, that means that if

Individual Juror Qualification

1 the State does meet its burden of proof and does prove the
2 defendant guilty to your satisfaction beyond a reasonable
3 doubt, you would be willing to pass a verdict of guilty
4 against someone?

5 A I'm sorry.

6 will you say that first part again?

7 I---

8 Q All right.

9 A ---lost you.

10 Q Should the State meet its burden of proof and it proves
11 the defendant guilty of the crime beyond a reasonable doubt
12 to your satisfaction---

13 A Yes.

14 Q ---would you, in that circumstance, be willing to
15 impose a verdict of guilty---

16 A Yes.

17 Q ---against another person?

18 A Yes.

19 Q Okay. So, I take it, ma'am, that it would, that you
20 are the kind of person, if you were selected on a jury,
21 would listen to the strength of the evidence, you'd listen
22 to the testimony and what the evidence did show, and listen
23 to the law as provided by the judge, and you would be in a
24 position to either find the person guilty or not guilty
25 depending on those factors.

Individual Juror Qualification

1 Is that correct?

2 A Correct.

3 Q All right. Now, ma'am, we're gonna get down to talking
4 about the, the death penalty. I told you we would get to
5 that point and that's what we're going to do at this point
6 in time.

7 The -- most of the time, in criminal cases in this
8 state, the judge imposes the penalty when someone's found
9 guilty. And as I've indicated, the exception to that rule
10 is when there's a charge of murder and the State is seeking
11 a death penalty. When that individual is found guilty, we
12 have a separate trial to determine the, the penalty which is
13 either life imprisonment or death.

14 Now, under those circumstances, the jury that convicted
15 the defendant of the murder is the same jury that hears the
16 issue concerning the penalty. That jury comes back, in a
17 separate proceeding, and listens to additional evidence on
18 the issue of the appropriate penalty to be imposed.

19 Do you understand that, ma'am?

20 A Yeah.

21 Q Now, in that separate proceeding, again, the only
22 determination is for the type of penalty and there's only
23 two choices, life imprisonment or death.

24 Do you understand that as well?

25 A Yes.

Individual Juror Qualification

1 Q Now, I want you to imagine yourself theoretically in a
2 position, and I'll describe it to you. Let's assume that
3 you have been selected to serve on a jury in a murder trial
4 in which the State is seeking the death penalty. You and
5 your fellow jurors have listened to the guilt phase of that
6 trial, and have determined that the defendant is guilty of
7 the crime charged, and, therefore, he has been found guilty.

8 For that reason then, since the State is seeking the
9 death penalty, it's necessary for that same jury that you're
10 sitting on to come back to the courtroom and listen to the
11 sentencing phase of that trial.

12 Do you understand what I'm saying?

13 A I understand.

14 Q So, you can place yourself in that position?

15 A I can.

16 Q Now, when you were back in the jury room I had a sheet
17 of paper in which we described three different jurors.

18 Did you see that paper?

19 A Yes.

20 Q And you read it?

21 A Yes.

22 Q All right. Now, I'm going to go over with you the
23 three jurors that were described on that piece of paper and
24 so that we're sure we're on the same page, same piece of
25 paper.

Individual Juror Qualification

1 Okay. The first juror that I described is someone who,
2 before they ever walk out into the courtroom for the
3 sentencing phase, has already made up their mind. That
4 person believes that the only appropriate penalty for
5 someone who has been found guilty of a murder is death. So,
6 that particular juror will always vote for death in that
7 situation. So, that juror's mind is already made up.

8 The second juror I described has also already made up
9 his or her mind. That particular juror, walking into that
10 courtroom, has a belief that the State has no right, under
11 any circumstances, to take anyone's life in punishment for a
12 crime. And so, that juror will always, in all situations
13 like that, vote for life as opposed to death. So, that
14 juror has already made up his or her mind.

15 The third juror I described is a juror who hasn't yet
16 made up his or her mind. That juror will have to come into
17 the courtroom and listen to the testimony, listen to the
18 evidence concerning the imposition of the penalty and have
19 to listen to that evidence and then make a decision as to
20 what the appropriate penalty would be. Either the death
21 sentence or life without parole.

22 Do you understand the three different types of jurors
23 I've described?

24 A Yes.

25 Q Now, ma'am, I'm going to ask you which of those three

Individual Juror Qualification

1 different jurors would most closely reflect your feelings as
2 you came back into the courtroom?

3 A Three.

4 Q Now, ma'am, I'm gonna take it then, from what you just
5 told me, that given the situation where someone has been
6 found guilty of murder and there's no longer a concern about
7 guilt or innocence, that you would be willing to listen to
8 the facts and the evidence, and if the evidence justified
9 this verdict, you would be willing to sentence someone to
10 death.

11 Is that correct?

12 A I'd have a hard time.

13 Q well, ma'am---

14 A But, but you said -- I couldn't do two and a half. I
15 needed -- I know how you were yesterday. You needed a
16 definitive answer. But it would be very difficult. I wish
17 you could -- I wouldn't want to. But I would do my best,
18 yes, I would try.

19 Q well, no, let me, let me ask the question to be sure
20 we've got a clear answer.

21 A I know. I've read that. I do know. But I'm just
22 saying I don't---

23 Q The question is if you were, if you were in that
24 situation, and you came back into the courtroom, and you had
25 found the defendant guilty of murder, and the issue of guilt

Individual Juror Qualification

1 was no longer an issue---

2 A I'm good with that.

3 Q ---would you be willing to listen to the evidence and
4 the facts, and if you found that the evidence justified
5 it---

6 A If it justified it.

7 Q ---would you be willing to sentence someone to death?

8 A Yes.

9 Q Now, the next question I'm going to have, if the
10 evidence did not justify the death penalty or for any other
11 reason, you don't have to have any other reason, would you
12 be willing also to sentence someone to life imprisonment in
13 that situation?

14 A Yes.

15 Q So, that means that, given the facts and circumstances
16 as you find them to be, you could sentence someone to life
17 or you could sentence someone to death in that circumstance?

18 A Yes.

19 Q Now, the final question I'm going to ask you has to do
20 with the fact that this jury will be sequestered. That
21 means that the jury will be staying at a hotel during the
22 evenings, will be eating dinner, meals together, will be
23 traveling together.

24 A All right.

25 Q And we will be conducting the trial most of the time

Individual Juror Qualification

1 during the days. We expect the trial will last anywhere
2 from five to seven days. That's my best estimate as to what
3 we're looking at. My question -- and I understand that's an
4 inconvenience in anybody's life. Don't get me wrong. I
5 understand that.

6 But my question is if you were in that jury and in,
7 sequestered in that fashion, would that pose a risk of
8 danger to either, to your health or well being?

9 A No.

10 Q Would it pose a risk of danger to the health or well
11 being of anyone who is dependent upon you?

12 A It would be difficult cause I've got children that
13 depend on me.

14 Q I understand that.

15 A They would not---

16 Q But it would -- would it be dangerous to their health
17 or their well being if you were on the jury?

18 A Their well being, yes.

19 Q All right. So, can you tell me, would that be
20 something that would prevent you from being able to serve on
21 the jury?

22 A Not prevent, but make it difficult.

23 Q Okay. I understand your answer. Now I'll allow the
24 defense to proceed with questioning.

25 Mrs. Hodges is rising. So, she'll be allowed to

Individual Juror Qualification

1 proceed.

2 MRS. HODGES: Thank you, Your Honor.

3 May it please the Court?

4 THE COURT: Yes, ma'am.

5 EXAMINATION

6 BY MRS. HODGES:

7 Q Mrs. McKinney, I understood your answers to some of
8 yesterday's questions to be that you're either friends with
9 or acquaintances with, with Mr. Gowdy's wife?

10 A Yes.

11 Q Okay. How would you characterize your relationship as
12 close friends, see each other at Pine Street School---

13 A Pine Street School.

14 Q ---kind of friends or---

15 A But my husband did grow up with, with Trey.

16 Q Okay. And your husband's also in the medical field?

17 A Yes, he is.

18 Q Okay. Any -- the fact that the, Solicitor Gowdy's
19 father was a doctor in the community, would that kind of---

20 A Not for me.

21 Q Not for you?

22 A No, I didn't even know that to tell you the truth.

23 Q Okay. I know that you have a medical degree. That's
24 what I gleamed from, from your questionnaire.

25 A I do.

Individual Juror Qualification

1 Q Have you ever actually had the opportunity to practice
2 medicine?

3 A No.

4 Q Okay. Is part of your hesitancy about imposing the
5 death penalty based on your Hippocratic Oath as, as a doctor
6 or is it more kind of just personal, personal views?

7 A Personal views.

8 Q Okay. And I understand these are tough questions, and
9 I know judges, you know, kind of require sort of, kind of
10 crisp answers. But -- and we're just really -- there is no
11 right or wrong answer. We're just trying to get to the
12 best, best understand your opinion and your position.

13 would you, in this particular case, not in this
14 particular case rather, but in, in a case involving murder,
15 would you ever consider a situation where you thought that
16 the death penalty was the only appropriate response?

17 A Yes.

18 Q Okay. Can you tell me a little bit, bit more about
19 that?

20 A well, it would -- some horrific crime, that they were
21 gonna potentially do it again, that it was out of control,
22 but yeah.

23 Q Okay.

24 A And it was gonna hurt the community, and, you know,
25 that's -- you know, yeah.

1 Q So, it's -- so, it's that kind of a crime that, that
2 you could consider that, that the death penalty -- and let
3 me make sure I understand it.

4 Is, is it your understanding that that would be, that
5 the death penalty would be the only appropriate response to
6 that kind of crime or that it's, basically it could, could
7 be an appropriate response?

8 A Would be the best.

9 Q Would be the best?

10 A Maybe only is---

11 Q Okay.

12 A The best.

13 Q Okay. In that type of case, the type of case that
14 you're thinking of, is particularly horrific, got, got
15 community concerns, that sort of thing, would you be able to
16 consider any sort of mitigating evidence in terms that, that
17 might lessen the crime, either in fairness or in mercy, to,
18 to determine, you know, that perhaps a, a lesser sentence is
19 appropriate in the case?

20 Would you be able to consider that, that mitigating
21 evidence?

22 A Mercy, yes.

23 Q Okay.

24 A Mercy.

25 Q And in that, and then in that type of case, would you

Individual Juror Qualification

1 be able to, to actually render a life sentence?

2 A Yes.

3 Q Okay. Would it, would it be equally difficult for you
4 to render a life sentence in that case because of the
5 concerns that it's a particularly horrific crime?

6 I mean would you -- let me strike that. That was a
7 very confusing question. It's late in the day.

8 A It's okay.

9 Q Have you had a lot of discussion, either, you know, in
10 your professional training, or, you know, in your community,
11 social groups, interactions about the death penalty?

12 A No.

13 Q Okay. Haven't had, really talked about it, expressed
14 an opinion about it?

15 A No. But it's pitiful. But no.

16 Q Well, no, I mean it's---

17 A You probably talk about it all the time.

18 Q And that's also probably pitiful.

19 But I mean have, then haven't really expressed an
20 opinion about the death penalty?

21 A No.

22 Q Hadn't done a lot of thinking about it.

23 I think that may be all my questions.

24 I have just a moment, moment.

25 (Pause.)

Individual Juror Qualification

1 Q Thank you, Mrs. McKinney.

2 THE COURT: Mr. Gowdy.

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

4 THE COURT: Yes, sir, you may proceed.

5 EXAMINATION

6 BY SOLICITOR GOWDY:

7 Q Good evening, Mrs. McKinney.

8 A Hello.

9 Q I want to start by reemphasizing what His Honor said.
10 That are no right answers. There are no wrong answers.
11 There are just your answers and nobody's gonna cross-examine
12 you or ask you to explain or ask you to justify it. We
13 just, in a case like this, we need to know what your deeply
14 held convictions are. And whatever they are, they are.

15 So, against that backdrop, what are your views
16 generally on capital punishment and what informs or
17 instructs those views?

18 A Well, that's a -- I like the yes or no questions. My
19 general view is that it would have to be very very strong
20 circumstances to, for me to agree with the capital
21 punishment, to the death penalty. But my views are taken
22 from the Bible. I think it's Biblical even though I think
23 it's very difficult.

24 So, that's -- so, morally it's -- I'm, I, I debate all
25 the time inside. Not that I've talked to a lot of people

Individual Juror Qualification

1 about that cause I don't. I try to avoid that. I think
2 it's a very difficult question. So, I'm probably -- I'm not
3 as strong as you might want. Sorry.

4 Q whatever you are is what we want. Whether it's
5 strong---

6 A I hope you don't want me---

7 Q ---whether it's two and a half, whatever you are and,
8 and you don't have to justify it.

9 would you agree with, with the basic premise that all
10 killings are not the same?

11 A Yes, I would agree with that.

12 Q You referenced your faith. Moses killed someone.
13 Davis, David conspired to commit the murder of Uriah. Paul
14 held the coats while Steven was stoned to death.

15 Do you believe that all murders should be punished the
16 same?

17 A No.

18 Q would life in prison be the ceiling beyond which you
19 felt comfortable going with punishment and, and that other
20 punishment should be below that?

21 A No, it's not the ceiling. I'd love it to be. But it's
22 not. Not -- it can't be the ceiling.

23 Q when, when you talk about heinous crimes, are you, are
24 you speaking about 9-11 type crimes, the bombing in Oklahoma
25 City or are you -- is there another category of crimes that

Individual Juror Qualification

1 is more, dare I use the word realistic, or common place for
2 which you could impose society's ultimate punishment?

3 A Yeah, yeah. Like just ruthless. Even if it's not
4 that, that many like 9-11, but a ruthless human who has no
5 regard for life.

6 Q South Carolina law will never require you to vote for
7 death. You can vote for a life sentence for any reason, no
8 reason, and you never have to justify it. Never have to
9 give anyone an explanation for why you voted the way you
10 did. And life means life. It means you will never get out
11 of prison.

12 Understanding that, that you don't ever have to justify
13 it, and life means life, do you really believe that you
14 could ever vote to put someone to death?

15 A I don't if it -- I'd hate to be in that situation.
16 Boy, I'd hate it.

17 Q Is it fair to say that your religious views, while they
18 may not prevent the imposition of the death sentence, they
19 substantially impair your ability to impose the death
20 sentence?

21 A Yes.

22 Q Is that fair?

23 A That's fair.

24 Q I don't want to put words in your mouth.

25 A No, that sounds fair. I wish I could say it that well.

Individual Juror Qualification

1 Q well, you probably could.

2 It may not prevent it, but it substantially impairs
3 your ability to vote for death?

4 A Yes.

5 Q Is that fair?

6 A Fair.

7 SOLICITOR GOWDY: One moment, Your Honor.

8 (Pause.)

9 Q Thank you very much for your candor and forthrightness
10 in the questions.

11 THE COURT: Any follow-up questions from the defense?

12 MRS. HODGES: Very briefly.

13 EXAMINATION

14 BY MRS. HODGES:

15 Q Mrs. McKinney, I, I understand the responses that, that
16 your religious views or your faith may substantially impair
17 your ability to impose the death penalty, but it does not
18 preclude in the, in the right situation or the appropriate
19 situation, it doesn't preclude your ability to do that.

20 Is that, is that correct also?

21 A Correct.

22 Q All right. Thank you, ma'am.

23 THE COURT: All right. Mrs. McKinney, just a couple of
24 things I want to go over with you before we release you
25 today.

1 First of all, the contact information that you provided
2 us, is it still correct?

3 WITNESS: Yes, it is.

4 THE COURT: And ma'am, we're still in the process, as
5 you can tell, of qualifying jurors for this case and I
6 expect that process to go through tomorrow. Perhaps even
7 into the next day. I don't know. We go until we have a
8 large enough pool from which to select a jury and I'm not
9 sure when that's gonna be reached. So, I can't tell you
10 exactly.

11 In the very near future though we will be contacting
12 jurors to return to the courthouse once we have a large
13 enough pool from which to select the jury. And those
14 individuals who are called back to the courthouse should
15 arrive prepared to stay for the full week of the trial if it
16 occurs.

17 So, you would bring your, whatever belongings you think
18 you will need to be able to stay for the week if you are
19 called back. And if you're selected, you would go directly
20 into sequestration at that point in time.

21 Do you understand that, ma'am?

22 WITNESS: I understand that.

23 So, if you're called back though, could you still, you
24 still could possibly not have to go?

25 THE COURT: That's right. There will be a pool of

Individual Juror Qualification

1 people from which the jury can be selected. Each side will
2 have strikes available to them and someone---

3 WITNESS: So---

4 THE COURT: ---may be stricken from the list and not
5 selected.

6 WITNESS: So, if you're not called back, that means---

7 THE COURT: You'll get a call either way. We'll tell
8 you you're off and don't worry about it or you need to come
9 back.

10 WITNESS: Oh.

11 THE COURT: But if you're called to come back, the main
12 thing I'm trying to get across is be prepared to stay
13 because if you're selected, we don't let you go to the car
14 and go home. You'll be staying with us from that point
15 forward until the case is ended.

16 Do you understand?

17 WITNESS: I do.

18 THE COURT: Okay.

19 WITNESS: That's, that's huge.

20 THE COURT: Now---

21 WITNESS: That's just something else.

22 THE COURT: Well -- and now, also, I do want you to be
23 aware that the admonitions that I gave you yesterday
24 concerning no contact, no discussions, not listening to or
25 watching any type of media reports continue until we tell

1 you those have ended.

2 Do you understand that, ma'am?

3 WITNESS: I do. I told my kids to say nothing about it
4 and if I did, I could get a year in jail.

5 And you know what they said?

6 A year, that's not so long, you need to keep us happy
7 mom, and I was very very quiet and I said well, a year to me
8 is a long time.

9 THE COURT: I, I hope you have kept those children
10 happy. That's all I can say.

11 WITNESS: Oh, my goodness.

12 THE COURT: All right, ma'am. At this point in time
13 you're gonna be free to go. Thank you very much for coming.

14 WITNESS: Okay. Thank you.

15 (The following takes place outside the presence of the
16 juror.)

17 THE COURT: All right. State's position regarding
18 Mrs. McKinney?

19 SOLICITOR GOWDY: Your Honor, Whitt and Waynewright do
20 not require an absolute inability to give the death
21 sentence, the death penalty. Neither does the Supreme Court
22 in our state. She started off by telling Your Honor, and,
23 and I think all of us commend her candor and anguish with
24 which she had to answer these questions. But she started
25 off by telling you that she was a two and a half, and she

Individual Juror Qualification

1 felt like she needed to fit in one of the categories. And
2 then she ended by telling me that her faith would
3 substantially impair her---

4 THE COURT: Go ahead.

5 SOLICITOR GOWDY: ---her ability to impose the death
6 sentence. It, it -- she doesn't have to say she can't.
7 It's, it's just enough if it substantially impairs it, and
8 she said it would.

9 So, we, we have actually, I believe and I would
10 respectfully submit to the Court, disqualified other jurors
11 who said they could give life, but it was, apparently none
12 of us believed it cause I agreed they were disqualified and
13 they said they were disqualified. I think this is the
14 reverse situation. She may of said she could. But she also
15 said her faith substantially impaired her ability to do so.

16 THE COURT: Hear from the defense.

17 MRS. HODGES: Respectfully, Your Honor, I mean when she
18 was asked the general question, the open ended question
19 about what her general view about the death penalty, she
20 said that she felt that it was an appropriate sentence for
21 something that had very very strong evidence, something that
22 basically was kind of ruthless, showed no regard for human
23 life. I think that, that while, you know, we've heard
24 several jurors this afternoon give us the indication that it
25 is a difficult and momentous and heavy and weighty decision,

1 and I don't think any of us would argue with that, that's
2 why we're going through this process.

3 I mean I think she probably perhaps has given us the
4 must real input in, you know, insight into the struggle that
5 a juror has, but by the same token I think she is qualified.

6 THE COURT: All right. I'm gonna, I'm gonna take a
7 look at her. I'll announce my decision on her in the
8 morning.

9 All right. That concludes our process. We'll start
10 again at nine o'clock in the morning.

11 Thank you very much.

12 Defendant remains in custody.

13

14 (Whereupon, Court was in recess for the evening.)

15

16

17

18

19

20

21

22

23

24

25

Individual Juror Qualification

1 wednesday, october 15th, 2008

2

3 THE COURT: I assume the State's ready to go forward?

4 SOLICITOR GOWDY: Yes, sir, Your Honor.

5 THE COURT: Defense ready to go forward?

6 MR. ALLEN: Yes, sir.

7 THE COURT: All right. Let's see. The next individual
8 we're going to examine is Juror Number 177, Curtis Marshall.
9 If he's ready, bring him forward.

10 MR. RECKENBEIL: Judge, we---

11 THE COURT: Just one second, Mr.---

12 MR. RECKENBEIL: I'm sorry. Last night when we left,
13 Your Honor, and I don't want to rush Your Honor on
14 Mrs. McKinney.

15 THE COURT: I'll make my ruling when I'm ready.

16 MR. RECKENBEIL: Yes, sir.

17 THE COURT: Bring him in.

18 MR. RECKENBEIL: We just---

19 THE COURT: Thank you.

20 CURTIS MARSHALL, having been previously
21 sworn, testified as follows:

22 EXAMINATION

23 BY THE COURT:

24 Q All right. Good morning.

25 A Good morning.

Individual Juror Qualification

1 Q You are Curtis Marshall, is that right?

2 A Yes, sir.

3 Q All right. Mr. Marshall, you are before me this
4 morning for some questioning by myself and by the attorneys.
5 I want to remind you that when we started this process on
6 Monday you were sworn to tell the truth concerning our
7 questions, and I'll remind you you're still under oath for
8 this purpose.

9 Do you understand that, sir?

10 A Yes, sir.

11 Q All right, sir. We're going to go over some matters
12 with you that have to do with some of your personal beliefs
13 and opinions on some matters. I understand that you're not
14 use to sitting in a seat in a courtroom with a microphone
15 surrounded by lawyers and a judge asking questions, and I
16 don't want you to be uncomfortable.

17 I will tell you now that, as we go through this
18 process, there are no right answers and there are no wrong
19 answers to our questions. We're simply trying to gather
20 some information about you and your opinions. And so, the
21 only answers we have are your answers, whatever that you,
22 you want to share with us as far as your opinions and the
23 information that you have in that regard.

24 Now, if, at any time during this process, you feel
25 somehow threatened or feel like the questioning is unfair or

Individual Juror Qualification

1 anything in that nature, please let me know, and we'll
2 address that issue at that time.

3 Do you understand that, sir?

4 A Yes, sir.

5 Q All right. Now, since we talked on Monday, has anybody
6 contacted you about the case?

7 Has anybody gotten in touch with you or have you been
8 exposed to any information about the case that might cause
9 you to form an opinion about this matter?

10 A No, sir.

11 Q Have you ever participated in any type of Internet site
12 or blog that has to do with the death penalty?

13 A No, sir.

14 Q Have you ever participated in any political activities
15 such as demonstrations, rallies, or meetings where these,
16 one of the subjects or the subject was the death penalty?

17 A No, sir.

18 Q Sir, I understand that there may have been some, some
19 pretrial publicity about this case in our local media.

20 My next question is are you, if you were selected as a
21 juror in any case, are you the kind of juror who can put
22 aside things that you may have heard previously and decide
23 the case solely upon the evidence as presented during the
24 trial of the case?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, my next questions have to do with some information
2 that you get, were given just a moment ago in the waiting
3 room, a list of potential witnesses.

4 Did you see that list?

5 A I did.

6 Q And did you look over it?

7 A Yes, sir.

8 Q I do not want you to identify anyone from that list by
9 name in the courtroom, but I am going to ask you some, you
10 some questions about the list.

11 First of all, after reading the list, is it your belief
12 that you have any social, business, or personal connection
13 with any individual who was named on that list as a
14 potential witness?

15 A There was one name on there. I had a student at Byrnes
16 that may have been with the Sheriff's Office. But just
17 seeing the name without the face, I couldn't be sure.

18 Q Okay. So, I take it then that your connection with
19 that individual is not so close or been so continuing that
20 you can tell that for sure, is that correct?

21 A That's correct.

22 Q Now, if that particular person happened to be a witness
23 in the trial, would that, in any way, affect your ability to
24 be fair and impartial to the State or the defense?

25 A No, sir.

Individual Juror Qualification

1 Q All right, sir. Now, are you related by blood or
2 formerly related by marriage to anyone on that list?

3 A No, sir.

4 Q Now, sir, I'm going to ask you now some questions about
5 your personal opinions or beliefs, and we're not trying to
6 invade your privacy by doing so. We are trying to find out
7 how you feel about some things and opinions that are
8 important to the issues that are in this case. You appear
9 to be a person who is secure enough in your beliefs and
10 opinions that we can ask questions about that without you
11 feeling threatened.

12 Is that a correct statement?

13 A Yes, sir.

14 Q I do understand and I hope you understand that we will
15 get to a point where we'll be discussing the death penalty,
16 that particular issue. I want to explain to you, as I did
17 at the beginning of this process, that this case, if it goes
18 forward, will be divided into two phases or segments. The
19 first phase or segment has to do with the guilt or innocence
20 of the defendant as to the charges that have been brought.

21 The second phase, if -- and one of the charges is for
22 the charge of murder. The State, for that charge, has
23 sought the death penalty. And if the defendant were found
24 guilty of that charge, we would have a second trial called
25 the sentencing phase where we would determine the

1 appropriate penalty because the State has requested that the
2 death penalty be the penalty that's given for that offense,
3 and the jury would then have to hold a second trial to
4 determine the appropriate penalty.

5 Do you understand that that's the process that we would
6 do there?

7 A Yes, I do.

8 Q And at that second trial, the choice for the jury would
9 be either life imprisonment or death. There's only two
10 choices in that phase of the trial.

11 Now, I'm telling you this and I want to explain this to
12 you, obviously, if the defendant were found not guilty of
13 the charge of murder there would be no second trial. And to
14 a certain extent we're kind of putting the cart before the
15 horse because we haven't gotten to that point. And we don't
16 know if that trial is going to occur. But the same jury
17 considers both issues.

18 So, this is the only chance we'll have to discuss that
19 issue and I'm telling you that so that you won't hold the
20 fact that we're discussing penalties against the defendant
21 and any defense that he might raise because this is really
22 the only time we'll have to discuss it before the trial
23 starts and we get possibly to that point.

24 So, do you understand what I'm saying there?

25 A I do.

Individual Juror Qualification

1 Q Okay, sir. Now, the first question has to do with your
2 ability to apply the law.

3 If you were a juror in any case, would you be willing
4 to listen to the law as instructed by the judge?

5 A Yes.

6 Q And would you be willing to accept the law as
7 instructed by the judge in a trial and apply it to the facts
8 of the case as you, a juror, find them to be?

9 A Yes.

10 Q Now, is that true even though you might not like the
11 law that the judge charges or you might even disagree with
12 the law, would you still be willing to accept it as charged
13 and apply it to the facts?

14 A Yes.

15 Q Now, sir, this case has had some pretrial publicity,
16 and I want to be sure that, from the things that have been
17 published, that -- I want to know if you have read or heard
18 or seen anything about this case outside the courtroom that
19 you would, that you could not disregard, and would you be
20 able to decide the case purely upon what you hear in the
21 courtroom.

22 Can you do that?

23 A Yes.

24 Q Now, they're two concepts I discussed with you during
25 our first discussion. I want to be sure you understand them

Individual Juror Qualification

1 and that you could apply these concepts.

2 The first is in our state and, and in this, in our
3 nation and state, criminal defendants who are charged with a
4 crime are always presumed to be innocent. What that means
5 is the defendant has no obligation or duty to prove his
6 innocence. It's already established as far as the
7 presumption is concerned.

8 The second concept is, that in all criminal
9 prosecutions, the State has the burden of proving the
10 defendant guilty beyond a reasonable doubt.

11 Now, do you understand those two concepts in our
12 criminal jurisprudence?

13 A Yes.

14 Q And would you be able to apply those concepts should
15 you be selected as a juror in this case?

16 A I would do my best.

17 Q Well, sir, would you be able to do that?

18 A Yes, sir.

19 Q Okay, sir. Now, that means that you would be willing
20 to listen to the law, also to listen to the evidence, and
21 based upon that evidence, you could either find a person
22 guilty or not guilty depending on what that evidence and law
23 showed.

24 Is that a correct statement?

25 A Yes.

Individual Juror Qualification

1 Q Is it your belief that everyone who is charged with a
2 crime, arrested, or indicted must automatically be guilty of
3 that crime?

4 A No, sir.

5 Q Now, sir, if the evidence convinced you, beyond a
6 reasonable doubt, that a person was guilty and you were on a
7 jury, would you be able to find someone guilty?

8 A Yes, sir.

9 Q And by the same token, if the evidence did not
10 establish, beyond a reasonable doubt, that guilt, would you
11 be able to find someone not guilty?

12 A Yes, sir.

13 Q Now I'm gonna talk to you about the death penalty
14 itself. I told you we would get to this point. And as
15 you're aware, in most cases in this state, the judge sets
16 the punishment for the crimes once someone's convicted.

17 The exception to that rule is when the State seeks
18 death, the death penalty in a murder case. And in that
19 case, the jury sets the penalty for the crime. And so, that
20 will be in what we call the, the penalty phase of the trial.

21 Under those circumstances, the jury that convicts the
22 defendant of the crime of murder is also the jury that comes
23 back and considers the evidence that's presented during the
24 penalty phase in setting the penalty for the crime, and
25 there's only two choices, life imprisonment without parole

1 or death. Those are the two choices should that be a, a
2 guilty verdict on murder.

3 So, do you understand the proceeding, that there is a
4 separate proceeding where the jury does that?

5 A I do.

6 Q Now, I want you to put yourself in a position in that,
7 for me in your mind. You were selected to serve on a murder
8 trial as a juror, and that is also a, a crime for which the
9 state has sought the death penalty. You and your fellow
10 jurors have heard all of the facts and have found the
11 defendant guilty of the murder. So, the question of guilt
12 or innocence is no longer before the Court. You're moving
13 on now to the penalty phase where the penalty will be set.
14 You and your fellow jurors are about to walk back into the
15 courtroom to begin that part of the trial.

16 And do you remember that I gave you another sheet of
17 paper to look at before you came into the courtroom that
18 described three different types of jurors?

19 Do you remember that paper?

20 A I do.

21 Q And do you understand the situation that I've put you
22 in?

23 A Yes, sir.

24 Q All right, sir. I'm gonna go over those three types of
25 jurors so we're sure we're on the same page about those

Individual Juror Qualification

1 jurors.

2 The first juror that I'm talking about already has his
3 mind made up before he walks into the courtroom. That juror
4 has a belief that the only appropriate punishment for
5 someone who is found guilty of murder is death. So, that
6 jury, before he ever walks into the courtroom and hears any
7 of the evidence on the sentencing phase, has already decided
8 that he is going to vote for death on that case or any other
9 case like that.

10 The other -- the second juror is a person who is also
11 has already made up their mind before they got into the
12 courtroom. That person believes that the State never has a
13 right to take the life of a person, a person in punishment
14 for a crime. So, in all cases like that, and this case too,
15 that juror has made up his or her mind that they will vote
16 for the, for life imprisonment without parole.

17 The third juror that's walking into that courtroom
18 doesn't know what he or she is going to do. Whether they're
19 going to vote for life imprisonment or death, that juror
20 will have to wait, listen to the evidence and the testimony,
21 and then make a decision as to what the appropriate penalty
22 would, would be.

23 Now, do you understand those three types of jurors I
24 just described to you?

25 A I do.

Individual Juror Qualification

1 Q And I've asked you to put yourself in the position
2 where you're walking back into the courtroom.

3 Of those three types of jurors, which one would best
4 describe you?

5 A Number three.

6 Q Now, sir, that means, under those circumstances and
7 you're keeping in mind you have already found the defendant
8 guilty of murder and the issue of guilt is no longer an
9 issue, you would be willing to listen to the evidence and
10 the facts.

11 Is that correct?

12 A Yes, sir.

13 Q And if you found that the evidence justified it, would
14 you be willing to sentence someone to death?

15 A Yes, sir.

16 Q And even though -- and if also the facts and the
17 evidence did not justify a death sentence, would you be
18 willing to sentence someone to life imprisonment?

19 A Yes, sir.

20 Q So, that means it would depend upon the facts and
21 circumstances that you heard in that portion of the trial.

22 Is that a correct statement?

23 A That's correct.

24 Q Now, the last questions I have for you have to do with
25 the, the way the case will be conducted. I've already

Individual Juror Qualification

1 indicated that the jury in this case will be sequestered
2 once the trial begins. We estimate the trial will last
3 somewhere between five to seven days. It's an estimate
4 because we never know how long those things are gonna last.
5 But that's our best estimate.

6 During that period of time, those who are serving on
7 the jury will be staying in a hotel. They'll be eating
8 meals together and going places together, be transported
9 back and forth to the courthouse together. Obviously that's
10 an inconvenience in anyone's life.

11 However, my real question to you is that if you were
12 selected on the jury and you're placed in that situation,
13 would that, in any way, pose a serious risk of danger to
14 your health or well being?

15 A Not to my health, no, sir.

16 Q Okay. Any problem as far as your well being is
17 concerned?

18 A It should not be.

19 Q Okay, sir. And my next question would, would be, if
20 you were in that situation, would it pose a serious danger
21 of risk to the health or well being of anyone who is
22 dependent upon you?

23 A No, it shouldn't.

24 Q All right, sir. That completes my questions. We're
25 going to allow the attorneys to ask a few questions of you

Individual Juror Qualification

1 at this time. We allow the defense to go first.

2 Mr. Allen, looks like you're standing. So, you may
3 proceed.

4 MR. ALLEN: Thank you, Your Honor. Excuse me.

5 EXAMINATION

6 BY MR. ALLEN:

7 Q Good morning, Mr. Marshall.

8 A Good morning.

9 Q Again, my name is Clay Allen. And I, along with John
10 Reckenbeil and Kathy Hodges, are, are representing Tony
11 Torres in this case. We appreciate your being here Monday
12 and today. I don't know if you got to the courthouse
13 yesterday. But if you were, we appreciate that as well.

14 A All afternoon. Six hours.

15 Q I'm sorry about that. But unfortunately this process
16 does take time, and I hope you would understand that. We
17 also appreciate your answers to the questionnaire. We've
18 been provided a copy of those questionnaires as, as well.

19 One thing I wanted to follow-up on, it comes from your
20 questionnaire, is I think you indicated in your
21 questionnaire that at some point in time your home was
22 burglarized, is that correct?

23 A That's correct.

24 Q Was anyone -- and was that here in Spartanburg County
25 or in some other county or state?

Individual Juror Qualification

1 A Here in Spartanburg County.

2 Q Okay. And was someone arrested as a result of that
3 case?

4 A Yes, they were.

5 Q They were prosecuted?

6 A Yes, sir.

7 Q By the Seventh Circuit Solicitor's Office?

8 A That's been so many years ago I really don't remember.

9 Q I don't know if I put a note down as to when that was.
10 Can you give me an approximation on how long it was?

11 A It would of probably been at least 20 years ago or
12 more.

13 Q Is there anything about that incident, that crime
14 against you that, and your family, that would affect you as
15 a juror to, in a case like this?

16 A I don't see why it should, no, sir.

17 Q Okay. And of course, you understand that one of the
18 charges against my client is burglary?

19 A Right.

20 Q But that wouldn't affect you in any way?

21 A I don't think so.

22 Q Okay. We appreciate that.

23 And by that, I presume that you mean that, if the
24 evidence warrants it, that you could make a finding for
25 either guilty or not guilty depending upon the evidence?

1 A It depends on the evidence, yes, sir.

2 Q All right. Thank you very much.

3 Of course, as the judge indicated in a case like that,
4 we do have to talk about the penalty portion and, cause this
5 is the only opportunity to question jurors about that. And
6 of course, I'm not trying to insinuate anything about the
7 ultimate outcome of the case. I'm just taking this
8 opportunity to ask you some questions about your feelings
9 about the death penalty and, and life imprisonment.

10 Is that okay?

11 A Go ahead.

12 Q Thank you.

13 First of all, can you give me your general feelings, if
14 you have any, about the death penalty?

15 A Life is precious. But it is my opinion that if a life
16 is willfully taken by another and the evidence bears out
17 that that was done, that the death penalty, that the State
18 has the right to, to impose the death penalty on the
19 individual that was convicted on evidence.

20 Q Okay. Do you think that -- and I don't want to put
21 words in your mouth. And if you disagree with anything I
22 say, please let me know. But sometimes I can, I just ask
23 the questions in this form.

24 But do you believe that in cases where a life was
25 willfully taken that the death penalty should be imposed in

Individual Juror Qualification

1 all such cases?

2 In other words, that would be the only appropriate---

3 A No, sir, I just said a while ago I did not feel that
4 way.

5 Q Okay. Do you believe that life imprisonment could be
6 an appropriate sentence where a life was willfully taken?

7 A It could be depending on the evidence.

8 Q Thank you.

9 As we're, we're talking about this, of course, we're
10 talking about the offense of murder. Whenever a jury is
11 given the opportunity to consider penalty, it means that the
12 jury has found an individual guilty of murder, and that is
13 willful taking of another person's life with malice
14 aforethought. That means that the jury has found there is
15 no defense to it. It was proven beyond a reasonable doubt
16 that the individual committed the offense, committed the
17 murder. No question that the person did it and no question
18 that the person's responsible for it.

19 Do you follow what I'm saying---

20 A (Witness nods affirmatively.)

21 Q ---that there's no defense?

22 And at that point is when the jury gets to consider the
23 penalty.

24 And so, again, do you have a feeling as to what may be
25 the only appropriate punishment under such a circumstance?

Individual Juror Qualification

1 In other words, do you have a feeling for one penalty
2 or the other as the only appropriate penalty for such crime
3 of murder?

4 A If someone intended to do harm from the very beginning
5 with the intent that no matter what, when they went into
6 that situation that person was going to die, I would think
7 the death penalty would be appropriate.

8 Q Okay. Would, in a situation like that, would that be
9 the only appropriate punishment that you would consider,
10 that you could consider?

11 A Once again, I would have to hear the evidence to
12 really, to really be able to answer that question.

13 Q Yes, sir.

14 In considering the evidence, of course, the state will
15 have an opportunity to present what's called aggravating
16 evidence. That means evidence which tends to make the
17 offense worse than other cases of murder.

18 Do you follow what I'm saying?

19 Now, I don't mean to diminish anyone's life when I say
20 other cases of murder. But essentially the state would be
21 allowed to present evidence of aggravation to show, in, in
22 their attempt to show why the death penalty is appropriate.

23 Do you follow what I'm getting is?

24 A (Witness nods affirmatively.)

25 Q But they also may be presented evidence in mitigation.

Individual Juror Qualification

1 Do you, do you know what I'm talking about there?

2 A Explain the mitigation.

3 Q Okay. That's a hard concept for a lot of folks. Even
4 lawyers.

5 Mitigation -- it's important to understand mitigation
6 is not evidence of a defense. In other words, mitigation
7 doesn't come into play essentially until there's been a
8 finding of guilty, and, of course, again, we're talking
9 about a situation where a jury has found the person
10 committed this willful killing of the other person with
11 malice aforethought. No defense to it. So, it's not a
12 defense.

13 But it is any matter, any evidence, any information
14 which may, in fairness or in mercy, justify some sentence
15 other than the death penalty. It may include not only
16 information about the offense. It could also include
17 information about the individual who has been found guilty.

18 Do you follow what I'm getting at?

19 A Would you mean like a mental defect or something in an
20 individual---

21 Q Well, I can't---

22 A ---or---

23 Q It could include that. It could include any other
24 information about that individual's background and that sort
25 of thing.

Individual Juror Qualification

1 Do you follow what I'm, what I'm getting at there?

2 A I think I'm getting there, yes, sir.

3 Q I mean it doesn't have to include anything about a
4 mental defect, but it could include it.

5 A Uh-huh. (Affirmative).

6 Q It could include any other number of matters about the
7 individual or the offense or the individual. Basically
8 anything about the individual or what led up to the offense
9 or anything about the offense as well.

10 A May it -- could it be something like drug use for
11 example?

12 Could that be one of the things involved?

13 Q It could, it could be that. It could be drug use. It
14 could be alcohol use. It could be any number of factors.
15 Actually, it could include any factor which, in the juror's
16 mind, would justify something other than the sentence of
17 death penalty.

18 Do you follow what I'm getting at?

19 A Yes, sir.

20 Q But I mean -- and in a situation like where we're in
21 now, I'm allowed to go into specifically what will be shown.

22 A Uh-huh. (Affirmative).

23 Q But I'm just trying to give you an overall idea of what
24 we're talking about when we're talking about mitigation---

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q ---or mitigating circumstances or mitigating evidence.
2 okay.

3 A Okay.

4 Q Would you be willing to consider this type of
5 mitigating evidence in arriving at what, the sentence that
6 you would believe to be appropriate?

7 A I would certainly listen to it.

8 Q Okay. Could you consider that type of evidence in
9 arriving at the sentence?

10 A Yes, sir.

11 Q I guess what I want to know is, after that's been a
12 finding of guilt, and you, if you're sitting on the jury,
13 hear evidence in, in aggravation about the offense, could
14 you keep an open mind while mitigation circumstances or
15 mitigating evidence, if any, is presented?

16 A I would hear the evidence, yes.

17 Q Okay. And not only -- and, and my question is not only
18 hear the evidence, but could you---

19 A Render a judgment---

20 Q ---consider it?

21 A Yes.

22 Q And take that, and take that evidence into your mind as
23 you consider the appropriate sentence?

24 A Yes.

25 MR. ALLEN: One second please, Your Honor.

Individual Juror Qualification

1 THE COURT: Yes, sir.

2 (Pause.)

3 Q Sir -- and please, I want you to understand I'm not
4 questioning anyone's opinion because I recognize, and I want
5 you to understand I recognize that everyone has a right to
6 their opinion as to these matters that we're talking about.

7 Your feelings about, for example, the death penalty,
8 how did you arrive at, at those feelings?

9 Like are they based on readings of philosophy, readings
10 of, in, in theology, in, in religion.

11 I mean can you give me an idea of how you arrived at
12 your opinion on the death penalty?

13 A The family I was reared in, family values, and
14 theological understanding.

15 Q Okay. Fair enough. And I appreciate your sharing that
16 with me.

17 Are your feelings about the death penalty such that --
18 well, let me ask it -- how would you describe your feelings
19 about the death penalty?

20 Are they moderate, or strong?

21 I mean do you have any idea?

22 A I really wish it was something society did not have to
23 deal with. But unfortunately we live in the kind of world
24 where we do.

25 Q Yes, sir.

Individual Juror Qualification

1 A And it is a, for me, a difficult issue.

2 Q Yes, sir.

3 A Personally.

4 Q Yes, sir.

5 I don't think that this process was made to be easy for
6 anybody because it is a very weighty decision.

7 I can -- do you agree with that?

8 A Yes, I do.

9 Q Thank you.

10 Are your feelings about the death penalty such that --
11 do you feel as if you would be impaired within your ability
12 to consider some sentence other than death?

13 A No, I could consider something other than death. Once
14 again, that would depend on what I hear.

15 Q Yes, sir.

16 How do you feel about life imprisonment without the
17 possibility of parole?

18 A I have a cousin serving such a sentence and it was not
19 for murder either.

20 Q Yes, sir.

21 A So, you know, he did the crime. He has to pay the
22 penalty.

23 Q Yes, sir.

24 This cousin, and I think that was also mentioned in the
25 questionnaire and I appreciate your sharing that with us,

Individual Juror Qualification

1 that was in another state or was that is this state?

2 A Florida.

3 Q Florida.

4 Okay. Do you feel as if life imprisonment without the
5 possibility of parole is an appropriate sentence under,
6 depending on the circumstances to---

7 A Yes, sir.

8 Q ---and to the offense such as murder?

9 A Yes, I do.

10 Q Okay. Even a murder that involves aggravating
11 circumstances?

12 A Once again, for me, that would depend upon what the
13 aggravating circumstances were.

14 Q Okay. I think the judge has indicated and, and I
15 believe that you are pretty firm in your opinions.

16 Is that a correct statement?

17 A I've gotten this old, yes, sir. I'm afraid so.

18 Q You're not that old.

19 But, of course, if you're serving on a jury, there may
20 be other people with different opinions.

21 You would recognize that?

22 A Yes, sir.

23 Q I mean I don't, I don't think you can get any group of
24 12 or fewer together without different opinions.

25 Would you agree with that?

Individual Juror Qualification

1 A I live with one woman and she sometimes doesn't agree
2 with me either.

3 Q I understand that. Believe me.

4 But my question is, of course, you would want your
5 opinions treated with respect by other people, is that
6 correct, as they should be, and you're willing to treat
7 other people's opinions with respect as well?

8 A I have tried to make that a principle by which I live
9 my life.

10 Q That is good. Thank you.

11 Of course, I'm not saying that the jury can't talk
12 about these matters during deliberations. That's part of
13 the job of the jury is to talk about it.

14 But if it comes down to it and you believe that a
15 certain sentence is the appropriate sentence, and all the
16 other jurors disagree with you, how, what would you do in
17 such a situation?

18 A In life, it's hard to say until you get put in that
19 situation.

20 Q Yes, sir.

21 A But in something this serious and this weighty, I would
22 hope I could stand by my convictions based on the evidence
23 that I heard.

24 Q Yes, sir.

25 Okay. One more second please.

Individual Juror Qualification

1 (Pause.)

2 Q Thank you, Mr. Marshall, for your answers and I thank
3 you.

4 THE COURT: Mr. Gowdy.

5 SOLICITOR GOWDY: May it please the Court, Your Honor?

6 THE COURT: Yes, sir.

7 EXAMINATION

8 BY SOLICITOR GOWDY:

9 Q Morning, Pastor Marshall.

10 A Good morning.

11 Q My name is Trey Gowdy. I'm part of the prosecution
12 team, and I, I only have a couple of questions. I'm gonna
13 change gears a little bit.

14 You taught for a number of years before you went into
15 the ministry if I read it?

16 A Thirty-one years.

17 Q Thirty-one years.

18 Of which disciplines did you, did you teach?

19 A Science, natural sciences.

20 Q And the bulk of that time was spent at Byrnes High
21 School or in District Five generally?

22 A District Five generally. But the bulk of it at Byrnes.

23 Q Okay. If my memory serves me correctly, Carson Newman
24 is a Baptist affiliated school?

25 A It is, yes, sir.

Individual Juror Qualification

1 Q Is Erskin affiliated with a denomination?

2 A Yes, it is. ARP, Associate Reformed Presbyterian.

3 Q I notice that you took great pains and were very artful
4 in your answer on the questionnaire with respect to capital
5 punishment and, and I believe you used the words maybe, but
6 not must be. And I assume you chose those words for a
7 reason.

8 A Yes, I did.

9 Q If, if I understood your answers to His Honor
10 correctly, you are the type of juror that's gonna have to
11 listen to all of the evidence before you can determine
12 whether or not someone's guilty or not guilty?

13 A Yes, sir.

14 Q And so too in the sentencing phase, you will listen to
15 the, to the aggravating circumstances and mitigating if
16 there are any, and that you will base your decision on that
17 and you can't tell anybody today how you'll vote because you
18 haven't heard the first piece of evidence?

19 A Exactly.

20 Q Are you satisfied, in your well of souls, that if you
21 thought death was the appropriate punishment, that you
22 actually could vote to impose that?

23 A I would not like to have to do it. But I believe yes,
24 I could.

25 Q Yes, sir.

Individual Juror Qualification

1 Finally, and I will let you go, and we all thank you
2 for your patience, I notice you have been involved in Prison
3 Ministries.

4 Are those South Carolina prisons, is it the local
5 detention center, or is it more regional?

6 A We've had some church members that had family members
7 incarcerated in state facilities like Tyger River here in
8 the Enoree area.

9 Q Yes, sir.

10 A And also at a federal prison in Kentucky.

11 Q Have you ever been to a prison, to your knowledge, by
12 the name of Lieber?

13 A No, sir.

14 Q Okay. All right. Thank you for your candor and your
15 time.

16 A Thank you.

17 THE COURT: Anything further?

18 MR. ALLEN: No, Your Honor.

19 THE COURT: All right. Mr. Marshall, I want to thank
20 you for your cooperation and help this morning. Let me just
21 go over just one or two things with you before I release
22 you.

23 The contact information you've given us is correct?

24 WITNESS: Yes, sir.

25 THE COURT: Hasn't changed since you gave it to us?

Individual Juror Qualification

1 WITNESS: No, sir.

2 THE COURT: So, when we need to get back in touch with
3 you, that's what we use, is that correct?

4 WITNESS: Yes, sir.

5 THE COURT: Sir, if you are asked to come back to the
6 courthouse for further jury selection, you should bring with
7 you sufficient clothing to stay for at least a week because
8 we will be selecting the jury on that occasion. And if
9 you're selected to serve on the jury, you'll go directly
10 into sequestration. So, bring whatever you need to have to
11 stay with us for a, about a week, and, and if you are
12 selected you would go into that process.

13 Okay, sir?

14 WITNESS: Would one of the bailiffs let me look at the
15 contact information just to make sure I've given all the
16 numbers?

17 THE COURT: Well, this lady right over here will help
18 you with that. If you want to step over, she will be able
19 to go over that with you though. She -- the bailiffs don't
20 keep that. She does. So, you're welcome to step right over
21 here and check it to be sure it's correct.

22 WITNESS: Okay. Thank you.

23 THE COURT: Thank you, sir.

24 (The following takes place outside the presence of the
25 juror.)

Individual Juror Qualification

1 THE COURT: State's position on Mr. Marshall?

2 SOLICITOR GOWDY: May it please the Court.

3 We submit that Mr. Marshall is qualified.

4 THE COURT: Defense position?

5 MR. ALLEN: Subject to our earlier objections.

6 THE COURT: Yes, sir.

7 MR. ALLEN: We have no other objections.

8 THE COURT: The Court does find him to be qualified.

9 And going back to Mrs. McKinney, the Court, in taking
10 the colloquy as a whole, not just specific responses from
11 Mrs. McKinney, finds her to be qualified as well.

12 Our next individual will be Sharon Glenn, Number 108.

13 SHARON GLENN, having been previously
14 sworn, testified as follows:

15 EXAMINATION

16 BY THE COURT:

17 Q Good morning.

18 A Good morning.

19 Q First of all, I want to thank you for your patience. I
20 understand that jury service is an inconvenience.

21 You're finding that out, is that correct?

22 A Yes, sir, I am.

23 Q All right. Well, I want to go over some matters with
24 you this morning. We're gonna ask some questions. I'll be
25 going first. The -- then we'll allow the defense and the

Individual Juror Qualification

1 prosecution to ask you some questions.

2 I will tell you now that the questions we're asking you
3 today don't have right or wrong answers. We're trying to
4 gather some of your views about certain things that will be
5 important in this trial. So, the only answers really are
6 your answers. If, at any time during my questioning, you
7 feel somewhat threatened or feel like someone is somehow
8 badgering you or something of that nature, let me know.
9 we'll stop and take that up.

10 okay?

11 A Okay.

12 Q All right. The first question I have for you, since we
13 talked on Monday, has anyone talked to you?

14 Have you gathered any information outside of the
15 courtroom that might cause you to form an opinion about this
16 case?

17 A No, sir.

18 Q Have you ever participated in or responded to any
19 Internet or blog or Internet site that has to do with the
20 imposition of the death penalty?

21 A No.

22 Q Have you ever participated in any political activities,
23 rallies, or meetings where the focus was the death penalty
24 or it was one of the issues discussed?

25 A No, sir.

Individual Juror Qualification

1 Q Now, my first question has to, next, next question has
2 to do with some information you reviewed back in the waiting
3 room. There was a list of witnesses.

4 Did you review that?

5 A Yes, I did.

6 Q I don't want you to name anyone off that list by name
7 because we won't do that in this setting.

8 But in reviewing that list, do you believe that you
9 have any social, business, or personal connection with
10 anyone listed on that list?

11 A No, sir.

12 Q Do you believe that you've ever been related by blood
13 or marriage to anyone on that list?

14 A No.

15 Q My, my next questions are now gonna be a little more
16 personal in nature. We're gonna be asking you about some of
17 your views. One of those things we will discuss is the
18 death penalty. You seem to be a person who is secure enough
19 in your beliefs that you can discuss that without feeling
20 threatened.

21 Is that true?

22 A Yes.

23 Q Now, I do want to ask your opinions about that penalty,
24 the death penalty, and I want, I want to just mention one
25 thing to you or explain it to you. When we went over things

Individual Juror Qualification

1 on Monday, I explained the trial would be divided into two
2 parts or sections. The first part would have to do with
3 guilt or innocence. The second part would have to do with
4 the penalty.

5 We're kind of putting the cart before the horse by
6 discussing the penalty because we haven't gotten that far.
7 But I hope you understand the same jury that considers guilt
8 or innocence will also consider the penalty. So, once we
9 begin the trial, there won't be another opportunity to
10 discuss that issue with you.

11 So, don't think anything about the defendant or any
12 defenses he might have because we're talking about penalties
13 now. We -- this is the only time we have to do that.

14 Do you understand that?

15 A Yes.

16 Q All right. Now, the first thing I want to talk to you
17 is about your concerns about the law.

18 If you were selected as a juror in any case, would you
19 be willing to take and listen to the law as instructed to
20 you by the judge during the trial?

21 A Yes, sir.

22 Q Would you be willing to accept the law and apply it to
23 the facts as you find them to be as a juror?

24 A Yes.

25 Q The last question would be, as to the law, is that

Individual Juror Qualification

1 still true even though, when you hear the judge charge you
2 with the law, you may not like the law or you may somehow
3 disagree with the law, would you still be willing to take it
4 as charged and apply it to the facts?

5 A Yes.

6 Q Now, there has been a little bit of pretrial publicity
7 about this case, and I want to be sure that, that, how you
8 stand as far as that's concerned.

9 Are you the type of juror who is willing to set aside
10 any knowledge or information, any information you may have
11 gained outside of the courtroom and place that aside and
12 decide the case purely upon the evidence, the testimony of
13 witnesses, and what is presented at the trial and on the law
14 as presented by the judge?

15 A Yes, I am.

16 Q Now, a couple of concepts we discussed at our first
17 meeting have to do with the way we view certain things and
18 burdens of proof, and I want to be sure you understand those
19 things.

20 First of all, in our state and in our nation, a
21 criminal defendant is presumed to be innocent. Therefore,
22 he never has to prove his innocence to anyone. So, the
23 defendant has no burden of proof in the, in a trial. He
24 goes into the case presumed to be innocent.

25 On the other hand, the State does have the burden of

Individual Juror Qualification

1 proof. The State has the burden of proving the defendant
2 guilty of the crimes charged beyond a reasonable doubt.

3 Now, do you understand those two concepts?

4 A Yes, sir.

5 Q And would you be willing and able to apply them to this
6 case if you were selected as a juror in this trial?

7 A Uh-huh. (Affirmative).

8 Yes.

9 Q So, I take that to mean that you would be willing to
10 listen to the law and the evidence, and based upon what the
11 law and the evidence is, make a decision as to guilt or
12 innocence, is that correct?

13 A Yes.

14 Q Now, is it your belief that because someone is accused
15 of a crime, arrested, or indicted that they must
16 automatically be guilty of that crime?

17 A No.

18 Q So, therefore, again, you could listen to the evidence
19 and the law and you could possibly or could find someone not
20 guilty of a crime that they were charged of?

21 A Yes.

22 Q By the same token, if you find that the State meets its
23 burden of proof beyond a reasonable doubt, could you also
24 render a verdict of guilty against someone charged with a
25 crime?

Individual Juror Qualification

1 A Yes.

2 Q So, I take it then you're a person who will make up
3 your mind concerning guilt or innocence, innocence based on
4 the strength of the evidence and whatever the testimony or
5 evidence shows?

6 Is that true?

7 A Yes.

8 Q Now, we're gonna again go back and talk about the death
9 penalty a little bit and I'm gonna talk about it
10 specifically now because it is possibly something that you
11 would have to consider.

12 As I indicated, there will be this first trial where
13 guilt or innocence is determined. One of the charges, as
14 you know, is murder. For that, the State has sought the
15 death penalty and where they do that we have the separate
16 sentencing trial.

17 Again, the two choices a jury will have on that
18 occasion will be life in prison without parole or the death
19 penalty. Those are the only two choices a jury will have.

20 So, under the circumstances where a jury has already
21 convicted someone of the murder, that same jury comes back
22 and considers the separate penalty.

23 Do you understand how that works?

24 A Yes.

25 Q Now, ma'am, I want you to put yourself in the, in a

Individual Juror Qualification

1 situation theoretically. You're on a jury in a murder
2 trial. The State is seeking the death penalty. The jury
3 has determined, in the first part of the trial, that the
4 defendant is guilty of the crime as charged. The jury is
5 about to come now back into the courtroom to consider the
6 potential penalty, either life imprisonment without parole
7 or death.

8 I gave you a sheet of paper to look at as you came in
9 here that had three different jurors described on that.

10 Do you remember that paper?

11 A Yes, sir.

12 Q I'll go over those three jurors with you again to be
13 sure you understand it.

14 And do you understand the position I've put you in,
15 you're walking back into the courtroom with a jury that is
16 found someone guilty of murder.

17 A Uh-huh. (Affirmative).

18 Q Now, the first juror on that paper is someone whose
19 already made up their mind. That juror has a belief that
20 the only appropriate penalty for someone who is committed a
21 murder is the death penalty. So, before that juror has
22 heard any evidence during the sentencing phase, that jury
23 already knows how he or she is going to vote and that is
24 they would vote for the death penalty every time.

25 The second juror is someone who also has already made

Individual Juror Qualification

1 up their mind. That's someone who has a belief the State
2 never has the right to take someone's life in punishment for
3 a crime, and that particular juror has made up his or her
4 mind that they would vote for life imprisonment and they
5 would do that on every occasion.

6 The third juror that I described to you doesn't know
7 exactly what that juror's going to do. He doesn't have his
8 mind made up as to life imprisonment or the death penalty.
9 He will have to wait, listen to the evidence, and testimony,
10 and the law, and then decide what to do.

11 Now, do you understand the three types of jurors I've
12 described?

13 A Yes, sir.

14 Q Now, as to those three types of jurors, which one would
15 more, most likely describe you if you were walking back into
16 the courtroom?

17 A The third one.

18 Q So, that means that, under those circumstances where
19 you'd found someone guilty of murder already, you would be
20 willing to listen to the law and the evidence, and if the
21 evidence justified it, you would be willing to sentence
22 someone to death if you found that it justified it?

23 A Yes.

24 Q And by the same token, if you find that the evidence
25 and the law do not justify the imposition of the death

Individual Juror Qualification

1 penalty, you would also be willing to sentence someone to
2 life imprisonment without parole?

3 A Yes.

4 Q So, that means that you could sentence someone to
5 either life or death depending on the facts and
6 circumstances shown to you in that third trial.

7 Is that true?

8 A Yes.

9 Q Or the second trial. Excuse me.

10 Now, the last thing I want to talk about with you is
11 more of a personal situation. If you're selected to serve
12 on the jury you will be sequestered with the other jurors.
13 That means that you will be staying at a hotel here. You
14 will be traveling back and forth to the courtroom with the
15 other jurors. You'll be taking your meals with them. And
16 so, you'll be there for about a week. Somewhere between
17 five to seven days depending on the length of the trial.
18 And that's our best estimate. And as you know, sometimes we
19 don't estimate time too well around here.

20 A I know.

21 Q But that's, that's our best estimate at this point in
22 time.

23 Now, my real question to you, and understand that's an
24 inconvenience to anyone who's selected on a jury.

25 But my real question is if you were in that situation

Individual Juror Qualification

1 and you were selected and sequestered, would that pose a
2 serious danger of risk to either your health or your well
3 being?

4 A No, sir.

5 Q And would that, in any way, pose a danger, a serious
6 danger of risk to the health or well being of anyone who's
7 dependent upon you?

8 A No.

9 Q All right. Now we're gonna allow the attorneys to ask
10 a couple of questions. We allow the defense to go first.

11 Mr. Allen, you may proceed.

12 MR. ALLEN: Thank you, Your Honor.

13 EXAMINATION

14 BY MR. ALLEN:

15 Q Good morning, Mrs. Glenn.

16 A Good morning.

17 Q My name is Clay Allen. I'm an attorney and I
18 represent, along with John Reckenbeil and Kathy Hodges as we
19 told you Monday, we represent Tony Torres in this case. And
20 I appreciate your time yesterday, today, and Monday. And we
21 also appreciate your filling out the questionnaire. We
22 received a copy of it and have reviewed it. And we
23 appreciate your participation in this process.

24 One thing I noticed is that I notice that you currently
25 teach English to speakers of other languages.

Individual Juror Qualification

1 A Yes.

2 Q And how long have you been teaching that subject or
3 those subjects?

4 A Three years.

5 Q Three years.

6 And what was your area in teaching prior to that?

7 A I taught third grade.

8 Q Third grade.

9 Okay. So, you still teach ESOL in the, in elementary
10 schools?

11 A Yes, I teach first through fifth grade.

12 Q Okay. Great.

13 I also notice that you had previously served as an
14 alternate about ten to fifteen years ago.

15 A Uh-huh. (Affirmative).

16 Q That was in a rape case I think you said?

17 A Yes.

18 Q Was there anything about that experience that left any
19 bad taste in your mouth about the judicial process?

20 A No, it was a mistrial.

21 Q It was a mistrial.

22 A And I hated that just because it just meant they had to
23 start, you know, they had to start over, the court system.

24 Q Sure.

25 Was it a mistrial that was called in the middle of the

Individual Juror Qualification

1 trial?

2 Like did the jury ever get to deliberate?

3 A Uh-huh. (Affirmative).

4 Q They did deliberate.

5 And now, I guess you -- was this a -- some judges do
6 things differently. Some jurors are excused and --
7 alternates I'm talking about. They are excused or some
8 alternates are put in a separate room.

9 I mean do you remember what happened with you since
10 you're the alternate that I imagine that---

11 A Yes, I do. Because I was allowed to go into the room
12 with the jurors to deliberate and I was not suppose to. I
13 didn't speak.

14 Q Sure.

15 A I knew I was not suppose to be a part of it, but the
16 bailiff led us in there and, and I just went. So, when that
17 was found out, it was---

18 Q That was the reason---

19 A ---considered a mistrial.

20 Q That was the reason for the mistrial.

21 So, it wasn't anything about the deliberation
22 process---

23 A No.

24 Q ---or the trial itself?

25 Just a glitch?

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q Okay. I understand now.

3 Now, I want to talk with you, if you don't mind, about
4 your views. Again, I know you don't know anything about
5 this case. I, I don't think you've indicated that you've
6 received any information through the news or the media.

7 Is that correct?

8 A You know, I -- before this happened, I did read about
9 it in the paper.

10 Q Was that over the weekend or was that---

11 A That was on Sunday I read part of the article. I did
12 not read all of it. On Sunday morning I opened the paper
13 and read, read the headlines or the main gist, and I then
14 get ready to go to church, and I just admit that's what I
15 did on Sunday.

16 Q Okay. Is there anything about what you read in the
17 article that would affect you, in any way, if you were
18 chosen as a juror?

19 A I do not think so, no.

20 Q Okay. You -- did anything in the article, or the
21 portion that you read, did anything stick -- does anything
22 stick out in your mind?

23 A Just the facts that it was a double murder, murder.
24 Other than that really, no.

25 Q Okay.

Individual Juror Qualification

1 A I mean I do realize it was a serious crime and --.

2 Q Sure.

3 And I guess at some portion or point you realize this
4 is what you're probably going into court for, is that right?

5 A I -- yes, I thought maybe so, yes.

6 Q And -- okay. And did anything in that article or
7 anything that, that you read, would that affect you, in any
8 way, as, as a juror?

9 A No, sir.

10 Q Okay. Now, I want to get back to a portion. And
11 again, because of this, of this process we have to talk to
12 you about sitting as a juror in a penalty phase, which as
13 the judge explained, we may not get to. It just depends on
14 what the verdict is but, in the first phase. But, of
15 course, we have to talk about these things now, and I think
16 you understand that.

17 Correct?

18 A Yes, sir.

19 Q But I want to put you in a situation, again, where the
20 judge has indicated, that you and the other 11 jurors, only
21 12 deliberating in the jury room, were to decide unanimously
22 that an, that an individual is guilty of murder. By that,
23 we're talking about the willful killing of another person
24 with malice aforethought. And if there was any evidence
25 concerning a defense, that's been rejected by the jury. In

Individual Juror Qualification

1 other words, there's no defense to it. It's no question in,
2 in the juror's mind beyond a reasonable doubt that the
3 individual's guilty, responsible for it.

4 Do you follow what I'm getting at?

5 A Yes.

6 Q Now, at that point do you have any, or let me just ask
7 it point blank, do you feel as if the death penalty would be
8 the only appropriate penalty for such a guilty murder?

9 A No, sir.

10 Q Okay. How do you feel about the death penalty?

11 A I would say that I was for the death penalty. But I
12 don't think it should be taken lightly, of course, and it
13 should be something that would be without a doubt, done with
14 a lot of aggression, with a lot of non-remorse, and just the
15 facts would have to be very clear that it was deserved.

16 Q Okay. And how do you feel about life imprisonment
17 without the possibility of parole as a potential sentence
18 for murder?

19 A Well, it would be a possibility.

20 Q Okay. Are you open to that as a possibility?

21 A Yes.

22 Q And -- okay. When we talk about the facts and
23 circumstances or when you mention the facts and
24 circumstances, are you talking about, in considering
25 corporal punishment, just the facts and circumstances about

Individual Juror Qualification

1 the crime itself?

2 A Just the facts and the circumstances, yes.

3 Q Okay. Are you open to any or to consider any
4 mitigation evidence?

5 Do you know what I mean by that?

6 A I'd like for you to explain it.

7 Q Okay. Mitigation evidence is different than evidence
8 about a defense. A defense are, is evidence that would
9 indicate, for some reason, that the individual is not guilty
10 or should be found not guilty. It would come in many
11 different forms. But it is a -- that's evidence presented
12 during what we're calling the first phase of the trial to
13 indicate why the individual should be found not guilty. And
14 of course, if such evidence was presented in a case that
15 we're talking about, that evidence essentially would of been
16 disbelieved or discounted by the jury because they've
17 returned verdicts of guilty of murder.

18 Do you follow what I'm getting at?

19 A Yes.

20 Q But evidence in mitigation is any evidence, which in
21 fairness or in mercy, may indicate that the appropriate
22 sentence should be something other than the death penalty.
23 It can include information about the offense itself. It can
24 also include information about the background of the
25 individual who was found guilty of murder or any number of

Individual Juror Qualification

1 other factors or, or matters.

2 Kind of get an idea of what I'm talking about now?

3 A Yes.

4 Q Would you be open to consider such mitigating
5 circumstances?

6 A Yes, sir.

7 Q And you'll be open to considering those before arriving
8 at a final decision?

9 A Yes, sir.

10 Q Is there any broad category of murder cases where you
11 would not consider mitigating circumstances and essentially
12 impose only the death penalty?

13 A No, not that I can think of.

14 Q In other words, could you be open to consider life in
15 prison for almost any case involving murder regardless of
16 the aggravating circumstances?

17 A Yes.

18 Q Okay. Now, understand we're talking in broad
19 generalities---

20 A Uh-huh. (Affirmative).

21 Q ---and that we're not---

22 SOLICITOR BARNETTE: Your Honor, I object at this
23 point. I think she answered the questions two or three
24 times.

25 THE COURT: Well, I think we, she's -- I think she has

Individual Juror Qualification

1 responded concerning her willingness to considering
2 mitigating circumstances.

3 MR. ALLEN: Yes, sir.

4 THE COURT: Don't know where you're going. But let's
5 move on to something else.

6 MR. ALLEN: Okay.

7 Q Your feelings about the death penalty, and they've
8 been -- I mean your, your opinions about the death penalty,
9 you've arrived at them over a period of time?

10 A Yes.

11 Q Okay. And of course -- and again, we're not
12 questioning your opinion cause everyone's entitled to their
13 opinion, right?

14 A Uh-huh. (Affirmative).

15 Q And I imagine you come across people in your life who
16 may not necessarily agree with, with other people's opinion
17 on this subject, correct?

18 A Correct.

19 Q Okay. If you're selected for a jury and you've come to
20 an opinion as to what you believe is the appropriate
21 punishment, and even after deliberating with the other
22 jurors, you are still convinced as to what the appropriate
23 punishment is, but the other 11 jurors do not agree, what
24 would, what do you think you could do in such a situation?

25 A I would feel that I would stick with my belief.

Individual Juror Qualification

1 whatever I think is the right thing to do.

2 Q You, of course, want your, under, want your -- you, of
3 course, want your beliefs respected by others, is that
4 correct?

5 A Uh-huh. (Affirmative).

6 Q As it should.

7 And of course, you would respect the other beliefs as
8 well of other people?

9 A Yes.

10 Q Would that be fair so say?

11 A Right.

12 MR. ALLEN: One second please, Your Honor.

13 THE COURT: Yes, sir.

14 (Pause.)

15 MR. ALLEN: Thank you, Mrs. Glenn.

16 THE COURT: Mr. Barnette.

17 SOLICITOR BARNETTE: May it please the Court, Your
18 Honor?

19 THE COURT: Yes, sir.

20 EXAMINATION

21 BY SOLICITOR BARNETTE:

22 Q Morning, Mrs. Glenn. My name is Barry Barnette. I'm
23 part of the prosecution team. I just want to ask you a few
24 questions to follow-up.

25 Have you been a teacher, a teacher in District Six all

Individual Juror Qualification

1 your life or all your career?

2 A District Five the first three or four years, and then
3 the rest of my career in District Six.

4 Q Okay. Has that mostly been in elementary schools or
5 grade schools?

6 A All.

7 Q All.

8 A Well, excuse me. The first year I taught ESOL I taught
9 part-time at Middle, Fairforest Middle School.

10 Q And did you also go to Dorman?

11 A Yes, I did.

12 Q So, you been basically in District Six or I guess in
13 that area most of your life, right?

14 A Yes.

15 Q Not all of your life?

16 A All of my, all of my life.

17 Q And I think you're a USC grad too?

18 A Uh-huh. (Affirmative).

19 Q I believe, in listening to the Judge's questions, Mr.
20 Allen's questions, you would consider all the evidence and
21 you---

22 A Yes, sir.

23 Q ---would make your decision based off that?

24 And if you felt like the evidence and the facts showed
25 that the death penalty was appropriate, could you give that

Individual Juror Qualification

1 kind of sentence?

2 A Yes.

3 Q And if you felt like life without parole was the
4 appropriate sentence, that would be a sentence you would
5 give also?

6 A Yes, sir.

7 Q Thank you very much for your time, ma'am.

8 THE COURT: Any follow-up questions?

9 MR. ALLEN: No, Your Honor.

10 THE COURT: All right. Mrs. Glenn, just a couple of
11 things I want to mention to you before you leave. We're in
12 the process obviously of still qualifying the jury. Once we
13 complete that process we will begin jury selection. If
14 you're asked to come back to the courthouse for that
15 process, you should come prepared to stay for a week at
16 least. Because if you're selected, you'll go directly into
17 sequestration. The trial will begin immediately and you'll
18 be required to stay with us. So, come prepared.

19 In that regard, is the contact information you've given
20 us correct so that we can get back in touch with you?

21 WITNESS: Yes.

22 THE COURT: Hasn't changed since you gave it to us?

23 WITNESS: No.

24 THE COURT: All right. Thank you very much for your
25 cooperation and your patience and you're free to go.

Individual Juror Qualification

1 WITNESS: So, I do not return until I'm contacted?

2 THE COURT: No.

3 And one other thing I didn't mention, everything I've
4 said about no review of television, television and don't
5 discuss the case continues until we tell you differently.

6 WITNESS: Okay.

7 THE COURT: Thank you, ma'am.

8 (The following takes place outside the presence of the
9 juror.)

10 THE COURT: State's position on Mrs. Glenn?

11 SOLICITOR GOWDY: She's qualified, Your Honor.

12 THE COURT: Defense?

13 MR. ALLEN: Subject to the other objections, no other
14 objection.

15 THE COURT: The Court finds that she is qualified.

16 Mr. Bailiff, if you'll step up for just a second, and
17 Madam Clerk.

18 (Pause.)

19 THE COURT: Given that it took us about an hour and ten
20 minutes to do the first two, I'm releasing some of the
21 panels to call back in at a later time. Obviously we're
22 running well behind where we thought we would be at this
23 time.

24 I am going to ask that you now bring in Dorothy Martin.

25 BAILIFF: Yes, sir.

Individual Juror Qualification

1 THE COURT: Juror Number 178.

2 DOROTHY MARTIN, having been previously
3 sworn, testified as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q Good morning, Mrs. Martin.

7 A Good morning.

8 Q You are Dorothy Martin, is that correct?

9 A That's correct.

10 Q And Mrs. Martin, do you recall on Monday you were here
11 and you took an oath to tell the truth during jury
12 qualification.

13 Do you remember that?

14 A Yes, I do.

15 Q All right. Ma'am, I'm just telling you that to remind
16 you of the fact and that you're still under oath now for
17 this discussion.

18 Do you understand that as well?

19 A Yes.

20 Q I have to put that on the record.

21 Okay?

22 A Okay.

23 Q All right. Now, ma'am, we're going through some
24 discussions and questions with the jurors today, and I will
25 tell you that what we're trying to do is to gather some

Individual Juror Qualification

1 information about your opinions and how you may feel about
2 certain things that will be issues in this case.

3 And for that reason, there are no right answers or
4 wrong answers to what we're asking you. We're trying to
5 gather your opinions and whatever your opinions is the only
6 right answer there is. So, I hope you don't feel threatened
7 by what we're doing. We're just going to talk to you about
8 your positions and feelings. And if, at any time, you feel
9 uncomfortable, you let me know and I'll try to take care of
10 that situation.

11 I'm gonna ask the questions initially. Then we'll
12 allow the attorneys to follow-up on my questions.

13 And the first thing I need to know from you, since we
14 talked on Monday, have you gathered any information from any
15 source or discussed the case with anyone that might have
16 caused you to form any opinions about this case?

17 That's since we talked on Monday.

18 A No, I haven't.

19 Q All right. Have you ever participated in any blog or
20 Internet, Internet site or anything of that nature that has
21 to do with the death penalty?

22 A No, I haven't.

23 Q Have you participated in any political activities,
24 demonstrations, meetings, or rallies where the imposition of
25 the death penalty was an issue that was being discussed at

Individual Juror Qualification

1 those meetings?

2 A No, I haven't.

3 Q Now, ma'am, did you read the list of potential
4 witnesses that was left outside?

5 A I did.

6 Q And do you believe -- after reading that -- and don't
7 identify anybody by their names. I don't want names
8 mentioned in here.

9 But after reading that, do you have any social,
10 business, or personal connections with anybody who is listed
11 on that list of, as potential witnesses?

12 A I do not.

13 Q And, ma'am, have you ever been related by blood or
14 marriage to anyone that you saw listed on that list?

15 A No.

16 Q So, I take it you don't know of any connections you
17 have with the witnesses in this case.

18 Is that true?

19 A That's true.

20 Q Okay. Now, ma'am, we're going to talk about some more
21 personal matters that have to do with some of your opinions
22 and feelings on certain topics. Again, we're not trying to
23 invade your privacy. We're trying to find out how you feel
24 about some things and those opinions about these issues are
25 important in the case.

Individual Juror Qualification

1 You appear to be someone who's secure enough in your
2 opinions that we can do that without you having any fear or
3 feel threatened in any way.

4 Is that true?

5 A That's true.

6 Q All right. Now, we will be talking about the death
7 penalty specifically. That's one of the issues in the case.
8 And I understand the trial hasn't begun yet. And I
9 explained earlier there's two phases to the trial. One
10 concerning guilt or innocence. One concerning punishment to
11 be rendered if we get to that point. Because obviously if
12 the defendant were found not guilty of the original charge,
13 we wouldn't even hold that hearing.

14 A Uh-huh. (Affirmative).

15 Q But I hope you understand the same jury will handle
16 both phases of the trial. So, this is our only opportunity
17 to discuss both guilt and innocence and the penalty phase of
18 the trial even though we may not get there.

19 A Yes.

20 Q Do you understand that?

21 So, the fact that we're talking about the penalty
22 shouldn't reflect in anyway adversely upon the defendant or
23 any defense that he has.

24 Do you understand that?

25 A Yes.

Individual Juror Qualification

1 Q All right. Now, concerning the law, during the trial,
2 you will be instructed concerning the law by the judge.

3 Would you be willing to listen to the law as instructed
4 by the judge?

5 A Yes.

6 Q And, ma'am, would you be willing to accept the law as
7 instructed by the judge and apply it to the facts of the
8 case?

9 A Yes.

10 Q Now, ma'am, is that true even though you might not like
11 what the law says or you might disagree with the law, would
12 you still be willing to apply the law to the facts of the
13 case?

14 A Yes.

15 Q All right. Now, ma'am, there has been some pretrial
16 publicity about this case in the local media. I don't know
17 how much of that you have listened to or read.

18 Have you been exposed to that?

19 A I have.

20 Q All right. Now, ma'am, are you the type of juror who
21 could take the information that you might have seen or, or
22 been exposed to outside of the courtroom and set that
23 information aside and be able to decide the case solely upon
24 the evidence presented during the trial and the law as given
25 to you by the judge during the trial?

Individual Juror Qualification

1 A Yes.

2 Q Now, ma'am, a couple of concepts I needed to go over
3 with you to be sure you understand them.

4 In our country, criminal defendants are never required
5 to prove themselves innocent, innocent of any crime because
6 they're always presumed to be innocent until the State
7 proves them guilty beyond a reasonable doubt. So, the
8 defendant comes into the trial and throughout the trial is
9 presumed to be innocent and has no burden of proof.

10 Do you understand that concept?

11 A Yes, I do.

12 Q And in our state and in our country, the State does
13 have the burden of proving the defendant guilty beyond a
14 reasonable doubt.

15 Do you understand that concept as well?

16 A Yes.

17 Q And ma'am, would you, if you were sitting as a juror,
18 be willing to listen to the law and evidence and apply those
19 two concepts to the law and the evidence?

20 A Yes.

21 Q Now, ma'am, I take it then that you would be someone
22 who would listen to the evidence during a trial, you would
23 be, and listen to the law, and weigh those factors, and then
24 based on the circumstances as you find them to be, you could
25 find someone guilty of a crime charged.

Individual Juror Qualification

1 Is that true?

2 A That's true.

3 Q And by the same token, if you believe that the evidence
4 was not sufficient, you also could find someone not guilty
5 of a crime charged?

6 A True.

7 Q So, is it true then that if you do not believe, just
8 because someone has been arrested, indicted, and brought
9 before Court, that they're automatically guilty of the
10 crime?

11 A True.

12 Q All right. Now, ma'am, I want to go over with you now
13 some, some information concerning the penalty phase of the
14 trial. That's the second phase. And as I indicated, we're
15 kind of putting the cart before the horse because we're not
16 even at that stage yet. But we won't, we won't get another
17 opportunity to discuss this with you if you're selected and
18 you're on the, on the jury. And we're gonna talk about the
19 death penalty in particular because that's one of the
20 options.

21 One of the crimes that has been selected or has been
22 charged by the State is for murder. They have asked that
23 the penalty or the death penalty be assessed. And as, for
24 that reason, we would, if the defendant were found guilty of
25 that crime, we would hold a second trial with the same jury

Individual Juror Qualification

1 but hearing new evidence and new information making a
2 decision as to whether or not that particular punishment is
3 appropriate or not.

4 So, the two choices for the jury at that stage would be
5 life imprisonment or the death penalty if we got to that
6 stage.

7 Do you understand how that works, ma'am?

8 A Yes.

9 Q Now, I want you, I want you to put yourself in a
10 situation theoretically. Let's say that you have been
11 selected to serve on a jury --

12 A Uh-huh. (Affirmative).

13 Q -- in a murder case where the State is seeking the
14 death penalty. And you and your fellow jurors have
15 deliberated after the first part of the trial and found that
16 the defendant is guilty of the crime of murder. So, the
17 question of guilt or innocence no longer is, exists. The
18 defendant has been found guilty of the murder, and we're
19 moving on then to the sentencing phase of the trial.

20 You and your fellow jurors are about to walk back into
21 the courtroom to begin the sentencing phase of the trial
22 where the additional evidence will be presented concerning
23 the issues involved in sentencing.

24 Now, I gave you a sheet of paper to look at in the back
25 that had three different types of jurors listed on it.

Individual Juror Qualification

1 Did you read that paper?

2 A I did.

3 Q All right. And I'm gonna go over it with you to be
4 sure we have a clear understanding as to what it said.

5 The first juror listed on there is someone who is
6 already made up their mind when they start back into the
7 courtroom. That juror believes that the only appropriate
8 penalty, when someone is committed a murder and has been
9 found guilty of that murder, is the penalty of death. So,
10 that particular juror would always, in every case similarly
11 situated, would vote for the death penalty automatically.

12 The second juror is someone who has already made up his
13 or her mind. That person believes that the State never has
14 the right to take a life in punishment for a crime. And so,
15 therefore, that juror has already made up his or her mind
16 that she is going or he is going to vote for life
17 imprisonment without parole and that juror would do that on
18 every occasion similarly situated, of similar circumstances.

19 The final juror, the third one is someone who has not
20 made up his or her mind. That juror does not know exactly
21 what that juror is going to do. That juror is going to have
22 to wait, listen to the evidence and the testimony, and then
23 make a decision as to what the most appropriate penalty is.
24 Either life imprisonment or death.

25 Now, do you understand the three types of jurors I just

Individual Juror Qualification

1 described?

2 A I do.

3 Q Now, of those three jurors, which one most closely
4 resembles how you would feel if you were walking back into
5 the courtroom in that situation?

6 A Number two.

7 Q So, you would be someone who would never impose the
8 death penalty?

9 A That's right.

10 Q And you feel that it is inappropriate in any and all
11 situations, is that correct?

12 A That's correct.

13 Q All right. I'm gonna allow the attorneys to ask any
14 questions of you at this point in time.

15 First of all, the defense.

16 EXAMINATION

17 BY MR. RECKENBEIL:

18 Q Mrs. Martin, good morning.

19 A Morning.

20 Q Thank you very much for coming. Very very briefly.

21 My name is John Reckenbeil. I'm one of the defense
22 lawyers on the defense team. I appreciate you taking the
23 time. I know this has been a long process, and I appreciate
24 you filling out the jury questionnaire.

25 Just so that I am clear, under Judge Couch's

Individual Juror Qualification

1 instructions, he's asked you to read that pamphlet and it
2 describes the fact that, three options. The second option
3 is what you indicated in this courtroom is that you would
4 never impose the death penalty.

5 Is that true, ma'am?

6 A That's true.

7 Q And in any situation you can think of you would never
8 impose the death penalty?

9 A That's true.

10 Q Okay. No matter what the facts and circumstances were?

11 A No matter.

12 Q Oklahoma City, 9-11?

13 A No, I would not. I am just opposed to the death
14 penalty.

15 Q Yes, ma'am. Thank you very much. I appreciate your
16 candor and thank you for your time.

17 A Uh-huh. (Affirmative).

18 THE COURT: Does the State have any questions of this
19 juror?

20 SOLICITOR GOWDY: Thank you for your participation.

21 THE COURT: Ma'am, at this point in time I appreciate
22 your participation in the system and you're free to go.

23 WITNESS: Thank you.

24 (The following takes place outside the presence of the
25 juror.)

Individual Juror Qualification

1 THE COURT: State's position?

2 SOLICITOR GOWDY: Your Honor, I believe that she is
3 unqualified.

4 THE COURT: And defense's position?

5 MR. RECKENBEIL: Disqualified, Your Honor.

6 THE COURT: The Court agrees. She -- the Court has
7 found her to be disqualified at this time.

8 The last one from Panel Number Six is Number 113,
9 Gardenia Goodwin.

10 GARDENIA GOODWIN, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Good morning.

15 A Good morning.

16 Q How are you this morning?

17 A Good.

18 Q Again, I, I want to apologize to you for all the
19 inconvenience we're causing you. But I told you when we
20 started it's inconvenient. So, I appreciate your
21 cooperation.

22 You are Gardenia Goodwin, is that right, ma'am?

23 A Yes.

24 Q All right. Ma'am, the first thing I want to mention to
25 you, on Monday, when we talked earlier, you were placed

Individual Juror Qualification

1 under oath to tell the truth.

2 Do you remember that?

3 A Yes.

4 Q I'm just reminding you of that fact and putting it on
5 the record because you're under oath still from that Monday
6 discussion.

7 Do you understand that, ma'am?

8 A Yes.

9 Q Okay. Now, some of the things that we are going to go
10 over with you today that have to do with your opinions
11 concerning certain things and your beliefs. For that
12 reason, the questions that I'm about to ask you don't have
13 right or wrong answers cause there is no right or wrong
14 answer. We're simply trying to find out a little more about
15 you, and, and there are some matters that your opinions, in
16 this case, would be important on.

17 So, we're trying to find out what they are. So, more
18 or less we're gathering information. And if, at any time,
19 you feel threatened by what's going on in here, you let me
20 know and we'll be glad to try to alleviate that problem.

21 okay?

22 A Okay.

23 Q All right. Now, ma'am, since we talked on Monday, have
24 you heard anything, talked to anyone, gathered any
25 information from any source that has caused you to form any

Individual Juror Qualification

1 opinions about this case?

2 A No.

3 Q Have you ever participated in any blogs or Internet
4 sites that might have had something to do with the death
5 penalty?

6 A No.

7 Q Have you ever participated in any political activities
8 such as demonstrations, rallies, or meetings either for or
9 against the death penalty or where that issue was discussed?

10 A No.

11 Q Now, ma'am, in the back you were given a list of
12 potential witnesses.

13 Do you remember that list?

14 A Yes.

15 Q Rather lengthy list of people's names and where they
16 worked and that sort of thing.

17 A Yes.

18 Q All right. Ma'am, did you have an opportunity to look
19 over that?

20 A Yes.

21 Q Please don't name anyone's name off that list because I
22 don't want you to name anybody's name in this courtroom.

23 But after reviewing the list, do you believe that you
24 have any social, business, or personal connection with any
25 of those people?

Individual Juror Qualification

1 A No.

2 Q Are you related, in any way, by blood or marriage or
3 have you ever been to any of those people?

4 A No.

5 Q All right. So, you don't have connection with them.
6 Is that a good statement?

7 A That's right.

8 Q That's right.

9 Okay. Now, ma'am, I'm gonna ask you some questions
10 about your, more personal questions about your beliefs and
11 how you would act in certain situations. Again, I'm not
12 trying to invade your privacy. There's no right or wrong
13 answers. You seem to be someone who's confident enough and
14 you wouldn't feel threatened if I asked you about your
15 opinions on something.

16 Is that true?

17 A True.

18 Q Okay. I do want to mention to you that part of what
19 I'm gonna ask you about eventually will be the death
20 penalty, which is a potential issue in this case. And I
21 realize and I hope you remember that I discussed with you
22 the case is divided into two sections.

23 The first part will decide guilt or innocence on the
24 crimes that have been charged. One of those crimes is
25 murder, and the State has requested the death penalty. Only

Individual Juror Qualification

1 if the defendant is found guilty of that charge at the first
2 trial do we get to the question of whether or not the death
3 penalty would be appropriate.

4 Do you understand that, ma'am?

5 A Yes.

6 Q And I understand we're talking about penalties before
7 we've ever held the trial, which is putting the cart before
8 the horse. But this is the only time we get to talk to you.
9 Because once the case starts, the same jury will hear both
10 parts of the case and we can't stop in the middle, talk to,
11 talk about it at that point in time.

12 A Okay.

13 Q So, we're talking about it now. It's the only time we
14 have to talk about it.

15 A All right.

16 Q Okay. Now, the first question has to do with your
17 ability to apply the law.

18 At -- during the trial, the judge will instruct you
19 concerning the law in the case, and would you be willing to
20 listen to those instructions?

21 A Yes.

22 Q And would you be willing to accept the law as
23 instructed by the judge and apply it to the facts as you
24 find those facts to be?

25 A Yes.

Individual Juror Qualification

1 Q And, ma'am, is that true even if though, once you hear
2 the law, you may not like it, and you may disagree with what
3 the law says, could you still take the law as given to you
4 by the judge and apply it to the facts?

5 A Yes.

6 Q Okay. Ma'am, there has been a little bit of -- I won't
7 say a little bit. There's some pretrial publicity about
8 this case in the local media both when the incident occurred
9 and more recently in preparation for trial.

10 My question is are you the type of juror who can set
11 aside things such as what you've read or heard outside the
12 courtroom about a case or something you might even hear
13 during the trial?

14 Could you set those matters aside and decide the case
15 solely upon the evidence that you hear in the courtroom, the
16 testimony that occurs there, and the law as given to you by
17 the judge?

18 A Yes.

19 Q Now, a couple of concepts I want to be sure you
20 understand.

21 First of all, under our law, a criminal defendant is
22 never required to prove himself innocent. We presume
23 everyone to be innocent who is charged with a crime, and
24 that presumption last, lasts throughout the trial.

25 The second concept is the State has the burden of

Individual Juror Qualification

1 proving the defendant guilty beyond a reasonable doubt. So,
2 the burden of proof in every criminal trial lies with the
3 State, and it remains with the State until they prove guilt
4 of the defendant beyond a reasonable doubt.

5 Do you understand those two concepts?

6 A Yes.

7 Q Now, ma'am, would you be able to apply those two
8 concepts to a trial such as this one if you were selected?

9 A Yes.

10 Q So, I take it, ma'am, that you would then be willing to
11 listen to the evidence, and at the close of the trial, make
12 a determination as to guilt or innocence?

13 A Yes.

14 Q All right. Now, ma'am, a couple of questions I have
15 for you. As I indicated, the State does have that burden of
16 proof.

17 And is it your belief that just because someone is
18 accused of a crime, and indicted, they've been arrested,
19 they've been brought to court, that because of those facts
20 they're automatically guilty of the crime?

21 A No.

22 Q So, you would be willing to listen to the evidence and
23 then make a determination of that guilt?

24 A Yes.

25 Q Is that a correct statement?

Individual Juror Qualification

1 A Yes.

2 Q And after listening, listening to the evidence, if you
3 believe or find that the person, the State has met its
4 burden of proving the defendant guilty beyond a reasonable
5 doubt, could you find someone guilty of a crime?

6 A Yes.

7 Q And if you find the evidence is not sufficient and the
8 State has not met its burden of proof, could you then find
9 someone not guilty of that same crime?

10 A Correct.

11 Q All right. Now, ma'am, I'm going to ask you now about
12 the death penalty. I told you that we would get to this
13 point in time.

14 And in most cases the judge decides the penalty in
15 South Carolina. The only exception is where we have a
16 murder trial where the State has asked for the death penalty
17 do we get to the question of this second trial and the death
18 penalty issue comes up.

19 And the jury, in that case, makes that determination as
20 to whether or not the defendant is, is punished by the death
21 penalty or is punished by life imprisonment without parole.
22 Those are the two choices in that situation when we get past
23 the guilt phase.

24 You understand that?

25 A Yes.

Individual Juror Qualification

1 Q All right. And in the back I had a sheet of paper for
2 you to look at that described three different jurors.

3 Did you read that paper?

4 A Yes.

5 Q Okay. And I'm gonna ask you to put yourself in a
6 situation. Let's say that you have been selected on a jury
7 in a murder trial where the State is seeking the death
8 penalty, and you and your fellow jurors, at the close of the
9 first part of the trial, have found a defendant guilty of
10 murder. So, the issue of whether or not the person
11 committed the murder or is guilty of the crime has been
12 ended, that's been settled, and you found them guilty.

13 You and your fellow jurors are about to walk back into
14 the courtroom and start the second phase of the trial. At
15 that phase you will be hearing evidence concerning the
16 appropriate penalty that should be assessed. So, it will be
17 new and additional evidence to what you've already heard to
18 be presented at that phase of the trial.

19 The three people I described to you or jurors I
20 described I'm going to go over with you again. One of them
21 had already made up his or her mind. That juror believes
22 that in every case the death penalty is the only appropriate
23 penalty that can be given to someone found guilty of murder.
24 So, as they walk back into the courtroom, that jury's
25 already, that juror has already made up his or her mind that

Individual Juror Qualification

1 juror will vote for the death penalty every time someone's
2 found guilty of a murder.

3 The second type of juror is someone who believes the
4 State never has the right to take a life in connection or in
5 punishment of a crime, and that juror also has already made
6 up his or her mind. That juror, on every occasion, will
7 vote for life imprisonment because they believe that the
8 death penalty is never appropriate.

9 The third juror is a person, who is walking back into
10 room, who hasn't made up her or his mind. That juror wants,
11 is going to have to listen to the evidence and the facts
12 presented during that phase of the trial, and then make a
13 decision as to which penalty is the most appropriate. So,
14 that juror has not made up their mind and does not come in
15 with the, their mind already made up.

16 Now, of the three jurors I just described, which one of
17 those would best describe you if you were walking back into
18 the courtroom in that situation?

19 A Number three.

20 Q All right. Now, ma'am, I take it then that that means
21 that you were sitting in that trial and you listened to the
22 trial, and then considered the facts and evidence, and
23 keeping in mind the defendant's already been found guilty of
24 murder, and the issue of guilt is no longer a concern, that
25 you would be willing to listen to the facts, listen to the

Individual Juror Qualification

1 evidence, then if you found that the evidence did justify
2 it, you would be willing to sentence someone to death?

3 A Yes.

4 Q And by the same token, if you listened to that, those
5 facts and evidence as presented, keeping in mind the
6 defendant has already been found guilty of a murder, you
7 would also be willing to sentence someone to life in prison,
8 prison without parole if you found that the facts did not
9 warrant the finding of death?

10 A Yes.

11 Q So, that means that you could sentence someone to
12 either life or death depending on those facts and
13 circumstances?

14 A Yes.

15 Q All right. Now, the final thing I want to discuss with
16 you, ma'am, is if you're selected, if you come back to the
17 courthouse for jury selection -- right now we're not
18 selecting the jury. We're still talking with you about the
19 case.

20 But if you came back to the courthouse for jury
21 selection, and you were selected, I've told you that we will
22 be sequestering the jury. That means that you and your
23 fellow jurors would be staying with us for about five to
24 seven days depending on how long the trial takes to
25 complete. And during that time, your contact with the

Individual Juror Qualification

1 outside world would obviously be limited. You'd be
2 traveling with the jury, eating with the jury, and staying
3 in a local hotel during that period of time.

4 Now, my question to you is if that were to occur and
5 you were on the jury, would that pose a serious risk of
6 danger to your health or your well being?

7 A No.

8 Q Would it pose a serious risk or danger to the health or
9 well being of anyone who's dependent upon you?

10 A No.

11 Q Okay. Now, ma'am, that completes all of my questions.

12 A Okay.

13 Q I'm gonna allow the attorneys to follow-up on the
14 questions I've asked. The defense goes first.

15 Mr. Reckenbeil.

16 MR. RECKENBEIL: Thank you, Your Honor.

17 THE COURT: Yes, sir.

18 EXAMINATION

19 BY MR. RECKENBEIL:

20 Q Mrs. Goodwin, good morning. My name is John
21 Reckenbeil.

22 A Good morning.

23 Q I have had the opportunity to read your jury
24 questionnaire and I appreciate you doing that and I
25 appreciate you being here for the past couple of days. I

Individual Juror Qualification

1 know it's been a long process.

2 And I see that you attend Upper Shady Grove Baptist
3 Church?

4 A Yes.

5 Q How long have you attended there?

6 A All my life.

7 Q Okay. Do you remember a situation where I was an, an
8 attorney involved in a case with Upper Shady Grove Baptist
9 Church?

10 A No, I don't.

11 Q Okay. Good. I just wanted to let you know that I was
12 representing the church, and I didn't want this to come up
13 later that you said, oh, yeah---

14 A Okay.

15 Q ---I remember that bald guy as my lawyer.

16 A Okay.

17 Q Okay. Good.

18 Ma'am, I'm also understanding that you received some
19 knowledge about this case.

20 Did you get it in the media or on the newspaper?

21 A I saw a little bit of it on the news.

22 Q Okay. Can you tell me about that?

23 A It was just about the, the Torres and the Emery murder.
24 It's a little quick section of it.

25 Q Do you remember what channel that was on?

Individual Juror Qualification

1 A Seven.

2 Q Channel Seven here in Spartanburg?

3 A Yes.

4 Q Is there anything else besides what you just told me
5 that sticks out in your mind about the case?

6 A No.

7 Q And because of the fact that you saw that on TV, does
8 that give you any sort of preconceived notions about the
9 case?

10 A No.

11 Q Does it give you any sort of preconceived notions about
12 the guilt or innocence of Mr. Torres?

13 A No.

14 Q Okay. Do you have an independent feeling on the death
15 penalty either for it or against it?

16 A No.

17 Q Have you ever had an opinion for the death penalty?

18 A No, I'm just like the third, I would like to hear the
19 evidence and then I'd go from there.

20 Q Sure.

21 So, understanding what the judge has told you and
22 understanding what you just communicated to me is that you
23 would want to wait and hear the facts and evidence before
24 you made a determination as to whether or not you would vote
25 for the death penalty or life in prison?

Individual Juror Qualification

1 A Correct.

2 Q Can you think of a fact scenario in your mind that you
3 would always vote for the death penalty?

4 A Of them really taking someone's life and found guilty
5 of it.

6 Q I'm sorry.

7 Could you repeat that, ma'am?

8 A Of them taking someone's life and really found, the
9 evidence that they were really found guilty of it.

10 Q Okay. So, you just -- so, I understand that, you're
11 saying is that if an individual is convicted of murder and
12 they took another person's life, in that situation, the only
13 thing that you would feel would be appropriate would be the
14 death penalty?

15 A Not the only -- well, yes.

16 Q Just want to make sure, ma'am. And listen, there is no
17 right or wrong answer. This is---

18 A Okay.

19 Q ---entirely your opinion. I'm not here to tell you
20 what, in fact, your opinion should be. But we just want to
21 make sure that we completely understand that.

22 A Okay.

23 Q So, just to make sure that I understand is that if a
24 person is convicted of murder, the only appropriate sentence
25 would be the death penalty?

Individual Juror Qualification

1 A Yes.

2 Q Okay. All right. Now, you understand that there will
3 be two parts to the case if, in fact, it gets there, and the
4 first part of the case would be determining whether or not
5 my client is guilty or not guilty of murder.

6 So, just so that I'm understanding is that the second
7 part of the case will be, if we get there, whether or not
8 they'll be a sentence of death or life if, in fact, he's
9 convicted of murder.

10 So, if we're sitting here for the first four or five
11 days of trial, and it comes back that there is convincing
12 evidence, and it's proof beyond a reasonable doubt that
13 Andres Torres committed the act of murder, and the jury goes
14 back and they find that he is guilty, I'm assuming, from
15 your answers that you've just given me, that you would, in
16 fact, vote only for the death penalty?

17 A We would have to weigh it out amongst the jury, the
18 evidence that was given and everything.

19 Q Okay. But I want to make sure that, understanding that
20 there's two separate parts of the trial, there's the guilt
21 or innocence, and then there's the fact of the sentencing
22 phase, would you make up your mind as to what appropriate
23 sentence would be in the, in the first part of the trial?

24 A No.

25 Q Okay. All right. Now, talking about the fact that