

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 there's a second part of the trial---

2 A Uh-huh. (Affirmative).

3 Q ---the fact that there's a sentencing phase.

4 A Uh-huh. (Affirmative).

5 Q We're assuming, just like Judge Couch has told you,
6 that there has already been a conviction of murder.

7 A Uh-huh. (Affirmative).

8 Q Now you're coming back and there is a separate case.
9 You kind of have to put the first part of the case behind
10 you a little bit even though you can still keep in mind what
11 happened in that first part.

12 A Okay.

13 Q But you're gonna come back out as a different fact
14 finder, that you have to make a determination as to the
15 penalty.

16 Do you think that you have the ability to subside that
17 first part of that trial, that conviction of murder, to give
18 a fair and impartial hearing as to whether or not my client
19 should be sentenced to death---

20 A Yes.

21 Q ---or whether or not life in prison---

22 A Yes.

23 Q Now, understanding that second part of that phase of
24 that trial that the State's gonna present evidence, and
25 they're gonna present evidence of what is called aggravating

Individual Juror Qualification

1 factors, those aggravating factors are gonna be what the
2 State is gonna try to show you that makes that murder even
3 worse.

4 Understanding that, the defense is gonna have an
5 opportunity. We're gonna bring evidence to demonstrate that
6 there is a mitigation or there's a lessening of the murder.

7 Understand where I'm, what I'm talking about, that
8 there's gonna be two sets of, of factors?

9 A Yes.

10 Q Will you have an opportunity to really give both sides,
11 to include the defense, an opportunity to present that
12 evidence before you make up your mind as to whether or not
13 that person should receive life in prison---

14 A Yes.

15 Q ---or the death penalty?

16 A Yes.

17 Q Now, I just want to -- cause I want to come back full
18 circle.

19 A Okay.

20 Q Cause we talked a little bit about this a couple of
21 minutes ago, and, and you were leaning towards the fact that
22 a person's convicted of murder---

23 A Uh-huh. (Affirmative).

24 Q ---that they got to get the death penalty.

25 A Okay.

Individual Juror Qualification

1 Q Now, I just want to make sure that we're absolutely
2 clear here, that if, if we have a conviction of murder, the
3 first part of that phase of trial has already been decided.
4 You're going now into the second part of the trial.

5 Are you gonna have the opportunity to have an open mind
6 to listen both to the defense and the prosecution before you
7 make up your mind as to whether or not a person shall be
8 sentenced to death or, in fact, they should have life in
9 prison?

10 A Yes.

11 Q Okay. The last thing I want to talk about, ma'am, is
12 the fact that we all have our own opinions, and you talked
13 about the fact that when a jury goes back there and they
14 deliberate and they, they talk about their own opinions,
15 once you make up your, your mind either way, for the fact
16 that a person should be sentenced to death or a person
17 should receive life in prison, do you have the ability to
18 hold on to that opinion when you get back into that jury
19 room knowing that there's gonna be a lot of emotion, people
20 gonna be giving their opinions, people are gonna be staunch
21 in what they feel?

22 Do you feel that you have the ability to hold on to
23 whatever you feel is your opinion once you make up your
24 mind?

25 A Yes, I do.

Individual Juror Qualification

1 Q And do you feel that you can withstand, using the words
2 it's somewhat of like intimidation or coercion, do you feel
3 that you could be steadfast in your opinion if, in fact,
4 that you vote for life in prison or if, in fact, you vote
5 for the death penalty that you can hold on to that opinion?

6 A Yes.

7 Q And also do you feel, even if everyone's against you,
8 that it's a 11 to one vote, and you're that one person and
9 people are, are coming, coming after you, do you feel that
10 you are that type that you could hold on to that opinion
11 and, and be that one person?

12 A Yes.

13 Q Okay. Ma'am, I appreciate your answers and I
14 appreciate your candor. Thank you very much for being here.

15 A Thank you.

16 THE COURT: Mrs. Crick.

17 SOLICITOR CRICK: Thank you, Your Honor.

18 THE COURT: Yes, ma'am.

19 EXAMINATION

20 BY SOLICITOR CRICK:

21 Q Morning, Mrs. Goodwin.

22 A Good morning.

23 Q We appreciate you being here. I'm Cindy Crick and I'm
24 part of the prosecution team with Trey Gowdy and Barry
25 Barnette. I'm not gonna ask you a whole lot of other

Individual Juror Qualification

1 questions.

2 But in general, we seriously just want to find out what
3 your views of the death penalty are.

4 Do you have feelings about it before you came to court
5 today?

6 A A little. Sometime I feel, when you take someone's
7 life and you're proven guilty, that it can, the same can
8 happen to you with the death penalty.

9 Q So, your feeling would be that sometimes it would be
10 appropriate depending on the crime?

11 A Yes.

12 Q Is there anything about either your religious views or
13 your moral views that causes you to think that way?

14 A No.

15 Q Just your basic feelings about the death penalty?

16 A Yes.

17 Q So, I think, if I understood you correctly, when you
18 were talking just a minute ago, you would have an open mind
19 and consider maybe the evidence and the facts of the case
20 before deciding whether to give a life sentence or a death
21 sentence?

22 A Correct.

23 Q But you really could consider either one of those?

24 A Yes.

25 Q Okay. Hold on just one second.

Individual Juror Qualification

1 (Pause.)

2 SOLICITOR CRICK: I think that's it, Your Honor.

3 Thank you so much.

4 A Thank you.

5 THE COURT: Follow-up questions?

6 MR. RECKENBEIL: Nothing, Your Honor.

7 THE COURT: All right. Mrs. Goodwin, thank you very
8 much for your cooperation. Let me just go over a couple of
9 things with you.

10 We're still talking to jurors. We haven't gotten to
11 the point where we're selecting jurors yet. When we get to
12 that point, if we need for you to come back to the
13 courthouse, you'll get a call from us. So, I want to be
14 sure that the information you've given for us to contact you
15 is correct, and correct, is it?

16 WITNESS: Yes.

17 THE COURT: Okay. And if you are called to come back
18 to the courthouse, you, it may be that you would be selected
19 on the jury. So, bring with you whatever you need to bring
20 to stay for about a week because if you're selected you'll
21 go directly into the trial. And from that point forward
22 you'll be staying at the hotel with us. So, bring whatever
23 you need to stay with us for about a week.

24 Okay, ma'am?

25 WITNESS: I was wanting to make one comment. I had

Individual Juror Qualification

1 paid for a vacation---

2 THE COURT: Uh-huh. (Affirmative).

3 WITNESS: ---for the 26th through the 28th of
4 October. I just wanted to make a note of that.

5 THE COURT: I, I understand that, ma'am, and, and we're
6 hoping that this case will be over by that time.

7 WITNESS: All right.

8 THE COURT: I think that it will be okay.

9 WITNESS: Okay.

10 THE COURT: Thank you very much.

11 WITNESS: Thank you.

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

14 THE COURT: State's position on Mrs. Goodwin?

15 SOLICITOR GOWDY: State believes she's qualified, Your
16 Honor.

17 THE COURT: Defense?

18 MR. RECKENBEIL: Judge, we've heard some of the
19 answers. I think that she gave that she was a type three.
20 I think it's clear that some of the answers that she gave at
21 the beginning is that she said if a person was found guilty,
22 that she would say the only thing is, she could do was
23 impose the death penalty. With all due respect to Mrs.
24 Goodwin, I think there's some confusion there. I tried to
25 break it down as much as possible. But I could, still think

Individual Juror Qualification

1 that there was some confusion.

2 I'm concerned a little bit about her responses in the
3 fact that I think what she said is that if there's a
4 conviction for murder, the death penalty. So, therefore, we
5 would ask that she be disqualified.

6 THE COURT: Well, Mr. Solicitor, I'll hear from you.

7 SOLICITOR GOWDY: Your Honor, only that I thought
8 Mr. Reckenbeil was very fair and he asked open ended
9 questions in his voir dire and that the conclusions reached
10 at the end of his colloquy was that she was a type three
11 juror, and that is all she ever expressed to Mrs. Crick, and
12 that is what she expressed to you.

13 It's not hard to believe anybody would get confused in
14 this setting. It's an overwhelming setting. But her
15 answers, taken as a whole like we have other jurors,
16 indicates that she could give either a verdict based on the
17 facts and circumstances and she's qualified.

18 THE COURT: I am required, and I, and I do take the
19 colloquies as a whole. Not any one particular response.
20 And I do think that perhaps -- I don't disagree with you,
21 Mr. Reckenbeil, that she perhaps was a little confused at
22 one point in time.

23 However, again, as the solicitor indicated probably on,
24 on three different occasions she expressed her willingness
25 to review the evidence and could give either verdict. And

Individual Juror Qualification

1 so, therefore, I am going to find Mrs. Goodwin to be
2 qualified.

3 We're now moving to Panel Number Seven and Number 81,
4 Chandis Digby.

5 BAILIFF: Yes, sir.

6 CHANDIS DIGBY, having been previously
7 sworn, testified as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q Good morning.

11 A Morning.

12 Q Ma'am, I'm, I'm not sure exactly how to pronounce your
13 first name.

14 I think it's Chandis?

15 A Chandis.

16 Q Chandis. Okay. Well, I appreciate you correcting me.
17 Digby is correct for the last name?

18 A That's correct.

19 Q Okay. Mrs. Digby, first of all, I want to thank you
20 very much for your patience. I know this is somewhat of a
21 vexing and trying proceeding, and I can appreciate that. I,
22 I've been -- I've never been in your situation exactly. But
23 I've served on a jury panel before, and I understand how
24 that can be.

25 I want to let you know that this morning, still

Individual Juror Qualification

1 morning, we are going to be going over some matters with you
2 that, that have to do with your beliefs and opinions
3 concerning certain things. For that reason, there are no
4 right or wrong answers to the questions that we have. We're
5 simply trying to gather information about you and your
6 positions on certain things so that we can make intelligent
7 decisions concerning the selection of the jury at a later
8 time.

9 I don't want you to feel uncomfortable. I know,
10 sitting in a courtroom behind a microphone with lawyers
11 around you, is not what you do everyday. And it can, it can
12 be somewhat of a disconcerting situation. So, I want you to
13 feel comfortable. So, if, at any time during this process,
14 you feel uncomfortable, let me know and we'll try to rectify
15 that situation for you.

16 okay?

17 A (Witness nods affirmatively.)

18 Q Now, I'm going -- as I indicated, I'm gonna ask some
19 questions and the plaintiff, excuse me, the State and the
20 defense will be asking you some questions.

21 The first question I have, since we talked on Monday --
22 oh, one other thing I need to point out I'm about to forget.
23 You were placed under oath to respond to, correctly and
24 truthfully to my questions on Monday. That oath still
25 applies to our questioning now.

Individual Juror Qualification

1 Okay. Now, since our meeting on Monday, have you
2 heard, read, or seen anything, discussed this case with
3 anyone such that you have formed any opinions about the case
4 since Mondays meeting?

5 A No, sir.

6 Q Have you ever participated in any website or blog or
7 any other information, gathering location concerning
8 information at, concerning the death penalty?

9 A Not that I'm aware of, no.

10 Q Okay. Have you ever participated in any political
11 activities, demonstrations, meetings, or rallies, where the
12 death penalty was an issue that was discussed?

13 A No.

14 Q Now, ma'am, when you were outside, you, we gave you a
15 list of potential witnesses.

16 Do you remember that list?

17 A Yes, sir.

18 Q Did you have a chance to look over it?

19 A I did.

20 Q All right. I don't want you to name anyone's name out
21 in court.

22 A Okay.

23 Q Okay. But I do want to ask you, after reviewing that
24 list, do you believe that you have any social, business, or
25 personal connections with anyone listed on the list?

Individual Juror Qualification

1 A One person.

2 Q All right. Can you tell me what connection you would
3 have with that person?

4 A I met the person at a Republican women's group meeting.

5 Q Okay. So, that person was involved in a political
6 meeting that you were at?

7 A Yes.

8 Q Okay. Now, would that fact, in any way, affect your
9 ability though to be fair and impartial in the trial of this
10 case---

11 A No, sir.

12 Q ---if that person did testify?

13 A No, sir, it would not.

14 Q Okay. All right. Are you related by blood or marriage
15 to anyone on that list?

16 A No.

17 Q Or have you ever been related by marriage to anyone on
18 that list?

19 A No.

20 Q Cause that does change from time to time.

21 All right. Now, I am going to be asking you now some
22 more personal questions about your beliefs and things, and
23 obviously one of the things we're going to talk, talk about
24 will be the death penalty, which is an issue in this
25 particular case. Again, I'm not trying to invade your

Individual Juror Qualification

1 privacy. We just need to know some information to make
2 intelligent choices.

3 Also, I want to make you aware of and explain to you,
4 as I did earlier, that this case will be divided into two
5 different phases. There will be a trial concerning the
6 charges that have been brought as to guilt or innocence.
7 One of those charges is the charge of murder. For that
8 particular charge, the plaintiff, the State has asked for
9 the death penalty to be imposed.

10 And in that case, the same jury that hears the guilt or
11 innocence phase would then, for that charge, if the
12 defendant were found guilty of the charge, conduct a
13 separate hearing concerning the appropriate penalty.
14 They'll be new witnesses testifying, new information
15 presented on that issue because it's a different issue than
16 the first particular, the trial that's held.

17 So, they'll be two different charges, two different
18 trials, and I want you to understand that we are kind of
19 putting the cart in front of the horse because there's not
20 been a completion of the first trial and we're already
21 talking about the penalty. Simply because the same jury
22 hears both, we won't have another occasion to sit down and
23 talk about this other than at this point in time.

24 So, I'm telling you that so that you would not, in any
25 way, have any opinion about any defenses that the defendant

Individual Juror Qualification

1 raises to, in the first trial or any positions the defendant
2 may have. This is simply the only time that we have to talk
3 about this issue.

4 Do you understand that, ma'am?

5 A Yes.

6 Q Okay. Now, the first thing I want to talk to you about
7 is how you would view the law in the case. And, and during
8 the trial, the judge charges the jury concerning the law.

9 Would you be listening, be willing to listen to the law
10 as instructed by the judge?

11 A Yes.

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

14 A Yes.

15 Q Now, is that true even though, once you hear the law,
16 you might disagree with it, you may not like it, but you --
17 would you be willing to accept the law as the judge
18 instructs you and apply it to the facts?

19 A The law is the law.

20 Q Okay. Thank you.

21 Well, that's a, that's a yes answer, is that right?

22 A Okay. Yes, that's yes.

23 Q Okay. All right. Thank you.

24 And, and you're starting to kind of shake your head and
25 we have to take everything down on tape. So, be sure you

Individual Juror Qualification

1 speak and answer for me.

2 okay?

3 A Yes.

4 Q Just want to caution you before we get there.

5 Now, this case did have a little, a little bit of
6 pretrial publicity or some pretrial publicity, and I want to
7 be sure that, that, if you were selected as a juror in this
8 case, are you the type of juror who could put aside anything
9 that you heard outside of the courtroom, anything that you
10 may have read outside the courtroom, and decide the case
11 purely upon the evidence that's presented during the trial?

12 That would be the testimony of witnesses, and the
13 evidence that comes in through that testimony.

14 Could you do that?

15 A Yes, sir.

16 Q A couple of concepts I talked about on Monday I want to
17 reinforce and be sure you understand them. .

18 First of all, under our law, a defendant is always
19 presumed to be innocent. Therefore, the defendant has no
20 burden of proof, does not have to prove himself innocent of
21 a crime.

22 Do you understand that concept?

23 A Yes.

24 Q Also, under our system, the State always has the burden
25 of proving a criminal defendant guilty of the crimes charged

Individual Juror Qualification

1 beyond a reasonable doubt.

2 Do you understand that concept as well?

3 A Yes.

4 Q And would you be willing to apply those two concepts to
5 a trial if you were selected?

6 A Yes.

7 Q Now, are you the kind of person who believes that just
8 because someone has been accused of a crime and been
9 arrested and indicted that they must automatically be guilty
10 of the crime?

11 A No.

12 Q That means that you would be willing to sit as a juror
13 and listen to the evidence and facts, and based on what you
14 find those facts to be, and based upon the law charged by
15 the judge, you could find a person not guilty of a crime
16 charged.

17 Is that true?

18 A That is true, yes.

19 Q And by the same token, if you believe the State did
20 prove the defendant guilty beyond a reasonable doubt, I
21 assume that you could also issue a verdict of guilty against
22 another person?

23 A Yes.

24 Q Is that true?

25 All right. So, I'll, I'm gonna describe a juror and

Individual Juror Qualification

1 you tell me if this sounds like you.

2 You're the kind of juror it sounds like who would be
3 willing to listen to the evidence, and depending upon the
4 strength of that evidence, and what the testimony was and
5 the evidence showed, and what the law was, be able to make
6 up your mind and find a defendant either guilty or not
7 guilty.

8 Is that true?

9 A Yes.

10 Q Now, again, we're gonna talk about the death penalty
11 specifically at this point in time. I told you we would get
12 to this point and I hope you understand that this issue will
13 only be, be reached once the defendant has been found guilty
14 of the crime of murder. The same juror, jury will be called
15 back to consider the question of the penalty. There's only
16 two choices, life imprisonment without parole or the death
17 penalty, when the jury is in that situation.

18 Do you understand that situation?

19 A Yes.

20 Q All right. And there will be separate proceedings and
21 separate evidence presented on the issue of the appropriate
22 penalty.

23 Do you understand that also?

24 A Yes, sir.

25 Q Now, I gave you a sheet of paper to look at in the back

Individual Juror Qualification

1 that described three different jurors.

2 Do you remember that paper?

3 A I do.

4 Q Did you have a chance to look at it?

5 A Yes.

6 Q Now, I'm going to describe those people so I'm sure
7 that you and I understand what we're talking about.

8 The first juror is the juror who, if walking back into
9 the courtroom, as I've asked you to put yourself in that
10 position, who's walking back into the courtroom, has already
11 made up his or her mind. That juror believes that if a
12 person is found guilty of a murder, that the only
13 appropriate penalty is death, and, therefore, on every
14 occasion that juror would vote for death as being the
15 appropriate penalty.

16 The second juror is that juror who believes that the
17 State never has the right to take a life in punishment for a
18 crime. And so, that juror has also already made up his or
19 her mind. That juror, in every situation, would always vote
20 to impose a sentence of life imprisonment without parole.

21 The third juror is someone who is walking back into
22 that courtroom and that juror has not made up his or her
23 mind. They don't know how they're going to vote. That
24 juror is going to have to wait and listen to the evidence
25 and the testimony. And based on what is heard during that

Individual Juror Qualification

1 third, I mean that second trial, make a decision as to what
2 is the appropriate penalty, either life imprisonment without
3 parole or death.

4 Now, do you understand the three types of jurors I've
5 described?

6 A Yes.

7 Q Of the three types of jurors that I just described to
8 you, which one would most closely resemble your position in
9 that situation?

10 A The third.

11 Q All right. Ma'am, I take it then from your answer that
12 in, and under those circumstances, that if you came back
13 into that jury room, back into the courtroom, and the issue
14 of guilt is no longer a concern, it's already been decided,
15 that you also though would be willing to listen to the facts
16 and evidence, and if the evidence justified it, you would be
17 willing to sentence someone to death?

18 A Yes, sir.

19 Q And by the same token, if you listened to the evidence
20 in that third trial, and you found that the evidence did not
21 justify it, you also could be and be willing to sentence
22 someone to life in prison?

23 A Yes.

24 Q So, that means that you would, depending on the facts
25 and circumstances that you heard in that portion of the

Individual Juror Qualification

1 trial, you could sentence someone to life or you could
2 sentence someone to death?

3 A Yes.

4 Q Now, the final thing I want to talk to you, it's a
5 little more personal in nature. I indicated to you on
6 Monday that if someone's selected on this jury we will be
7 sequestering the jury, and that's a legal phrase that means
8 we will ask you to live in a hotel during that period of
9 time with your fellow jurors. You will be transported back
10 and forth to the courthouse during that period of time. You
11 will, during that period of time, eat all your meals and be,
12 have limited contact with the jury, and you'll be, have
13 limited contact with the outside world.

14 You understand that, ma'am?

15 A Yes, sir.

16 Q We expect the trial will last anywhere from five to
17 seven days. Best estimate.

18 Now, my question to you is if you were placed in that
19 situation, and you were sequestered with a jury for that
20 period of time, would that, in any way, pose a serious risk
21 of danger to you or your health or your well being?

22 A No, sir.

23 Q Would that pose a serious risk of danger to the health
24 or well being of anyone who is dependent upon you?

25 A No, sir.

Individual Juror Qualification

1 Q All right. Now, this is the point in time I'm going to
2 allow the attorneys to follow-up on the questions that I've
3 gone over with you. We allow the defense to go first. And
4 it looks like Mrs. Hodges is standing up. So, she's going
5 to be asking the questions.

6 Mrs. Hodges.

7 MRS. HODGES: Thank you, Your Honor.

8 EXAMINATION

9 BY MRS. HODGES:

10 Q Good morning, Mrs. Digby.

11 Digby, is that correct?

12 A That's correct.

13 Q My understanding is you're a chemical engineer by, by
14 training?

15 A Yes.

16 Q Okay. And that is currently the profession that you're
17 working in now?

18 A I applied my chemical engineering background. But I am
19 now in supply chain for the chemical division.

20 Q Okay.

21 A So, still doing that though.

22 Q And one of the questions that the judge just asked you
23 in regard to sequestration, I noticed on your questionnaire
24 you have two young girls.

25 A I do.

Individual Juror Qualification

1 Q Anything in terms of their schooling or anything like
2 that that would be a problem I guess for them for you to be
3 able, not be with them during that, that period of
4 sequestration?

5 A It would be hard on my husband and we don't have family
6 who live here.

7 Q Okay.

8 A But he's -- we've already talked about it and he's
9 willing to deal with it.

10 Q Okay. And I appreciate that. I appreciate that.
11 You had indicated I think on Monday that you had heard
12 some, had heard something about the case.

13 Can you tell us---

14 A Yeah.

15 Q ---tell us what you actually heard?

16 A I saw an article on goupstate.com---

17 Q Okay.

18 A ---before knowing that, before getting here.

19 Q Okay.

20 A And I just---

21 Q And was that over the, over the weekend before you came
22 here?

23 A It was Monday morning.

24 Q Monday morning.

25 A I was just reading my normal---

Individual Juror Qualification

1 Q Okay. So, you saw it Monday morning?

2 A Yes.

3 Q You then came on into jury service?

4 A Right.

5 Q Okay. Haven't seen anything since then?

6 A Correct.

7 Q The goupstate article that you read, anything stick out
8 in your mind from that article?

9 A It -- I remember it named the victims and that the
10 trial would be starting today. Certain number of days for
11 jury selection, an estimation.

12 Q Okay.

13 A It was relatively brief.

14 Q Anything else?

15 I mean that's, that's actually what you remember?

16 A I think so. I don't, I don't recall any other details
17 off the top of my head.

18 Q Do you remember any publicity when this case was first
19 being investigated?

20 A I don't.

21 Q Okay. Based on what you saw in the goupstate article,
22 would that affect your ability to be a fair and impartial
23 juror for both the State as well as the defense?

24 A No, it would not.

25 Q Okay. Do you have any kind of just general views on

Individual Juror Qualification

1 the death penalty, position about the death penalty?

2 A I feel that it's, it is the State's right to impose the
3 death penalty if it is necessary. So, I would take it
4 that -- I would, I would take it into consideration, based
5 on the law, what, what my options are.

6 Q So, what I hear from you saying is that, is that the
7 law authorizes it and that, and that, you know, that you
8 would be able to follow the law?

9 A Yes.

10 Q Are there any -- in this, in this particular type of
11 case, as you know, the person's charged with murder, and we
12 may never even get to the question about whether it's the
13 death penalty or life sentence until a conviction in this
14 happened.

15 Murder being the willful killing of another human being
16 unlawfully with malice aforethought. Malice basically
17 meaning kind of an evil intent, wicked heart. And basically
18 when we're talking the killing is done lawfully, that means
19 there's really no, no legal defense to it. There's -- the
20 jury has heard all of the evidence, listened to the law as
21 the judge instructs them, and essentially determined that,
22 that the kill was not justified, and that, you know, that
23 the person convicted of it is truly responsible for that.

24 Are we on the same page?

25 A Yes.

Individual Juror Qualification

1 Q In that type of situation, do you have an opinion as to
2 whether the death penalty is the only appropriate penalty
3 for, for any, for that kind of guilty murder?

4 A If there are no extenuating circumstances, I would say
5 yes.

6 Q Okay. So, I mean in terms of extenuating
7 circumstances, would another word for that be, be mitigating
8 circumstances, something that, that would lessen the
9 severity of the crime in some way to you?

10 A Yes, I think that's, that is accurately --.

11 Q Okay. Because basically, we're, we're gonna hear,
12 you're gonna hear, if you're selected on this jury, you're
13 gonna hear the phrases aggravating circumstances and
14 mitigating circumstances. In this type of situation,
15 aggravating circumstances are things that make the crime
16 worse. Make the, you know, that particular murder worse
17 than, you know, some other sort of killing.

18 You know, it could be a variety of things. It could
19 be, you know, just a variety of things that, that, that
20 could be involved. But essentially something that the State
21 presents the, the testimony that makes the, that makes the
22 killing worse and that particular crime worse than others.

23 In a situation like that where you have a murder with
24 aggravating circumstances, do you feel that the death
25 penalty is the only appropriate penalty in that type of

Individual Juror Qualification

1 case?

2 A I don't know.

3 Q Okay.

4 A So, I think I would have to see the details.

5 Q Okay.

6 A I'm not sure that I would know definitively one way or
7 another.

8 Q Okay. As I said, they're other types of, of evidence.
9 You might hear what we call mitigating. It's either -- you
10 may hear mitigating factors, mitigating evidence, mitigating
11 circumstances. But essentially it could be something that
12 either, you know, could come from something in the
13 defendant's background. It could be some particular
14 evidence in the case. You know, for whatever reason, that
15 kind of, in fairness or in mercy, sort of dictates to you
16 that perhaps the death penalty is not the appropriate
17 sentence and some lesser sentence is appropriate. In this
18 case, it would be life without the possibility of parole.

19 would you be willing to listen to those mitigating
20 factors in, in making your determination as to what the
21 appropriate sentence is?

22 A Yes.

23 Q Okay. And you'd be open to basically, once, you know,
24 if you, if the evidence, if selected, you and your other 11
25 jurors would, you know, found somebody guilty, you'd be able

Individual Juror Qualification

1 to kind of put that decision aside and sort of come into the
2 sentencing phase kind of with a, a sort of a fresh mind, if
3 you will, in terms of being able to listen to the
4 aggravating circumstances and the, and the mitigating
5 circumstances?

6 A Yes.

7 Q You will be able to do that?

8 A (Witness nods affirmatively.)

9 Q Okay. Your views on the death penalty, do that, does
10 that come from, you know, sort of personal experience,
11 philosophical, theological experience.

12 You know, what, what forms your views on the death
13 penalty?

14 A I've never really given it -- I haven't given it that,
15 where it comes from, much thought. Probably the way I was
16 brought up --

17 Q Okay.

18 A -- in that personal responsibility, punishment for
19 crimes, and my parent's beliefs, and how I, how I was
20 brought up.

21 Q Okay.

22 A I think that's --.

23 Q And those, and those are beliefs that you've held?

24 A Most of my life.

25 Q You kind of felt, you know, throughout your life and

Individual Juror Qualification

1 held for a while?

2 A Uh-huh. (Affirmative).

3 Q Would you have any problem in articulating your opinion
4 to your other jurors and, and, during the course of your
5 deliberations?

6 A No.

7 Q Would you, by the same token, be comfortable in holding
8 fast to your opinion even if perhaps your opinion was in the
9 minority or the only person in that jury room that had a
10 particular opinion about a particular sentence?

11 A That's not a problem.

12 Q I'm sorry?

13 A That's not a problem.

14 Q I had noticed that you had made mention that your
15 father had been a victim of a mugging.

16 Was that recently, several years ago?

17 A Probably 15 years ago and it was outside of the
18 country.

19 Q Okay. Any, anything from that experience that, that
20 would of affected you as to any particular type of sentence?

21 A No.

22 Q The witness that you mentioned that, that you had met
23 at the Republican, at the, from the Spartanburg County
24 Republican Women's---

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q Were you -- did you guys work together on any sort of
2 project or committees or---

3 A No, ate dinner with the person---

4 Q Okay.

5 A ---at a meeting and talked with them.

6 Q Okay. There may be -- the Anderson Mill Baptist is
7 coming -- I think there may of been some other church
8 members that, that had been summoned for jury duty.

9 I mean, you know, no telling if, if you were put on the
10 same jury with a member from your same church, would that be
11 a problem for you one way or the other?

12 A I don't think so.

13 MRS. HODGES: Okay. That's all the questions I have,
14 Your Honor.

15 THE COURT: Mrs. Crick.

16 SOLICITOR CRICK: Thank you, Your Honor.

17 THE COURT: Yes, ma'am.

18 EXAMINATION

19 BY SOLICITOR CRICK:

20 Q Good afternoon. I'm Cindy Crick and I'm part of the
21 prosecution team with Trey Gowdy and Barry Barnette. And
22 honestly, I think you were so thorough in answering your
23 questions, I just wanted to clarify and make sure I
24 understood you correctly.

25 You're saying that you're one of those folks who could

Individual Juror Qualification

1 go into a trial with an open mind and consider it both by
2 the, any evidence presented and then make a decision after
3 that, correct?

4 A That's correct.

5 Q And if you were to get to a point of entering a penalty
6 phase where you would have to consider a life sentence or a
7 death sentence, you could consider any evidence presented by
8 the State and also any, if there were any, presented by the
9 defense and then make your decision based upon that?

10 A Yes.

11 Q And you feel like you could be fair in doing that?

12 A I do.

13 Q That's all.

14 THE COURT: Anything further from this juror?

15 MRS. HODGES: No, sir. Thank you.

16 THE COURT: Thank you.

17 Mrs. Digby, just a couple of things I do want to go
18 over with you before we allow you to leave.

19 As I indicated, the jury will be sequestered. And if
20 you are asked to come back to the courthouse for jury
21 selection, I will tell you to come prepared to stay with us
22 for that week. Bring whatever you need to bring with you
23 for that purpose. Because once you're selected on a jury,
24 we will begin the trial of the case and we'll proceed rather
25 rapidly and in accord into that process. So, be sure you

Individual Juror Qualification

1 have that available, and, and are prepared for that.

2 The contact information that you have provided us I
3 assume is correct?

4 WITNESS: Yes, sir.

5 THE COURT: It has not changed?

6 WITNESS: Correct.

7 THE COURT: Okay. And I will caution you also that my
8 previous instructions to you concerning no contact, not
9 listening to any news reports, that sort of thing, or no
10 discussions concerning the case continue until we tell you
11 those have ended.

12 You're free to go.

13 Thank you very much for your cooperation.

14 (Whereupon, the following takes place outside the
15 presence of the jury.)

16 THE COURT: State's position concerning Mrs. Digby?

17 SOLICITOR GOWDY: The State submits she is qualified.

18 THE COURT: Defense, subject to your previous
19 objections I'm sure?

20 MRS. HODGES: No other objections, Your Honor. Subject
21 to those.

22 THE COURT: The Court finds Mrs. Digby to be qualified
23 and I'll make that notation.

24 All right. We're gonna take about a five minute break
25 at this point in time.

Individual Juror Qualification

1 Court's in recess for about five minutes.

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

3 THE COURT: All right. The next juror is Number 47,
4 Shoshannah Burnett.

5 BAILIFF: Juror 46.

6 THE COURT: Juror 46. Excuse me. I'm sorry. Read
7 that number wrong.

8 SHOSHANNAH BURNETT, being first duly
9 sworn, testified as follows:

10 EXAMINATION

11 BY THE COURT:

12 Q Good morning.

13 A Good morning.

14 Q Check to be sure.

15 Your name is Shoshannah Burnett, is that correct?

16 A Yes, Your Honor.

17 Q And Mrs. Burnett, I want to remind you that when you
18 and I talked last on Monday you were sworn to tell the
19 truth. I remind you that so that you'll be aware you're
20 still under oath for purposes of our discussion today.

21 Do you understand that, ma'am?

22 A Yes, Your Honor.

23 Q Okay. Now, I want to let you know what's going to be
24 happening today because I understand sitting in a courtroom
25 with a microphone and lawyers all around is not the most

Individual Juror Qualification

1 comfortable seat in, in town. And -- but I do want to let
2 you know, what we're going to do is ask you about some of
3 your opinions, your beliefs, things of that nature.

4 For that reason, there's really no right answers or
5 wrong answers to the questions we're asking today. We're
6 simply trying to gather information that will be helpful to
7 us and the parties involved in selecting a jury.

8 Do you understand that?

9 A Yes, Your Honor.

10 Q And we're seeking what your beliefs and opinions are.
11 And as I indicated, there are no right or wrong answers.
12 Simply your answers.

13 Okay?

14 A (Witness nods affirmatively.)

15 Q Now, if, at any time, you feel uncomfortable, let me
16 know and we'll try to alleviate the situation.

17 The first question I have for you is that since we
18 talked earlier on Monday, have you read or seen anything or
19 discussed the case with anyone such that you have formed any
20 opinions about the case?

21 A No, Your Honor.

22 Q Have you ever, have you ever participated in any blog
23 or Internet site or anything of that nature that might have
24 had as its subject the death penalty?

25 A No, sir.

Individual Juror Qualification

1 Q Have you ever participated in any political
2 demonstrations, meetings, or discussions where the principal
3 focus was on the death penalty?

4 A No, sir.

5 Q While you were waiting outside we gave you a list of
6 potential witnesses.

7 Did you see the list?

8 A Yes, sir.

9 Q Did you have a chance to review it?

10 A Yes, sir.

11 Q I don't want you to name anyone's name off of that list
12 at this point in time. But I do have a couple of questions.

13 After reviewing that list, do you believe that you have
14 any social, business, or personnel types with anyone who is
15 listed on the list?

16 A No, sir.

17 Q Are you related by blood or marriage or have you ever
18 been related by marriage to any of those individuals that
19 you saw?

20 A No, sir.

21 Q So, as far as you know, you have no connection with
22 those people, is that correct?

23 A Yes, sir.

24 Q Okay. Now, I'm going to be asking some more personal
25 questions as we go along that have to do with your beliefs

Individual Juror Qualification

1 and opinions about certain topics, and one of those is going
2 to be the topic of the death penalty. I believe, after
3 already my discussions with you, that you're secure enough
4 in your feelings and opinions that we can do that without
5 you feeling threatened.

6 Is that true?

7 A Yes, sir.

8 Q All right. And we're gonna talk about the death
9 penalty. But I do want you to understand, and I told you on
10 Monday, this trial will be divided into two phases. The
11 first phase will involve the question of guilt or innocence
12 as to the charges that have been lodged against the
13 defendant. One of those charges is for murder.

14 The State has, in that case, requested the imposition
15 of the death penalty. For that reason, we hold, if he's
16 found guilty and only if he's found guilty of the murder,
17 would we go on to the second phase, which is the sentencing
18 phase for that particular offense, and there we would
19 determine the proper punishment, either life in prison
20 without parole or the death penalty.

21 Now, it's a little bit like putting the cart before the
22 horse for us to discuss that issue because we may never get
23 there. If the jury found the defendant innocent of that
24 charge, we would not hold that second hearing. But the same
25 jury hears both sides of the case, both, both phases. And

Individual Juror Qualification

1 so, this is the only opportunity we have to discuss both
2 phases. And so, we must discuss the penalty phase even
3 before we've decided if we'll get there.

4 For that reason, you should not hold this discussion
5 against the defendant or any defenses that he has. This is
6 simply the only time that we have to discuss that.

7 Do you understand that, ma'am?

8 A Yes, sir.

9 Q Okay. Now, I'm gonna ask you some questions about how
10 you would view the law in the case during the trial, and at
11 the end of the trial the judge charges the jury concerning
12 the law.

13 If you were a juror in a criminal case, would you be
14 willing to listen to the law as presented by the judge?

15 A Yes, sir.

16 Q And would you be willing to accept that law and apply
17 it to the facts as you, a juror, might find them to be?

18 A Yes, sir.

19 Q Now, is that true even though, when you hear the judge
20 charge the law, after you've heard it, you might not like
21 what you heard or you may disagree with portions of what the
22 judge tells you, would you still be willing to follow the
23 law as charged by the judge and apply it to the facts as you
24 find them to be?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, there has been some pretrial publicity about this
2 case, and I want to be sure that you are the type of juror
3 who would be willing and able to set aside any information
4 or knowledge you may have gained outside of the courtroom
5 about this case, anything you've read or heard or seen about
6 the case, or any information that should come in your
7 possession during the trial, could you put all of that
8 information aside and decide the case solely and purely
9 based on the evidence that you hear during the trial and the
10 law as presented to you in the trial?

11 A Yes, sir, I have no prior knowledge of this case
12 whatsoever.

13 Q So, you have not seen any of that, that---

14 A I don't watch local news.

15 Q Okay.

16 A And so, I kind of stay out of touch with local
17 information---

18 Q Uh-huh. (Affirmative).

19 A ---which is not necessarily good all the time, but---

20 Q In this case---

21 A I don't know anything about it.

22 Q ---that's a pretty good situation.

23 A Yes, sir.

24 Q So, thank you, thank you very much. I appreciate your
25 volunteering that information.

Individual Juror Qualification

1 Now, a couple of concepts I talked with you about on
2 Monday I want to reinforce to be sure you understand.

3 First of all, in our state and in our country, everyone
4 who has been charged in a criminal case is presumed to be
5 innocent, and therefore, a defendant never has the duty of
6 proving himself innocent. He's presumed to be so.

7 Do you understand that concept?

8 A Yes, sir.

9 Q Also, under our law, the State always has the burden of
10 proving someone charged with a crime by the State of guilt
11 beyond a reasonable doubt. So, the burden of proof in every
12 criminal trial is always upon the State.

13 Do you also understand that concept?

14 A Yes, Your Honor.

15 Q And would you be willing to apply those concepts to
16 this case if you were selected as a juror?

17 A Yes, Your Honor.

18 Q Now, I take it then, based on your answer already, and
19 you can tell me if I'm right or wrong, do you believe -- it
20 sounds like you're not the kind of person that would believe
21 that someone who is accused of a crime or, or arrested of a
22 crime or indicted for a crime is automatically guilty of
23 that crime.

24 Is the true?

25 A Yes, sir.

Individual Juror Qualification

1 Q So, therefore, you would want to listen to the
2 evidence, listen to the law, weigh the evidence, and based
3 upon how you determine those things to be, you could find
4 someone not guilty of a crime as charged.

5 Is that true?

6 A Yes, Your Honor.

7 Q And also I assume, if you find the State met its burden
8 of proof and proved someone guilty beyond a reasonable
9 doubt, you would be able to find someone guilty of a crime
10 charged as well.

11 Is that also true?

12 A Yes, sir.

13 Q Now, we're going to talk again specifically about the
14 death penalty. I touched on it just a minute ago. I hope
15 you understand that that's, this is a little bit of an
16 unusual situation because normally in our state, when
17 someone's convicted of a crime, the judge determines the
18 appropriate penalty. The exception to that rule is where
19 the State seeks the death penalty for a murder, and our law
20 then provides for the same jury that hears the main case to
21 hold a separate trial concerning the issue of the penalty to
22 be imposed, and the two choices, again, life imprisonment
23 without parole and the death penalty.

24 Do you understand that?

25 A Yes, sir.

Individual Juror Qualification

1 Q And there would be separate evidence presented during
2 that separate trial.

3 Now, before you came into the room, I provided you with
4 a sheet of paper that described three different jurors and
5 asked you to read that.

6 Did you read over that?

7 A Yes, sir, I did.

8 Q Right now I want you to put yourself theoretically into
9 a situation. Let's say that you were selected as a juror in
10 a case where a defendant is charged with murder, and the
11 defendant, and the State has sought the death penalty. You
12 and your fellow jurors have heard the first part of that
13 case. And based on your views of the evidence, and the law
14 that was charged, you have determined that the defendant was
15 guilty of the offense of murder.

16 Therefore, you now have the duty of coming back and,
17 into the second phase of the trial, the sentencing phase of
18 the trial, and determining the appropriate punishment.

19 Do you understand where I've put you?

20 A Yes, sir.

21 Q All right. Now, on that paper that I gave you, there
22 were three jurors who were described, and I'm gonna go over
23 them again so I'm sure we're on the same page about those.

24 The first type of juror is one who, before that person
25 comes back into the courtroom, already knows how the juror

Individual Juror Qualification

1 is going to vote. That individual has decided to vote for
2 the death penalty because it's that juror's belief that, in
3 every situation where someone is convicted of the crime of
4 murder, the only appropriate penalty is death.

5 The second juror is someone who has also already made
6 up that juror's mind. That person has a belief that the
7 State should never impose the penalty of death for any crime
8 no matter how serious it might be. And so, that individual
9 will always vote for life imprisonment without parole
10 regardless of the, what the evidence might show because
11 that's that individual's belief.

12 The third juror really doesn't know how he or she is
13 going to vote coming back into that courtroom. That juror
14 has not made up that juror's mind as to how they're going to
15 vote. That juror is gonna have to listen to the evidence,
16 wait and see, and see what is presented at that hearing, and
17 take the law and then make a decision as to what the most
18 appropriate punishment might be.

19 Now, do you understand those three types of jurors?

20 A Yes, sir.

21 Q Now, of those three jurors, and I've asked you to put
22 yourself in the position of walking back into the courtroom
23 in those circumstances, which one of them, those three
24 jurors best describes yourself?

25 A Number three, sir.

Individual Juror Qualification

1 Q All right. Now, I take it then that, under the
2 circumstances that I've described where someone's already
3 been found guilty of murder, and the issue of guilt is no
4 longer a concern, that you would be willing to listen to the
5 facts and evidence in the case.

6 Is that true?

7 A Yes, sir.

8 Q And if you found that the evidence justified it, would
9 you be willing to sentence someone to death?

10 A Yes, sir, I would.

11 Q And also, the converse I assume would be true, if you
12 find that the evidence and facts, as presented during the
13 sentencing trial, did not justify the death penalty, that
14 you would be willing to sentence someone then to life
15 imprisonment without parole?

16 A Yes, sir, I would.

17 Q So, depending upon the facts and circumstances you
18 heard in that portion of the trial, you could sentence
19 someone to life imprisonment without parole or you could
20 sentence someone to death?

21 A Yes, sir, I could.

22 Q Now, the last thing I want to go over with you is a
23 more personal question. I told you that, if you were
24 selected in a jury, that you would be sequestered. What
25 that means is the jury would be staying at a local hotel.

Individual Juror Qualification

1 You would take your meals with the jury. You would travel
2 back and forth with the jury. And during that period of
3 time, your contact with the outside world would be limited.
4 You would be limited as to who you could speak to on the
5 telephone, and what information you could get from the media
6 or television, things that you could watch, things of that
7 nature.

8 Do you understand how that would work?

9 A Yes, sir, I do.

10 Q Now, my real question to you, and I realize that that's
11 an inconvenience in anyone's life the, in any stretch of the
12 imagination, but my question to you, if you were placed in
13 that situation, would that pose a serious risk of danger to
14 your health or well being?

15 A No, sir.

16 Q And would that place a serious risk of danger to the
17 health or well being of anyone who is dependent upon you?

18 A No, sir.

19 Q All right. That completes all of the questions I have.
20 I told you I'd let the attorneys follow-up. We allow the
21 defense to go first, and I see Mrs. Hodges is standing. So,
22 she must be going first.

23 Mrs. Hodges.

24 MRS. HODGES: Thank you, Your Honor.

25 EXAMINATION

Individual Juror Qualification

1 BY MRS. HODGES:

2 Q It's Burnett, it's Burnett, is that correct?

3 A Burnett.

4 Q Burnett. Okay. Thank you, Mrs. Burnett. We
5 appreciate your being here and taking time to answer the
6 questions.

7 I had noticed, from your questionnaire, that you have
8 a, an aunt who apparently was the victim of an armed robbery
9 while she was a manager I guess at a, at a hotel?

10 A Yes, ma'am, correct.

11 Q Did that happen here in Spartanburg?

12 A Yes, ma'am, it did.

13 Q How long ago was that?

14 A Oh, my goodness. I was eight or nine---

15 Q Okay.

16 A ---years old.

17 Q Okay. So, I presume at this point that, that case is
18 kind of come to Court and---

19 A They never even found the gentleman.

20 Q Never found him?

21 A Correct.

22 Q Anything in that experience that would affect you in,
23 in, you know, being involved, that, that one of the
24 allegations in this case is an armed robbery?

25 A Being that I was nine years old, and really, you know,

Individual Juror Qualification

1 you get that information from your parents.

2 Q Right.

3 A And you're pretty much left out of the loop and I can
4 not see -- and she's never discussed that with me as an
5 adult or what I would consider, you know, a more mature
6 knowledgeable age.

7 Q Sure.

8 A So, no, it would not.

9 Q And you had served on a jury previously?

10 A Yes, I did.

11 Q And I think you said that was a drug case. The jury
12 simply wasn't able to reach a verdict in that case.

13 A Actually what happened was, is one of the jury members
14 was not honest through the whole process. She knew the
15 person at a level that she was concerned with the well being
16 of her family should she convict him. So, we ended up in a
17 hung jury.

18 Q Got you. Got you.

19 Anything from that experience that would affect you in,
20 in, in, you know, sitting as a juror in this case?

21 A Not at all.

22 Q Okay.

23 A No, ma'am.

24 Q Let me just ask you it -- do you have any views about
25 the death penalty or, or any kind of strong feelings about

Individual Juror Qualification

1 it one way or the other?

2 A No, ma'am, I don't.

3 Q Ever participate in any sort of discussions with
4 family, friends, church members, anybody about it?

5 A No, not really.

6 Q Okay.

7 A Not really.

8 Q In this type of case, obviously, we have a, you know,
9 we never get to the question about the death penalty unless
10 and until we've reached the situation where the jury's
11 actually found somebody guilty of murder. Murder
12 essentially is defined as the willful killing of another
13 human being with malice aforethought.

14 Malice being kind of, you know, have an evil intent,
15 you know, sort of a wicked, depraved heart, you know, and
16 that killing is done unlawfully. Basically that there's no
17 sort of, of evidence, you know, that the jury has heard that
18 rises to the level that would either excuse, you know,
19 excuse or lessen the severity of that killing. It's
20 basically that that person has killed somebody willfully
21 without an excuse and that person's responsible.

22 Okay. Do you understand what I, that's what I'm
23 talking---

24 A Yes, ma'am.

25 Q ---about when we talk about murder?

Individual Juror Qualification

1 For that type of case, when somebody's been found
2 guilty of murder, do you have an opinion as to whether the
3 death penalty is the only appropriate penalty in that type
4 situation?

5 A As I've not heard the case, and like I said, I know
6 nothing---

7 Q Right.

8 A ---about the case.

9 Q Right.

10 A I think that I would have to go solely on what was told
11 and what the circumstances were to really make a decision if
12 that person deserved to die for, for what they did or if
13 there's other issues, mental health issues, that type of
14 thing, to determine if that person needed to be imprisoned.

15 Q Okay.

16 A I just think it would solely depend on the
17 circumstance.

18 Q Okay. So -- and in this type of case, you actually
19 probably, you know, if, if picked as a juror, you know,
20 might consider things that are considered aggravating
21 circumstances, things that make the crime worse than, you
22 know, any, in any other case. You know, any death penalty
23 case the jury's gonna consider, you know, aggravating
24 circumstances, why that particular murder is, you know,
25 worse than others, and, and kind of asking for the death

Individual Juror Qualification

1 penalty as opposed to some other sentence that, you know,
2 would be authorized by law.

3 In addition, there would be mitigating circumstances
4 that can be presented. Things that lessen either the
5 severity of the crime in terms of why the punishment, you
6 know, either in fairness or in mercy, should be something
7 less than the death penalty.

8 From what I'm hearing from you is that you sound like
9 the type of that juror that would listen to both the
10 aggravating circumstances as well as the mitigating
11 circumstances in, in terms of, in forming your decision?

12 A Yes, ma'am, I would try my best to make a decision
13 based on the facts and what was presented in the courtroom.

14 Q Okay. would you be able to, once we got through the
15 first phase, and, and the conviction's been made on the
16 murder case, and when I say that by no means am I conceding
17 that, that, you know, that definitely we're gonna be getting
18 to some other situations. As the judge told you, this is
19 just our only opportunity.

20 But, you know, in the event that there's a second
21 phase, would you be able to kind of come into the courtroom
22 sort of with, with a, you know, a fresh slate, if you will,
23 or a clean mind in terms of, of, you know, obviously you can
24 consider the facts that you've heard previously, but really
25 be able to focus on kind of the second phase of evidence in

Individual Juror Qualification

1 making your decision?

2 A Yes, ma'am, I would say if I'm going to have the death
3 of somebody on my hands, I'm going to make 100 percent sure
4 that that person is guilty and deserves to be punished in
5 that way.

6 Q Okay. All right. Well -- and I, and I appreciate
7 that.

8 You seem to me to be the type of person that would be
9 able to articulate her opinions to the rest of the jurors in
10 the jury room as you're deliberating.

11 Is that---

12 A Not a problem.

13 Q ---a fair representation?

14 A Yes, ma'am, not a problem.

15 Q You also seem to me to be the same type of person that
16 would be able to kind of, you know, even if you were in the
17 minority or the only person who had a particular opinion
18 about a particular sentence, and I'm not saying one way or
19 the other, but just if you had a decision that you think,
20 you know, for whatever reason one particular sentence is
21 more appropriate than the other, that you'd be able to kind
22 of hold fast to that opinion.

23 Is that?

24 A Yes, ma'am.

25 Q Okay. Don't think you would be intimidated or coerced

Individual Juror Qualification

1 or---

2 A No, ma'am.

3 Q Kind of pulled along just to go, to go with the rest of
4 the group?

5 A No, ma'am.

6 Q Okay. I guess you have kind of a, a couple of
7 children. The judge asked you about sequestration.

8 would you be able to -- I mean have adequate
9 arrangements for your kids?

10 A Yes, I have joint custody with my ex-husband and we
11 have already discussed the fact that this might occur.

12 So --.

13 Q And he's local?

14 So---

15 A He is local, yes, ma'am.

16 Q Okay. Great. Great. Thank you, ma'am. Thank you.

17 THE COURT: Mr. Barnette.

18 SOLICITOR BARNETTE: Thank you, Your Honor.

19 May it please the Court?

20 THE COURT: Yes, sir.

21 EXAMINATION

22 BY SOLICITOR BARNETTE:

23 Q Morning, ma'am.

24 A Good morning.

25 Q My name's Barry Barnette. I'm on the prosecution team.

Individual Juror Qualification

1 Trey Gowdy and Cindy Crick will be also representing the
2 State in this case. Again, I appreciate you taking time
3 talking to us, filling out the questionnaire and everything.

4 I hate to ask you. But there's a few questions I need
5 to ask you. So, I hate to ask about that. But I know
6 there's some issues here that we need to ask about.

7 One thing, I noticed that when you was talking to Mrs.
8 Hodges you mentioned mental health as being one of those
9 situations involved.

10 Is there a reason why you mentioned that or anything?

11 A Well, I have a stepfather who is a psychologist and my
12 mother is also an RN in behavioral health here in
13 Spartanburg. And I just know that they, you know, they have
14 been in situations and seen situations that where people are
15 truly under mental duress, if you want to call it that, or
16 they have mental issues that are real. And I know lots of
17 times our society may put forth a mental illness, you know,
18 plea for a convicted murderer or felon, what have you.

19 I believe that sometimes that truly is the case, that
20 these people do have things that are going on that should
21 have been controlled in a different way. I think that I
22 would take that into consideration when, when a verdict, you
23 know, or when I was to choose between the death penalty or
24 life imprisonment. If the facts had been presented to me in
25 a case where I really felt that this person was not in a

Individual Juror Qualification

1 right state of mind when they made a decision to commit a
2 crime, I could definitely say life imprisonment.

3 However, I will say, in stating that, that it would not
4 sway me if I felt, in any way, that the person that they
5 were claiming this was at all that -- it would have to be
6 very factual for me. I mean I would have to have a lot of
7 evidence supporting a mental health issue to make that a
8 consideration.

9 Q Now, if you felt like that it did make a mental health
10 argument or whatever, would you always vote life with,
11 without parole in that situation?

12 A Not necessarily. Once again, I would just have to see
13 what, after you came back, after, you know, after the guilty
14 verdict was, was given and we came back in, I would try to
15 look everything in a prospective of, you know, now this is
16 what we're looking at to decide, you know, life or to decide
17 death. And I would try to really be, you know, honest and,
18 and do the right thing according to the law.

19 Q I know you mentioned your stepfather and that was in
20 the questionnaire that you knew several, I guess, people
21 here in town I guess.

22 What's your -- who would be your stepfather?

23 A Doctor Luther Diehl, and he is a family therapist.

24 Q Okay. And one other thing I wanted to ask you about
25 too was I noticed you put Catholic as your religion.

Individual Juror Qualification

1 Do you know what the position of the Catholic Church is
2 on the death penalty?

3 A I do know what the position is. But I was raised
4 Catholic. I've been baptized Baptist. I've been baptized
5 Methodist. And currently have been residing in no church
6 for probably the past six or seven months.

7 Q So, their position wouldn't have any affect on your
8 position?

9 A Not at all. I usually just write that down because I
10 don't know if I should write Catholic, Baptist, Methodist,
11 you know, but I was actually raised Catholic.

12 Q But you're not in the Catholic Church?

13 A But I am not, I am not a practicing Catholic, no, sir.

14 Q And you realize what, what will happen if we get to the
15 second phase of the trial after y'all find him guilty and
16 everything?

17 There would be aggravating circumstances you'll be
18 hearing about, to make it, heighten the murder charge in
19 that situation. Of course, they may present mitigating
20 factors. I don't know if they will or not, but they can if
21 they want to.

22 And would you weigh those types of factors to determine
23 what your sentence would be in this situation?

24 A Yes, sir.

25 Q And would you take in the State's evidence, what they

Individual Juror Qualification

1 say in that situation, and weigh that in your decision also?

2 A Yes, sir, most definitely.

3 Q And you would hear a different, like I say, evidence
4 from both sides.

5 But you would listen to the State's evidence?

6 A Yes, sir, I would.

7 Q If there was a mental health issue, would that be the
8 only issue you would be looking at?

9 A No, sir, and I'm not -- when making a decision, I guess
10 I should also state I don't have an emotional aspect in it
11 one way or the other. You know, as a juror, I think you're
12 brought forth to make a decision based on what the facts and
13 evidence are, and, you know, what you find to be relevant
14 and true about those facts.

15 So, I do not personally have, having no emotional
16 involvement, knowing nothing about this case beforehand at
17 all, never heard the gentleman's name, the defendant's name
18 until I was in court on Monday, you know, I have no opinion
19 going forward. I would try to solely base it upon the facts
20 presented in the case. I mean it wouldn't be anything of an
21 emotional nature whatsoever on my part.

22 Q Yes, ma'am.

23 I notice one other thing you said. You said you would
24 have to be a hundred percent sure before you'd give the
25 death penalty.

Individual Juror Qualification

1 Do you realize the judge will charge you -- of course,
2 death -- you never have to give death in these type cases.
3 Life without parole will always be an option. But if --
4 they talk about in terms of beyond a reasonable doubt, and,
5 of course, beyond a reasonable doubt is not a hundred
6 percent obviously. That is the standard you have to look at
7 and the judge will explain that to you in more detail if we
8 get to that point. But it's never gonna be perhaps a
9 hundred percent.

10 Do you think if it wasn't proven to a hundred percent
11 that you could give the death penalty?

12 A Yes, I guess when I said that, I'm meaning to the fact
13 that I would have to be, as a juror, number one, through the
14 beginning phase, the first phase, before I even passed on a
15 guilty sentence, I would have to know within myself that I
16 was sure that he was guilty or innocent beyond a reasonable
17 doubt. So, when I'm saying that, I'm saying that in the
18 sense that I would have to know for myself. Not what
19 anybody else said on the jury panel. But what I felt I
20 should vote, you know, guilt or innocence and then make a
21 decision as to what that punishment should be.

22 Q So, you'd have to be firmly convinced in your mind?

23 A In my mind.

24 SOLICITOR BARNETTE: Okay. One second, Your Honor,
25 please.

Individual Juror Qualification

1 THE COURT: Yes, sir.

2 (Pause.)

3 Q Ma'am, thank you for answering and I'm sorry about
4 asking you such personal questions.

5 A That's -- no, that's fine.

6 THE COURT: Anything further from the defense?

7 MRS. HODGES: No, sir. Thank you.

8 THE COURT: Mrs. Burnett, let me -- Burnett?

9 WITNESS: Burnett.

10 THE COURT: Okay. It's Burnett. Let me get something,
11 go over some things with you. We are still in the process
12 of qualifying the jury panel. Obviously, if we call you to
13 come back to the courthouse, that will be for the jury
14 selection. They will still be some people who will not be
15 selected from that group. But there will be some selected
16 and those who are selected would go directly into
17 sequestration.

18 So, if you're called to come back to the courthouse for
19 jury selection, be prepared to stay for about five to seven
20 days. That's what we're estimating. So, bring whatever you
21 need for that purpose with you.

22 Do you understand that, ma'am?

23 WITNESS: Yes, ma'am.

24 THE COURT: The contact information we have concerning
25 you, is it correct?

Individual Juror Qualification

1 WITNESS: Yes, sir, it is.

2 THE COURT: It does not need to be updated since you
3 submitted it?

4 WITNESS: No, sir.

5 THE COURT: Okay. Thank you very much for your
6 cooperation and your willingness to serve and you're free to
7 go at this time.

8 WITNESS: Thank you.

9 (The following takes place outside the presence of the
10 jury.)

11 THE COURT: State's position?

12 SOLICITOR GOWDY: State believes she's qualified.

13 THE COURT: Defense?

14 MRS. HODGES: Your Honor, we have no additional
15 objections subject to our previous motions.

16 THE COURT: I find that she is very qualified and so,
17 I'm going to list her as such.

18 Our next juror to be considered is Number 71, Hillary
19 Crowe.

20 HILLARY CROWE, having been previously
21 sworn, testified as follows:

22 EXAMINATION

23 BY THE COURT:

24 Q Good morning still.

25 A Good morning.

Individual Juror Qualification

1 Q Just barely morning.

2 All right. Your name is Hillary Crowe, is that right,
3 ma'am?

4 A Yes, sir.

5 Q Mrs. Crowe, I want to thank you, first of all, for your
6 patience. I, I told you, when we began, that the Court
7 system works fairly slowly and it does. But we are, we're
8 slowly getting through this process, and in -- this is the
9 opportunity we have to talk with you about a few things
10 personally.

11 First of all, I want to let you know that what we're
12 going to be talking about will be questions about your
13 beliefs and your positions and opinions on certain things.
14 For that reason, there are no right answers and there are no
15 wrong answers to what we're asking you. We're simply trying
16 to find out a little more about you, and your position on
17 certain things, gathering information so that we can make
18 good decisions in striking a jury when the time comes.

19 Do you understand that, ma'am?

20 A Yes, sir.

21 Q And for that reason, I realize that where you're
22 sitting is not where you're use to being, in a courtroom
23 with lawyers all around, and a microphone in front of you,
24 and somebody writing down everything that's said. But I
25 want you to feel as comfortable as you can because, again,

Individual Juror Qualification

1 we're really wanting to find out a little bit about you,
2 and, and you feel -- you just need to respond. Again, no
3 right answers. No wrong answers.

4 Now, you -- if, at any time, you feel uncomfortable
5 during that process about what's going on, let me know and
6 I'll be glad to try to take care of that for you.

7 A All right.

8 Q I'm gonna ask you some questions. The attorneys will
9 be allowed to follow-up on those questions.

10 okay?

11 A All right.

12 Q First thing I want to ask you is -- well, let me remind
13 you, you were placed under oath on Monday to tell me the
14 truth, and you're still under oath now.

15 Do you understand that, ma'am?

16 A Yes, sir.

17 Q Okay. Now, we talked earlier on, on Monday about the
18 case.

19 But since that time, has anybody contacted -- have you
20 heard anything, have you read anything, or gained any
21 information that may have caused you to form any opinions
22 about the case?

23 A No, sir.

24 Q Have you ever participated in any Internet site or blog
25 that had to do with, with any issues concerning the death

Individual Juror Qualification

1 penalty?

2 A No, sir.

3 Q Have you ever participated in any political activities
4 such as demonstrations, rallies, or meetings at which the
5 death penalty was an issue that was discussed?

6 A No, sir.

7 Q Now, while you were waiting we gave you a list of
8 potential witnesses.

9 Did you see that list?

10 A Yes, sir.

11 Q Did you have a chance to look at it?

12 A Yes, sir.

13 Q Now, ma'am, I don't want you to name anyone's name off
14 that list in court. What I do want to ask you though, some
15 general information.

16 First of all, do you have any social, business, or
17 personal connections with any of the individuals who were
18 listed as potential witnesses?

19 A No, sir.

20 Q Have you or have you ever been related by blood or
21 marriage to anyone who was listed on the list?

22 A No, sir.

23 Q So, as far as you know, you have no connections with
24 the potential witnesses in this case.

25 Is that true?

Individual Juror Qualification

1 A That's correct.

2 Q I'm going to ask you some questions about your
3 positions, more personal questions, and we will eventually
4 get to the point where we're gonna discuss the death penalty
5 because that's an issue that's involved in this case.

6 Now, again, we're not trying to invade your privacy and
7 based on my initial questions I think you're somebody who's
8 not going to feel threatened by me asking you about your
9 opinions.

10 A No, sir.

11 Q Is that true?

12 A No, sir.

13 Q Okay. Now, I want to remind you that I've already
14 discussed that we're gonna divide -- this case, this case is
15 divided into two phases. That's what we'll call it. The
16 first phase is where the charges will be considered, and the
17 issue of guilt or innocence on those charges will be
18 determined.

19 One of those charges is for murder. For that murder,
20 the State is seeking the death penalty. And in situations
21 where the State seeks the death penalty, if the defendant is
22 found guilty of the murder, and only if that happens, we go
23 on to a second phase of the trial, which is the sentencing
24 phase of that at which time the jury determines what the
25 appropriate sentence is, either life imprisonment without

Individual Juror Qualification

1 parole or death.

2 Do understand what we're doing?

3 A Yes, sir.

4 Q We're going to be asking you some questions about the
5 death penalty and perhaps we're putting the cart in front of
6 the horse because we haven't gotten to that point yet.

7 A Right.

8 Q But the same jury considers both sides of the case.
9 So, this is the only chance we'll have to talk to you about
10 that penalty phase even though we may not get there. That's
11 before the jury's selected.

12 Do you understand what I'm saying?

13 A Yes, sir.

14 Q And for that reason, you shouldn't feel any less about
15 the defendant or his defenses that he has to the charges.
16 This is simply the only time we can talk about this. So,
17 we're gonna do it at this time.

18 Okay?

19 A All right.

20 Q Now, first of all, I'm gonna ask you about your views
21 concerning the law.

22 In a case, the judge will instruct you, at some point
23 in time, concerning the law to be applied to the facts.

24 Would you be willing to listen to a judge's
25 instructions on the law?

Individual Juror Qualification

1 A Yes, sir.

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 of the case as
4 you find them to be?

5 A Yes, I would.

6 Q Now, is that still true even if, when you hear the
7 judge charge you on the law, you don't like the law that he
8 tells you or you disagree with the law, would you still be
9 willing to accept the law as charged and apply it to the
10 facts?

11 A Yes, I would.

12 Q All right. Now, there's been a little bit of pretrial
13 publicity about this case, and I want to ask you, first of
14 all, have you heard or seen or read anything about this case
15 in the media?

16 A No, I haven't.

17 Q All right. Well, I'm still gonna ask you though.

18 If you, if you were selected to serve on a jury, in
19 particular in this case, are you the kind of person who
20 could put aside anything you heard outside of the courtroom
21 about this case, either before or during the, the trial, and
22 decide the case purely upon the evidence presented during
23 the trial and the law as charged to you during the trial?

24 A Yes, I could.

25 Q Now, two concepts I talked to you about on Monday and

Individual Juror Qualification

1 I'm gonna remind you of these and be sure we have an
2 understanding.

3 First of all, in every criminal case, no matter what
4 the seriousness of the crime, a defendant in this state and
5 in this nation is always presumed to be innocent, and,
6 therefore, the defendant has no burden at all to prove
7 anything in any criminal case.

8 Do you understand that?

9 A Yes, I do.

10 Q Also, in this state and in this, in our nation, the
11 State always has the burden of proving the defendant guilty
12 beyond a reasonable doubt of each crime that's been charged.

13 Do you understand that concept?

14 A Yes, sir.

15 Q And would you be willing and are you able to apply
16 those concepts to this case if you were selected?

17 A Yes, sir.

18 Q Now, do you believe that just because someone has been
19 arrested, accused of a crime, even indicted by the Grand
20 Jury, that they must automatically be guilty of that crime?

21 A No, I don't.

22 Q So, therefore, if you were sitting as a juror in a
23 criminal case, and you heard the evidence and were given the
24 law, and based on how you find those things to be, you could
25 find someone not guilty of the crime.

Individual Juror Qualification

1 Is that true?

2 A Yes, sir.

3 Q By the same token, if you found that the State proved
4 the crime to your satisfaction beyond a reasonable doubt,
5 could you find or return a verdict of guilty against another
6 person?

7 A Yes, sir.

8 Q So, I take it then that, that I could describe you as
9 someone who would listen to the evidence, and based upon the
10 strength of the evidence and the testimony and the evidence
11 shown to you, and the law as charged by the judge, you could
12 either find a person guilty or not guilty?

13 A Yes, sir.

14 Q Now, we're going to talk again about the death penalty
15 a little bit, and I, again, I want to reiterate that when we
16 get to that second phase of the trial now, we will already
17 have a determination on the charge of murder, if we get
18 there, that the defendant would be guilty. And so,
19 therefore, that issue would be taken care of and would no
20 longer be an issue in the case.

21 Do you understand that?

22 A Yes, sir.

23 Q And that the jury would be asked to come back in that
24 second sentencing phase of the trial and hear additional
25 evidence, perhaps from new witnesses concerning that issue,

Individual Juror Qualification

1 what is the appropriate penalty, and, again, the only two
2 choices are death or life imprisonment without parole.

3 Do you understand how that works?

4 A Yes, sir.

5 Q And the same jury will hear both cases.

6 A Right.

7 Q Now, I want to, want you to, for a moment, put yourself
8 theoretically in someone's position. Let's say that you are
9 a juror whose been selected in a murder case. The State is
10 seeking the death penalty in that case. You and your fellow
11 jurors have heard all the evidence, heard all the arguments,
12 the charge on the law, and you have found the defendant
13 guilty of the murder. So, that issue's been placed behind
14 you.

15 Now, you and your fellow jurors are outside the
16 courtroom and getting ready to walk in---

17 A Uh-huh. (Affirmative).

18 Q ---to begin the sentencing phase of the trial.

19 Do you understand the position I've put you in?

20 A Right.

21 Q Now, when you're outside the courtroom I gave you a
22 piece of paper that had three different types of jurors.

23 Do you remember the piece of paper I had you read?

24 A Sure do.

25 Q And did you read it?

Individual Juror Qualification

1 A I sure did.

2 Q Okay. I want to go over those, those three
3 possibilities again to be sure we have an understanding of
4 what we're talking about.

5 A All right.

6 Q The first type of juror I described on that piece of
7 paper is somebody, when they walk back into that room, is
8 already made up their mind. That's somebody who believes
9 that once someone is convicted of a murder, that no matter
10 what the situation is, the only appropriate penalty is death
11 and that person will vote for death on every occasion and
12 will vote for death on that occasion.

13 The second type of juror is another juror who believes
14 that the State never has the right to take someone's life in
15 punishment for a crime. And so, that juror also has already
16 made up his or her mind. That juror has decided that they
17 will always vote for life imprisonment regardless of the
18 circumstances of the situation because that's the only
19 appropriate punishment.

20 The third juror is someone who is walking into that
21 courtroom and they really haven't made up their mind one way
22 or the other. That juror does not know yet how that juror
23 is going to vote. That juror will have to wait, listen to
24 the evidence presented during that period of the, of trial,
25 and then make a decision, based upon that evidence and how

Individual Juror Qualification

1 they view the evidence, as to what the appropriate penalty
2 is.

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

5 A Yes, sir.

6 Q Now, of those three types of jurors, which one most
7 closely would be the same as your feelings as you walked
8 into that courtroom?

9 A It would be the third.

10 Q All right. So, I take it, ma'am, that, keeping in mind
11 the circumstances that I just described where someone's been
12 found guilty of a murder, and that issue's no longer in
13 front of you, you would be willing to listen to the facts
14 and evidence of the case.

15 Is that true?

16 A Yes, sir.

17 Q And if you find that the evidence justified it, you
18 would be willing and able, if it was justified, to sentence
19 someone to death?

20 A Yes, sir.

21 Q And, however, if you found that the evidence presented
22 during that phase of the trial did not justify the death
23 penalty, you would also be willing to sentence someone to
24 life in prison without parole.

25 Is that true?

Individual Juror Qualification

1 A Yes, sir.

2 Q So, depending upon the facts and circumstances heard in
3 the final portion of the trial, you would make a decision as
4 to what would be the most appropriate penalty.

5 Is that also true?

6 A Yes, sir.

7 Q Now, ma'am, final thing I want to talk to you about.

8 I've told you that if you were selected to serve on
9 the, the jury you would be sequestered, and what that means
10 is that you would be spending the nights in the hotel here
11 with some people who would be watching over you. You would
12 have your meals with the jury. You'd be transported back
13 and forth to the courthouse with the jury. You'd have
14 limited contact with people on the outside, and we would
15 limit your access to television and other media outlets.

16 Do you understand that, ma'am?

17 A Yes, sir.

18 Q Now, ma'am, I understand that's an inconvenience to
19 anybody. Don't get me wrong. I know that's not, not what
20 most people would like to be doing.

21 But my real question to you is if you were in that
22 situation, then would that pose a serious risk of any type
23 of physical harm or harm to your well being?

24 A No, it wouldn't.

25 Q And the -- if you were in that situation, would it pose

Individual Juror Qualification

1 any serious harm to your health or your well being, risk of
2 serious harm to your health or well being of anyone who's
3 dependent upon you?

4 A No, it wouldn't.

5 Q All right. Now's the time I'm going to let the
6 attorneys ask some follow-up questions.

7 okay?

8 A All right.

9 THE COURT: Defense goes first and I see Mr. Allen
10 standing.

11 You may proceed, Mr. Allen.

12 MR. ALLEN: Thank you, Your Honor.

13 EXAMINATION

14 BY MR. ALLEN:

15 Q Mrs. Crowe, I'm Clay Allen as we said---

16 A Good morning.

17 Q ---earlier.

18 A Afternoon.

19 Q Good afternoon. That's right. It is afternoon.

20 And I, along with John Reckenbeil, Kathy Hodges, are
21 representing Tony Torres in this case. I appreciate your
22 being here these last several days, and I also appreciate
23 your willingness to answer our questions and also fill out
24 the questionnaire.

25 I noticed in your questionnaire that you've indicated

Individual Juror Qualification

1 that I think that you, you or your family had been the
2 victim of a burglary?

3 A Yes, sir.

4 Q Was that here -- that was here in Spartanburg County?

5 A Spartanburg County, yeah.

6 Q How long ago was that?

7 A Roughly about ten years ago.

8 Q About ten years ago.

9 Was someone arrested or charged with that case?

10 A No, sir, they weren't.

11 Q Never caught?

12 A Never caught.

13 Q Okay. And also noticed that you even have had some
14 sort of contact with the Public Defender's Office.

15 What was that?

16 A Yeah, through my, my son, yeah.

17 Q Okay.

18 A And that's a year or two ago.

19 Q A year or two ago.

20 So, the Public Defender's Office represented your son?

21 A Yes, they did.

22 Q And I'm not sure which, which lawyer. I can't remember
23 her name.

24 Q Okay. But you think that -- you said her name. So, it
25 must of been---

Individual Juror Qualification

1 A It was a lady, yeah.

2 Q ---woman attorney?

3 Okay. Anything about either of these two experiences,
4 the burglary or the representation by the Public Defender's
5 office of your son---

6 A Uh-huh. (Affirmative).

7 Q ---that affects you today as a juror?

8 A No, sir.

9 Q You can be fair, and, of course, impartial to both the
10 defense and the State even though you've had these
11 experiences?

12 A Yes, sir.

13 Q Okay. Very good.

14 Now, I want to also talk to you a little bit about the
15 penalty portion. And as His Honor has said, this is our
16 only chance to ask you questions. So, we must talk about
17 the penalty portion even though obviously we haven't reached
18 that portion yet.

19 But again, what I want to know is what are your general
20 views of the death penalty?

21 A My views would be that, you know, you, you can listen
22 to the, the radio, and the TV, and this and that. But you
23 really, you know, these days you don't know whether they're
24 telling you the truth or not. I would want to listen to the
25 evidence. You know, if the evidence pointed to the fact

Individual Juror Qualification

1 that someone had, you know, taken someone's life and the
2 death penalty was on the table, I could do that. whereas
3 the evidence showed that they, you know, weren't part of
4 that or didn't do that, you know, I wouldn't have a problem,
5 you know, not voting for it.

6 Q Okay. When you say that they weren't a part of, of
7 that, I mean what, what do you mean?

8 A That they didn't commit the crime.

9 Q That they didn't commit the crime.

10 A The evidence showed that they didn't or preponderance
11 of the evidence showed they didn't, you know, I wouldn't
12 have a problem with voting for or against.

13 Q Okay. When we talk -- well, let me ask you, again,
14 take you to the point that if you were a juror in connection
15 with this case and you listened to the evidence during this
16 first phase of the trial, and you and the other 11 jurors
17 decided that the, that the individual is guilty of murder
18 and that means that someone has willfully killed another
19 person with malice aforethought. And that part of that
20 decision that you and the other 11 jurors were taking part
21 in means that there was no defense to it.

22 In other words, that you're satisfied, beyond a
23 reasonable doubt, that the individual committed the crime of
24 murder, responsible for it, and that has no defense to it,
25 no legal justification, or that there's no question but that

Individual Juror Qualification

1 that person did it.

2 My question is, at, at that point, do you feel as if
3 the death penalty is the only appropriate punishment for
4 such a guilty murder?

5 A To me, not necessarily, no.

6 Q Okay.

7 A I would maybe want to know the, the situation
8 surrounding the events that happened, what was in his mind,
9 what he was thinking. You know, the, the whole situation.

10 Q Okay. So -- and you would not -- let me make sure I've
11 got this right.

12 That even if you find or that you and the jury find
13 that someone commits the crime of murder, you do not think
14 that the death penalty is the only appropriate punishment as
15 to---

16 A I do not think it's the only appropriate punishment.

17 Q Okay. And you would be open to other forms of or the
18 other form of punishment depending upon the facts and
19 circumstances---

20 A Correct.

21 Q ---of the whole case, correct?

22 A Correct.

23 Q Now, what are your feelings about life imprisonment
24 without the possibility of parole as an appropriate
25 punishment for murder?

Individual Juror Qualification

1 A I feel that's an appropriate, appropriate punishment
2 also.

3 Q In a case that's put up for consideration for the death
4 penalty, the State, in the second phase, by this I mean
5 after a jury has returned a verdict of guilty for murder,
6 has the opportunity to present evidence of what we call
7 aggravation. That means evidence tending to show that the
8 offense is more serious than we might say other cases
9 involving murder, and that also there would, that there
10 could be evidence in mitigation.

11 Do you know what I mean by mitigation evidence?

12 A I think I do. But if you'll tell me.

13 Q Okay. Mitigation is different than evidence of a
14 defense. Defense means it's evidence could, that would
15 indicate that an individual is not guilty of an offense or
16 of murder. In other words, it rises to the level of a
17 defense meaning he's not guilty.

18 But that's not -- that won't be the issue in the second
19 phase because the jury's already made that determination
20 that the individual is guilty of murder.

21 A Uh-huh. (Affirmative).

22 Q In the second phase, the mitigation evidence is any
23 evidence that, which in fairness or in mercy, tends to show
24 that the appropriate punishment is something other than the
25 death penalty.

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q It can be any number of, of things, which, to each
3 juror's satisfaction, is enough to show that juror that the
4 death penalty is not appropriate for that particular case.

5 You follow what I'm saying?

6 A Yes, sir.

7 Q And my question is, would, are you open to considering
8 not only matters in aggravation, but also matters in
9 mitigation?

10 A Yes, sir.

11 Q Okay. And you will not make up your mind about the
12 appropriate punishment until you've heard all these matters?

13 A Yes, sir.

14 Q Okay. Of course, including what you've already heard
15 and what you would of already heard in the first phase that
16 caused the jury to come to that conclusion of guilty of
17 murder as well, right?

18 A Yeah. Correct.

19 Q Have you had your opinion concerning the death penalty
20 and life imprisonment for a while?

21 A A while, yeah.

22 Q I mean a long time or can you quantify it in any sort
23 of way?

24 A As I said before, I'm not for the death penalty. I'm
25 not for. I would want to, you know, listen to the case, all

Individual Juror Qualification

1 the circumstances surrounding it, and then I would form an
2 opinion be it on a case by case basis. You know, I don't
3 have an opinion for or an opinion against.

4 Q Okay. So, you don't come in with the other---

5 A With my mind already formed, my opinion already formed,
6 no, sir.

7 Q Thank you very much. We appreciate that.

8 I guess what -- I want to know about your opinion. Of
9 course, you know, other people's may be different than
10 yours.

11 A Uh-huh. (Affirmative).

12 Q You understand?

13 I mean -- and, of course, if you're in a situation
14 where you have an opinion say, an opinion as to what you
15 believe is the appropriate punishment, and others do not
16 share that opinion, how likely are you, are you to change
17 your opinion just to go along with the others?

18 A I would stick to my opinion.

19 Q Okay.

20 A My opinion is my opinion, you know.

21 Q And of course, you would respect the opinion of others
22 as well?

23 A Exactly, yeah.

24 Q Just as you would want your opinion respected?

25 A (Witness nods affirmatively.)

Individual Juror Qualification

1 Q Okay. Thank you very much.

2 A You're welcome.

3 SOLICITOR BARNETTE: May it please the Court, Your
4 Honor?

5 THE COURT: Mr. Barnette.

6 EXAMINATION

7 BY SOLICITOR BARNETTE:

8 Q Afternoon, Mrs. Crowe.

9 A Good afternoon.

10 Q I'm Barry Barnette. Along with myself, and Trey Gowdy,
11 and Cindy Crick will be representing the prosecutor in this
12 case.

13 A All right.

14 Q Just a couple questions I wanted to ask you. I hate to
15 ask you these personal questions. But I just need to know
16 how you feel.

17 A That's all right.

18 Q Do you know if -- your daughter's case I assume was
19 prosecuted by our office?

20 A Which case?

21 Q I'm sorry.

22 A No, my son.

23 Q Oh, your son. I'm sorry.

24 A My son, yeah.

25 Q I thought daughter.

Individual Juror Qualification

1 But your son's case was prosecuted by our office?

2 A Right.

3 Q What was he charged with?

4 A I guess.

5 Q What was he charged with?

6 A Burglary.

7 Q Burglary?

8 A Yeah.

9 Q Was that case brought into -- has it been, has it been
10 tried yet?

11 A It's been tried and over, yes.

12 Q Okay. And during that process, did you feel like the
13 prosecutors treated you well in that situation or was fair?

14 A Yes, sir, I mainly dealt with I guess it was the
15 Department of Juvenile Justice. I don't really ever
16 remember dealing with the -- I just -- that would -- I think
17 it was the older lady down there.

18 Q Okay. So, it's a juvenile case?

19 A Yes.

20 Q It wasn't, it wasn't---

21 A No, sir. Right.

22 Q I apologize. I misunderstood from there.

23 A That's all right.

24 Q So, really you dealt more with DJJ---

25 A Right.

Individual Juror Qualification

1 Q ---than us---

2 A Right.

3 Q ---in that situation?

4 A Yes, sir.

5 Q Did you think it was a fair resolution in the case?

6 A Yes, sir.

7 Q And the -- who was the agency that was involved with
8 that?

9 was it the police department or Sheriff's Department?

10 Do you know?

11 A Spartanburg Sheriff's Department, yeah.

12 Q Do you feel like they treated you fair in that
13 situation also?

14 A Yes, I did.

15 Q Looking back, and I know, I know Mr. Allen asked you
16 several questions and everything about your views on the
17 death penalty, and how you feel about the death penalty and
18 everything, and you mentioned that, at one point, the
19 situations you were looking for.

20 A Right.

21 Q What kind of situations are you looking for from that
22 standpoint?

23 A Well, what I was talking about is, is, as to my opinion
24 on whether I would fight for the death penalty or not, I
25 would want to listen to all the evidence, the, the -- you

Individual Juror Qualification

1 know, when it comes down to the death penalty phase, the
2 situation surrounding, you know, the crime, the, the, maybe
3 what he was thinking, he or she were thinking, what was
4 going through their mind, what was in their lives at the
5 time, you know, any kind of circumstances like that.

6 Q So, you would want to listen to -- I guess you'd put,
7 go through the first phase and then the second phase you'd
8 listen to those situations that was, that you'd be looking
9 for?

10 A Yeah, I guess.

11 Q Is there any situation you're looking for specifically
12 to tilt you one way or the other?

13 A No, sir, I would just listen to everything---

14 Q And you realize---

15 A ---and then form an opinion.

16 Q And you realize death is an option, but you don't --
17 the law will not tell you that you have to give death.

18 A Okay.

19 Q Life without parole will always be an option for you---

20 A Right.

21 Q ---there?

22 Knowing that, would you be able to vote for the death
23 penalty in certain circumstances, situations?

24 A Yeah.

25 Q Okay.

Individual Juror Qualification

1 A Yes, sir.

2 Q And after listening to obviously the State's case, the
3 defense case, going through sentencing where you would
4 hear -- like I said, we have aggravating circumstances,
5 situations---

6 A Uh-huh. (Affirmative).

7 Q ---situations where we try to heighten the murder to
8 the level of death penalty. And, of course, they have
9 mitigating factors. I don't know what those are. I don't
10 know if they'll even have any. They'll try to do that to
11 lessen---

12 A Right.

13 Q ---what should be there.

14 If the State proved those aggravating circumstances to
15 your satisfaction, beyond a reasonable doubt, and like I
16 said, the judge will give you the definitions and
17 everything, could you vote death?

18 A Yes, I could.

19 Q And that -- let's say, for example, 11 jurors have
20 signed what we call the death warrant, the death sentence
21 back there where every juror will sign that, and you're the
22 12th juror, and you know your signature is gonna be the one
23 that, that finds, that seals the verdict, could you sign it?

24 A If I was for it or against it?

25 Q For it. Well, either way, either way.

Individual Juror Qualification

1 But in the death penalty, if 11, the other 11 had
2 voted---

3 A If it came down to me to be the deciding factor?

4 Q Yes, ma'am, you---

5 A Yes, I could.

6 Q You knew, you knew you were the 12th -- you were gonna
7 be the last signature on that piece of paper, could you do
8 that?

9 A Yes, I could.

10 Q All right. Thank you, ma'am, for your time.
11 Appreciate it.

12 A Thank you.

13 THE COURT: Any follow-up from the defense?

14 MR. ALLEN: No, thank you.

15 THE COURT: All right. Mrs. Crowe, I want to thank you
16 very much for your answers, your cooperation. Let me just
17 go over a couple of things with you.

18 We're still going through qualification of the jury,
19 and at some point in time in the not too distant future
20 we're going to be selecting the jury.

21 WITNESS: Yes, sir.

22 THE COURT: If you're called back for that, the
23 process, I will tell you now you should come prepared to
24 stay for a week. Bring with you whatever you need to bring
25 with you because once the jury's selected we'll start right

Individual Juror Qualification

1 into the trial of the case. And so, be prepared for that if
2 you come back.

3 Now, the contact information you provided to us, is it
4 correct?

5 WITNESS: I think so. I'm not quite sure which numbers
6 I put down.

7 THE COURT: Well, I'm gonna ask you to step over and
8 see this young lady here and she'll go over that information
9 with you---

10 WITNESS: Okay.

11 THE COURT: ---to be sure that we have everything that
12 we need. The final thing, my instructions concerning not
13 talking to anyone about the case, not viewing any outside
14 information, any media reports continue until such time as
15 we tell you they've ended.

16 Okay.

17 WITNESS: Okay.

18 THE COURT: Thank you, ma'am. You can step over and
19 check your information.

20 (Pause.)

21 THE COURT: Thank you, ma'am.

22 WITNESS: Thank you.

23 (The following takes place outside the presence of the
24 juror.)

25 THE COURT: Okay. State's position regarding this

Individual Juror Qualification

1 juror?

2 SOLICITOR GOWDY: State believes she's qualified, Your
3 Honor.

4 THE COURT: Defense?

5 MR. ALLEN: Subject to the earlier objections, no other
6 objections.

7 THE COURT: All right. I find that she's qualified and
8 she'll be placed on the list.

9 Mr. Bailiff, if you'll approach just a second.

10 BAILIFF: Yes, sir.

11 THE COURT: Excuse me.

12 SOLICITOR GOWDY: I just wondered if Mr. Allen and I
13 could approach for just one, one minute.

14 THE COURT: All right. Come up.

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

16 THE COURT: All right. The next gentleman will be
17 Number 77, George Denny.

18 GEORGE DENNY, having been previously
19 sworn, testified as follows:

20 EXAMINATION

21 BY THE COURT:

22 Q Good afternoon, sir.

23 A Good afternoon.

24 Q Your name is George Denny, is that right?

25 A Yes, sir, but I prefer to go by Tom.

Individual Juror Qualification

1 Q All right. Well, that's okay. But I'm gonna call you
2 Mr. Denny. That way we won't have that problem.

3 okay?

4 A (Witness nods affirmatively.)

5 Q Mr. Denny, first of all, I want to thank you for your
6 patience. I understand that this has been somewhat of a
7 trying situation, but that happens sometimes in court, and
8 we do appreciate your willingness to come forward and serve
9 and today to meet with us and talk with us further about
10 jury, jury service.

11 I want to tell you that, and remind you, that you were
12 placed under oath to respond truthfully to my questions
13 then. That oath still applies today?

14 Do you realize that, sir?

15 A Yes, sir.

16 Q Okay. I just have to get that on the record.

17 Now, also, sir, we're going to go over some matters
18 with you that have to do with your opinions and beliefs
19 concerning this case. I will tell you now that I'm going to
20 ask the initial questions. Then I'll allow the attorneys to
21 follow-up on the questions that I've asked.

22 Do you understand that, sir?

23 A Yes, sir.

24 Q Also, sir, I will tell you that there are no right or
25 wrong answers today. We, we're basically trying to get your

Individual Juror Qualification

1 opinions and beliefs on certain things so that we can make
2 good decisions when we select a jury at a later time.

3 So, I hope you don't feel intimidated, in any way, by
4 sitting in a witness stand and being surrounded by judges
5 and lawyers and court reporters and things like that. And
6 you're be -- if you have any problems in that regard, let me
7 know and I'll be try, try to alleviate that situation if at
8 all possible.

9 The first question I have for you, since we talked on
10 Monday, has anyone talked to you or contacted you about the
11 case or have you read, seen, or watched anything that might
12 cause you to begin to form an opinion about the case?

13 A No, sir.

14 Q Have you ever participated in any websites or blogs or
15 anything of that nature that has to do with the imposition
16 of the death penalty?

17 A No, sir.

18 Q Have you ever participated in any demonstrations or
19 other political events, rallies, meetings, where the death
20 penalty was an issue that was discussed?

21 A No, sir.

22 Q Now, while you were waiting I gave you the opportunity
23 to look over a list of potential witnesses.

24 Did you do that?

25 A Yes, sir.

Individual Juror Qualification

1 Q And I'm gonna ask you some questions about that, but I
2 don't want you to identify anyone by name off of that list.

3 Okay, sir?

4 A (Witness nods affirmatively.)

5 Q The first thing I'm gonna, going to ask you, after
6 reading the list, do you believe that you have any social,
7 business, or personal connections with anyone listed on the
8 list?

9 A No, sir.

10 Q Do you believe that you are related, either by blood or
11 marriage or former marriage, to anyone who might be listed
12 on that list?

13 A No, sir.

14 Q So, as far as you know, you have no connections with
15 the individuals listed as potential witnesses, is that
16 correct?

17 A Not that I'm aware of.

18 Q Okay. Now, I'm going to begin to ask you some
19 questions now about your personal beliefs and opinions. So
20 far it does appear you're not a person who's threatened by
21 this process, and you'll be able to express those opinions.
22 One of the things that I will eventually get to is the death
23 penalty because that is a potential issue in this case.

24 I explained earlier on Monday about the fact that where
25 the, a person is charged with murder and for that murder the

Individual Juror Qualification

1 State seeks the death penalty, the case can be divided into
2 two phases. The first phase would deal with the guilt or
3 innocence of the initial charge. The second phase for the
4 murder would involve, if the defendant and only if the
5 defendant were found guilty at that stage of that murder,
6 would we go on to the sentencing phase where the issue then
7 would become the imposition of the appropriate penalty. The
8 choices being to, for the jury, either life imprisonment
9 without parole or the death penalty.

10 Do you understand that process?

11 A Yes, sir.

12 Q And I'll make -- I'll point out to you that the same
13 jury that hears the first part of the case hears the second
14 part of the case. I'm telling you all this because we're
15 kind of putting the cart before the horse by discussing
16 penalties before we've even gotten to that point because
17 normally penalties are decided by judges in most cases. The
18 only exception is where we have a murder and the seeks, the
19 State seeks the death penalty, then the jury makes that
20 determination if it becomes necessary.

21 I'm telling you all this because it's unusual to
22 discuss penalties before guilt and innocence is ever been
23 determined, and I'm going to ask you not to hold any of our
24 discussions against a, the defendant or any defenses he
25 might raise. This is simply the only time that we can

Individual Juror Qualification

1 discuss this because, once you're selected and the trial
2 starts, we can't discuss those things at that point in time.

3 Do you realize what I'm saying?

4 A Yes, sir.

5 Q Okay, sir. Now, the first issue I'm going to talk
6 about, as far as your opinions are concerned, has to do with
7 the application of the law.

8 During the trial, the judge will instruct the jury
9 concerning the law to be applied, and if you were a juror in
10 that situation, would you be willing to listen to the
11 judge's instructions on the law?

12 A Yes, sir.

13 Q And would you be willing to accept the law as
14 instructed and apply it to the facts as you find them to be?

15 A Yes, sir.

16 Q Now, is that true even if, when you hear the judge
17 instruct the law, you might disagree with what the law says
18 or you might not like what the law says, would you still be
19 willing to accept the law as charged and apply it to the
20 facts as you find them to be?

21 A Yes, sir.

22 Q All right. Now, also, in this case, there has been
23 some mention of this case in our media, and have you been
24 exposed to any of that?

25 Have you seen or read anything about the case?

Individual Juror Qualification

1 A Only the initial headline.

2 Q Okay. And when was that, on this past weekend or was
3 that when it first happened?

4 A First happened.

5 Q Okay, sir. Now, I'm going to be asking you if you
6 would be the kind of juror, if you were selected in a case,
7 that you could set aside anything that you might of read,
8 heard, or seen outside of the courtroom and decide the case
9 that you were selected on purely upon what you hear in the
10 courtroom, the evidence, and the law?

11 A Yes, sir, only on the evidence.

12 Q Yes, sir.

13 Now, two concepts I talked to you about on Monday I
14 want to go over with you, be sure we have an understanding,
15 and how you would apply those concepts.

16 First of all, under our law, all criminal defendants,
17 no matter what the seriousness of the crime might be, are
18 always presumed to be innocent.

19 A Correct.

20 Q Therefore, the defendant never has a burden of proving
21 himself innocent. The burden -- the defendant has nothing
22 to prove since on, as far as innocence is concerned, since
23 he's already presumed to be innocent.

24 Do you understand that concept?

25 A Yes, sir.

Individual Juror Qualification

1 Q The other concept is, under our laws and our
2 Constitution, both in our state and our nation, the State
3 always has the burden of proving the defendant guilty beyond
4 a reasonable doubt of the crime charged. So, the State
5 always has the burden of proof in a criminal case.

6 Do you understand that concept?

7 A Yes, sir.

8 Q Are you willing to accept those concepts and apply
9 those to this case if you were selected?

10 A Yes, sir.

11 Q Now, I take it then from what you're saying that its,
12 that if you think someone has been accused of a crime,
13 they've been charged, and they have been indicted, it's,
14 it's not your belief that they are automatically guilty.

15 Is that true?

16 A That's true.

17 Q Now, if you were a juror in a criminal case, and you
18 heard all of the evidence, and you weighed that evidence and
19 you took the law as charged by the judge, and based on your
20 findings you found that the person, the State had failed to
21 meet its burden, would you be willing to find someone not
22 guilty of a charge in that situation?

23 A Given they had not provided sufficient proof.

24 Q Yes, sir.

25 And on the same, by the same token, if the State met

Individual Juror Qualification

1 its burden of proof and proved to you beyond a reasonable
2 doubt that someone was guilty of a crime, would you be
3 willing to find someone guilty, another individual guilty of
4 a crime?

5 A Yes, sir.

6 Q So, I take it then you would, depending upon the
7 strength of the evidence presented and the testimony, what
8 it showed and the evidence, you could either find someone
9 guilty or not guilty depending on that evidence?

10 A Correct.

11 Q Is that true?

12 Now, we're gonna get back to the death penalty. We
13 talked about it briefly just a minute ago, and I explained
14 that there's two phases to the trial. The same jury that
15 finds a defendant guilty of a murder would have to come back
16 and hear the evidence concerning the appropriate penalty to
17 be applied. Either life imprisonment or death.

18 Do you understand that, sir?

19 A Yes, sir.

20 Q I want you to imagine or put yourself into a
21 theoretical position. Let's say that you were selected to
22 serve on a jury in a murder case. In that case the State
23 has sought the death penalty and you and your fellow jurors
24 have heard all the evidence in the first part of the trial,
25 and you've made a determination that, in fact, that

Individual Juror Qualification

1 defendant was guilty of the crime as charged. So, that case
2 has -- the question of guilt or innocence has been ended and
3 it's been put aside.

4 Now you and your fellow jurors are about to walk back
5 into the courtroom and begin the second phase of that trial,
6 which would be the sentencing phase of that trial.

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

8 A Yes, sir.

9 Q Okay, sir. Now, before you came into the courtroom I
10 provided you with a sheet of paper that described three
11 different jurors.

12 Did you read that sheet of paper?

13 A Yes, sir.

14 Q All right. I'm going to go over those individuals with
15 you again, those types of jurors, and be sure that we're on
16 the same page, that we agree as to what we're talking about.

17 The first type of juror described on that page is
18 someone whose already made up their mind walking back into
19 the courtroom. That particular individual believes that
20 anytime someone is found guilty of a murder that the only
21 appropriate punishment is death. And so, therefore, that
22 juror, walking back into the courtroom in that situation,
23 already knows he's going to vote for death. He's already
24 made that decision because he believes that's the only
25 appropriate punishment for a murder. That's the first type

Individual Juror Qualification

1 of juror.

2 The second type of juror, walking back into that
3 courtroom, is also already made up his or her mind. That
4 juror has a belief that the State never has the right to
5 take someone's life in punishment for a crime, and,
6 therefore, that juror will always vote for life imprisonment
7 as opposed to death. So, that juror's already decided that
8 that juror's gonna vote for life walking back into the
9 courtroom.

10 The third juror on that list was one that was described
11 as an individual walking back into that same situation who
12 had not yet made up his or her mind as to how they were
13 going to vote. That juror is going to have to listen to the
14 evidence in the third part of the trial, is going to have to
15 weigh that evidence, take the law as given to them by the
16 Court, and then make a decision as to whether or not the
17 appropriate punishment is death or life imprisonment without
18 parole.

19 Do you understand the three different types of jurors
20 I've described?

21 A Yes, sir.

22 Q Now, of the three different types that I've described
23 to you, of those three, which one of those jurors would most
24 closely resemble you walking back into that courtroom?

25 A The third.

Individual Juror Qualification

1 Q All right, sir. Then I take it, from what you just
2 told me, that you would be willing to listen to the evidence
3 in the sentencing phase of the trial, that you would weigh
4 that evidence, and under those circumstances you would make
5 a decision based upon the facts and the evidence in the, in
6 the sentencing part of the trial.

7 Is that correct?

8 A Correct.

9 Q And if that evidence justified it, you would be willing
10 to sentence someone to death.

11 Is that true?

12 A Correct.

13 Q And by the same taken, if you found the evidence did
14 not justify a death sentence, then you and, or for any other
15 reason, you would be willing to sentence someone to life in
16 prison.

17 Is that also true?

18 A Correct.

19 Q Now, sir, I'm going to go over one final matter with
20 you. I told you earlier, if you're selected on the jury,
21 the jury will be sequestered during that period of time of
22 the trial and we estimate that's gonna last anywhere from
23 five to seven days.

24 Now, during that period of the trial and sequestration,
25 you will be limited as to the contact you have with the

Individual Juror Qualification

1 outside world and media access that you might have. You'll
2 take your meals with your fellow jurors, travel to and from
3 the courthouse with them, and be staying in a hotel during
4 that period of time.

5 I understand that's an inconvenience in anyone's life.
6 I, I appreciate that fact.

7 However, my real question to you is, if you were placed
8 in that situation, would that, that sequestration pose any
9 serious risk of danger to your health or your well being?

10 A No, sir.

11 Q Or would that sequestration pose a serious risk or
12 danger to the health or well being of anyone who's dependent
13 upon you?

14 A No one's dependent on me.

15 Q Okay, sir. That's fine. I just wanted to be sure of
16 those two facts.

17 Now, sir, I told you I'd let the attorneys follow-up on
18 my questions. I'm going to allow the defense to go first.
19 I see Mr. Allen standing up. So, he will be questioning at
20 this time.

21 Mr. Allen, you may proceed.

22 MR. ALLEN: Thank you, Your Honor.

23 EXAMINATION

24 BY MR. ALLEN:

25 Q Good afternoon, Mr. Denny.

Individual Juror Qualification

1 A Good afternoon.

2 Q I'm Clay Allen. I'm an attorney. I'm representing
3 Tony Torres. I'm representing him along with John
4 Reckenbeil and Kathy Hodges. I do want to ask you a few
5 questions about your information, and also appreciate you
6 filling out the questionnaire.

7 You indicated that you, you first saw the initial
8 headline when this thing first happened, is that correct?

9 A Yes, sir.

10 Q And beyond that, there's nothing -- does anything stick
11 out in your mind about this---

12 A Nothing whatsoever.

13 Q ---what you've read?

14 A Until, until I re -- until I got to the courtroom
15 Monday.

16 Q Till you got to the courtroom on Monday.

17 And you didn't see the newspaper over the weekend or
18 saw the news over the weekend?

19 A (Witness nods negatively.)

20 Q Okay. So, it's fair to say then that you don't know
21 anything about this case?

22 A Other than what was stated in the charges Monday.

23 Q Okay. Other than what's been stated in the courtroom
24 on Monday?

25 A (Witness nods affirmatively.)

Individual Juror Qualification

1 Q And you have no preconceived notions about this case
2 then, is that right?

3 A Correct.

4 Q Okay. Now, of course, I also want to ask you a few
5 questions about your feelings on the penalty, but, of
6 course, I do want to caution you, as the judge did, that,
7 you know, this is the only time that we have to talk to
8 jurors and to ask them about their feelings on things. So,
9 we do have to talk to them about the penalty first without
10 any, without you having heard the first bit of evidence or
11 having any idea of, other than what you heard on Monday,
12 about what this case is all about.

13 But I do want to know, I mean what are your general
14 feelings about the death penalty?

15 A When appropriate, I mean if it, the crime is heinous
16 enough to warrant it based on the evidence, then I'm not
17 opposed to it totally. I mean it's, it's not a thing that I
18 would not, under any circumstances, vote for it. And that
19 is to say, if appropriate, I could or could, could vote for
20 it if it were appropriate.

21 Q Okay. If it were appropriate under the, the case, is
22 that correct?

23 A Correct.

24 Q And when you talked about the case, are you, are you
25 talking about the facts and circumstances of the case

Individual Juror Qualification

1 itself?

2 A Yes.

3 Q Okay. What about other facts and circumstances called
4 mitigation?

5 Do you know what I mean by that?

6 A Right.

7 In other words, you're asking about mitigation as
8 opposed to aggravation?

9 Q Right.

10 In other words, something that's not a defense to
11 murder, but other information that, in fairness or in mercy,
12 would indicate that the death penalty would not be the
13 appropriate sentence.

14 A Then, then it would not be appropriate.

15 Q Okay. Well, my question is, is, again, putting you
16 back in the situation where, if you were on a jury, you and
17 the other 11 jurors have found an individual guilty of
18 murder, the willful killing of another person with malice
19 aforethought, and again, there was no defense, you know, the
20 jury found that there was no defense to it, beyond a
21 reasonable doubt this individual is guilty of the murder,
22 responsible for the killing of another individual, again
23 with malice aforethought, could you consider mitigating
24 circumstances, something that's not quite or that, that,
25 excuse me, something that's not a defense, but which does

Individual Juror Qualification

1 act to lessen the severity---

2 A Sure.

3 Q ---of the offense?

4 And it could be any number of things, which, in the
5 juror's own mind, is sufficient not to impose the death
6 penalty.

7 Would you---

8 A Are you questioning whether I could understand why the,
9 the defendant acted the way he did and not impose the death
10 penalty because of understanding why they acted the way they
11 did?

12 Q That could be part of it.

13 A I mean for an example.

14 Q That's an example, yes, sir.

15 Could you do that?

16 A Sure.

17 Q Again, how do you feel about the, in, in general, how
18 do you feel about the life without the possibility of
19 parole, life imprisonment without the possibility of parole
20 as a sentence for murder?

21 A If needed, I think that could be an alternative that
22 sometimes in our society object to the death penalty in the
23 sense that all too often they get tied up and become very
24 costly for the court system with the number of appeals and
25 seldom is the penalty ever carried out.

Individual Juror Qualification

1 Q Okay.

2 A So, to answer your question, sometimes life
3 imprisonment may be the better alternative.

4 Q I see.

5 Okay. But this is not to say that you would totally
6 reject the idea of the death penalty for yourself?

7 A No.

8 Q In other words, that you could vote for the death?

9 A I could vote for death. I could vote for life
10 imprisonment.

11 Q Okay. And I take it, sir, that you've come across your
12 opinions on these issues over a long period of time?

13 A Well, I have more years than most people think I have.

14 Q Well, I did read your questionnaire, and you don't have
15 as many years as you think you do.

16 But nonetheless -- but you've come across your opinion
17 over, over a period of time?

18 A Yes.

19 Q Essentially your whole lifetime, is that right?

20 A (Witness nods affirmatively.)

21 Q And you understand that there are, that there may be
22 people who do not necessarily agree with ones, with another
23 person's opinion, right?

24 A Certainly.

25 Q And of course, each person's opinion is due respect.

Individual Juror Qualification

1 Do you agree with that?

2 A Certainly.

3 Q And that if you were in a situation where you believed
4 that a particular sentence is the appropriate sentence after
5 you've heard all the evidence presented in the whole case,
6 if you come to a decision as to what you believe the
7 appropriate sentence is, but that opinion does not match the
8 other individuals in that jury room, what would you do?

9 A Stand by my convictions.

10 Q Okay. One, one second please.

11 (Pause.)

12 Q Thank you, Mr. Denny, for your responses.

13 THE COURT: Sir, sir, just one second.

14 The State.

15 SOLICITOR GOWDY: Yes, sir, Your Honor.

16 May it please the Court?

17 EXAMINATION

18 BY SOLICITOR GOWDY:

19 Q Good afternoon, Mr. Denny.

20 A Good afternoon.

21 Q My name is Trey Gowdy. I'm part of the prosecution
22 team. I, too, would like to thank you for your
23 forthrightness, your candor, your openness, and ordinarily,
24 ordinarily, in life, I wouldn't be able to ask any of these
25 questions of you. They're frankly none of my business. If

Individual Juror Qualification

1 I ran into you at Wal-Mart, the conversation would never
2 come up. But because of the nature in this proceeding, you
3 know, I, I have to ask you questions I would not ordinarily
4 ask you.

5 A Sure.

6 Q Is that fair?

7 A That's fair.

8 Q All right. I will start off with something easy.

9 I notice you went to Mars Hill?

10 A Yes, sir.

11 Q What was your undergraduate degree?

12 A Business.

13 Q Okay.

14 A Heavy in accounting.

15 Q Okay. Well, in the business and accounting background
16 may explain one of the answers that you gave Mr. Allen that
17 I want to ask you about. And just like His Honor told you,
18 there are no right answers. There are no wrong answers.
19 There are just Mr. Denny's answers and it is not my place
20 nor my desire to, to debate them with you. I just need to
21 know what they are. And whatever they are, I'll live with
22 them.

23 You mentioned that the economic considerations that are
24 part of the death penalty process or the appeal process
25 sometimes made you think life without parole is a better

Individual Juror Qualification

1 option.

2 A Yes.

3 Q And again, if I put words in your mouth, then you
4 correct me.

5 Would your thoughts on the appellate process in capital
6 litigation influence your decision?

7 A Not necessarily. Going back to the fact of whether the
8 facts of the case warranted the death penalty because of the
9 nature of the crime and the way it was committed would
10 overshadow whether it was an economical thing for the state
11 or the government to do.

12 Q Well, you are an extraordinarily well spoken juror that
13 thinks before you answer.

14 A Uh-huh. (Affirmative).

15 Q I will have to assume that it, that if it weren't in
16 your mind high enough that you would mention it, that you
17 would mention the economic aspects of it.

18 So, how would that play into it?

19 I understand the answer you just gave, that it's the
20 facts and the circumstances. But you were candid and
21 forthright enough to say that I also am concerned about the
22 economic consequences of endless capital litigation.

23 How would that influence your decision making?

24 A It wouldn't.

25 Q Not at all?

Individual Juror Qualification

1 A No.

2 Q If you thought the facts and circumstances in this
3 crime warranted society's ultimate punishment, you believe
4 in your well of souls that you could disabuse your mind of
5 what you, you think may be unnecessary cost associated with
6 appellate litigation?

7 A Sure.

8 Q Positive?

9 A Positive.

10 Q All right. Thank you.

11 THE COURT: Anything to follow-up?

12 MR. ALLEN: No, Your Honor.

13 THE COURT: Mr. Denny, let me go over just a couple of
14 things before I release you. We're still in the
15 qualification process of this trial. We will be selecting a
16 jury in the not too distant future. However, for that
17 reason, I want to know if the contact information you've
18 given us is correct.

19 WITNESS: Correct.

20 THE COURT: All right, sir. We'll be calling you and
21 let you know whether to return to the courthouse or not in
22 the not too distant future as I indicated. If you receive
23 that call to come back to the courthouse, you should become,
24 come back prepared to stay for a week. Bring with you
25 whatever you will need because we will be selecting the jury

Individual Juror Qualification

1 at that time. And once that jury's selected, they will go
2 into sequestration. I'm not saying you would or you would
3 not be selected. But be prepared if that should happen.

4 Also, I will remind you that our previous instructions
5 concerning contact about this case continue until we tell
6 you that they no longer apply.

7 Do you understand that, sir?

8 WITNESS: I understand.

9 THE COURT: Okay. You're free to go. Thank you very
10 much for your willingness to come today.

11 WITNESS: Thank you, sir.

12 THE COURT: Yes, sir.

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

15 THE COURT: State's position regarding Mr. Denny?

16 SOLICITOR GOWDY: State believes he's qualified, Your
17 Honor.

18 THE COURT: Defense?

19 MR. ALLEN: Subject to the other objections, no other
20 objection.

21 THE COURT: All right, sir. I'll find that Mr. Denny
22 is qualified and we'll mark him on that list.

23 All right. We're going to take the final one from
24 Panel Number Seven before we break for lunch. I will tell
25 that my next group is coming in at 2:00. So, I'll let your

Individual Juror Qualification

1 conscious be your guide as far as your lunch break as to how
2 long this particular process might take. Certainly we want
3 to give enough for it to take as long as it needs to take.
4 But I'll just make you aware of our scheduling constraints.

5 Next is Number 205, Kelly Norfolk.

6 KELLY NORFOLK, having been previously
7 sworn, testified as follows:

8 EXAMINATION

9 BY THE COURT:

10 Q Good afternoon.

11 A Good afternoon.

12 Q You're Kelly Norfolk, is that right?

13 A Yes, sir.

14 Q All right. Mrs. Norfolk, I want to thank you -- is it
15 Norfolk?

16 A Norfolk, yes.

17 Q I'm saying that right?

18 A Yes, like Norfolk Virginia.

19 Q Very good.

20 All right. Now, ma'am, first of all, I want to remind
21 you, on Monday, you were sworn to tell me the truth.

22 Do you remember that?

23 A Yes, sir.

24 Q That oath still applies to our discussion now. I just
25 have to put that on the record that you've been reminded.

Individual Juror Qualification

1 A Yes, sir.

2 Q Okay. Now, also, ma'am, we're going to go over some
3 matters with you at this point in time that involve your
4 opinions and beliefs about certain things, things of that
5 nature.

6 A Uh-huh. (Affirmative).

7 Q We're gonna be asking some questions about that. I'll
8 ask the questions first.

9 A Okay.

10 Q I'll allow the attorneys to follow-up. I will tell you
11 that when we're asking about your opinions and your beliefs,
12 there are no right answers. There's no wrong answers.
13 There's simply your answers.

14 Okay. So, I don't want you to feel intimidated by
15 what's going on. I know that you're not use to sitting in a
16 chair like this with all these people around you. So, if,
17 at any time, you feel uncomfortable, if you'll let me know,
18 we'll try to alleviate the situation.

19 okay?

20 A Okay.

21 Q The first question I have for you is since we talked on
22 Monday, has anyone contacted you about the case, talked to
23 you about the case, or have you been exposed to any
24 information that would cause you to form an opinion about
25 the, this case?

Individual Juror Qualification

1 A No, sir.

2 Q Have you ever participated in any Internet site or blog
3 that had as its subject the death penalty?

4 A No, sir.

5 Q Have you ever participated in any political meetings,
6 demonstrations, rallies in which one of the issues that was
7 the focus of those meetings was the death penalty?

8 A No, sir.

9 Q Now, ma'am, while you were waiting you had a chance to
10 look over a list of potential witnesses.

11 Is that true?

12 A Yes, sir.

13 Q And did you get a chance to look at that?

14 A Yes, sir.

15 Q I don't want you to name anyone by name off of that
16 list.

17 A Okay.

18 Q But my question to you is, after reviewing the list, do
19 you believe that you have any social, business, or personal
20 connections with anyone listed on the list?

21 A I know some of them, yes, sir.

22 Q Okay. Can you tell me how many of them you might know?

23 A Two or three.

24 Q All right. And can you tell you in what connections
25 you know those individuals?

Individual Juror Qualification

1 A They were prior church members. No longer church
2 members, you know.

3 Q Okay. So, people that you've met in the past through
4 your church affiliation?

5 A Uh-huh. (Affirmative).

6 Q Is that a correct statement?

7 A Yes, sir.

8 Q All right. Now, if, in fact, those individuals that
9 you identified as having some prior contact with, if they
10 were, in fact, witnesses in the trial of a case, would that,
11 in any way, affect your impartiality toward either the State
12 or the defense?

13 A No, sir.

14 Q Okay. So, you could take and weigh their evidence,
15 whatever they testify to, just like any other witness?

16 A Yes, sir.

17 Q All right. Now, also my next question, you may of
18 already discussed it with me, but maybe not, are you related
19 by blood or marriage or by former marriage to anyone on that
20 list?

21 A No, sir.

22 Q Okay. Now, the next set of questions I'm going to ask
23 you involve some of your beliefs, some of your opinions.
24 Again, I'll tell you there are no right or wrong answers to
25 the questions I'm going to ask you. You appear to be

Individual Juror Qualification

1 someone who's secure enough in your beliefs and your
2 opinions that we can talk about this without you feeling
3 threatened.

4 Is that correct?

5 A Yes, sir.

6 Q Okay. Now, our discussions will ultimately result in
7 our discussing the death penalty because that's an issue
8 that's involved in this case potentially, and I want you to
9 understand that that will be coming up. I also want to
10 understand, want you to understand one thing about our
11 discussions.

12 The case is gonna be divided into two phases, a guilt
13 or innocence phase, and a penalty phase. One of the charges
14 in the, in the initial phase is for murder. The State has
15 requested the imposition of the death penalty for that
16 murder.

17 A Uh-huh. (Affirmative).

18 Q So, if the defendant were found guilty, and if only
19 that, that happened, of that murder, would we go to the
20 second phase. That would be the question of the imposition
21 of either the death penalty or a sentence of life
22 imprisonment without parole.

23 Do you understand that?

24 A Yes, sir.

25 Q The same jury will hear both sides of that case. So,

Individual Juror Qualification

1 I'm telling you all of that to let you know it's a little
2 unusual for us to talk about penalties before we've held the
3 first part of that trial.

4 A Uh-huh. (Affirmative).

5 Q But this is the only chance we'll get to do since the
6 same jury will hear both sides.

7 Do you understand that?

8 A Yes, sir.

9 Q So, our discussions now, even though we're talking
10 about penalties, should no, in no way, adversely reflect
11 upon the defendant or any defenses he has to the first part
12 of the trial. It's simply our only opportunity to do this
13 and we have to discuss it now.

14 Do you understand that too?

15 A Yes, sir.

16 Q Okay. Now, my first question has to do with how you
17 might apply the law in this case. And in any criminal case
18 the judge is going to instruct you concerning the law at
19 some point in time.

20 And would you be willing to listen to that instruction
21 from the judge?

22 A Yes, sir.

23 Q And would you be willing to accept the law as
24 instructed to you and apply it to the facts as you determine
25 them to be?

Individual Juror Qualification

1 A Yes, sir.

2 Q Is that true even if when you hear the judge instruct
3 you on the law, you may not like the law or you may disagree
4 with the law, could you still apply the law, as given, to
5 the facts as you find them to be?

6 A Yes, sir.

7 Q Now, there has been some pretrial publicity about this
8 case.

9 Have you been exposed to any of that?

10 Have you seen or read anything about the case?

11 A Yeah, before Monday, yes.

12 Q Okay. And would that be in the form of newspaper
13 articles or on the television?

14 A The news.

15 Q When you say the news---

16 A Television.

17 Q Television news.

18 Okay. All right. Now, I'm not gonna ask you
19 specifically about that.

20 What I am gonna ask you is are you able and are you
21 willing to set aside any information or knowledge that you
22 may have gained about this case from any other source,
23 anything you heard, read, or saw about the case, and decide
24 the case purely upon the evidence that's presented during
25 the trial and the law as you hear it at the trial?

Individual Juror Qualification

1 A Yes, sir.

2 Q So, you could set those things aside?

3 A Yes, sir.

4 Q And they would not influence your ultimate decision?

5 A No, sir.

6 Q All right. Two concepts I want to be sure you're clear
7 on and you and I have an understanding on.

8 First of all, under the law of our country and our
9 state, a defendant, criminal defendant is always presumed to
10 be innocent until that defendant might be proved guilty
11 beyond a reasonable doubt. Because the defendant has a
12 presumption of innocence, the defendant is never required to
13 prove himself innocent of any crime.

14 Do you understand that concept?

15 A Yes, sir.

16 Q By the same taken, the same laws place the burden of
17 proof upon the State to prove the defendant guilty beyond a
18 reasonable doubt. So, the burden of proof, in a criminal
19 case, always rests upon the State.

20 Do you understand that?

21 A Yes, sir.

22 Q Now, are you willing to accept those principles and
23 apply them to any trial that you might participate in that,
24 that involves criminal charges?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, ma'am, I take it then, and you tell me if I'm
2 wrong -- well, you just answer my questions on this.

3 Is it your belief that if someone is arrested, accused
4 of a crime, even indicted, that they must automatically be
5 guilty of the crime?

6 You want me to repeat the question?

7 A Yeah.

8 Q All right. Is it your belief that because someone's
9 been arrested, charged with a crime, indicted, and brought
10 before the Court that they must automatically be guilty?

11 A No.

12 Q Okay. So, is it your belief then that you, that a
13 person whose been charged, who has been brought before the
14 Court could be found not guilty of the crime---

15 A Yes.

16 Q ---during the trial?

17 A Yes.

18 Q All right. So, you -- would you be willing to listen
19 to the law and the evidence, and based upon that evidence,
20 is it possible that you could find somebody not guilty of a
21 crime?

22 A Yes, based on the evidence, yes.

23 Q Okay. And if, based on that same evidence, the State
24 met their burden of proof beyond a reasonable doubt, could
25 you also and would you be willing to pass down a verdict of

Individual Juror Qualification

1 guilty against another individual?

2 A Yes.

3 Q So, based upon the strength of the evidence, what you
4 hear during the trial, you could possibly find someone not
5 guilty of the crime or also guilty of the crime?

6 A Yes, Your Honor.

7 Q Is that true?

8 A That's true.

9 Q Now, ma'am, I'm going to talk to you a little more
10 about the penalty phase of the charge, the trial, the trial.
11 That's, again, if the defendant was found guilty of a
12 murder, we'd go into the penalty phase of the trial at that
13 point in time. The jury's choice then, and the jury makes
14 the decision as to what penalty is to be imposed, whether it
15 be death or life imprisonment without parole for a
16 conviction for murder. Normally the judge makes that
17 decision, but that's different in this case.

18 Do you understand that?

19 A Yes, sir.

20 Q And do you understand the same jury will be making the
21 determination both of guilt and of the penalty?

22 Do you understand that?

23 A Yes, sir.

24 Q Now, I want you to put yourself in a situation.

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q Theoretically, you've been selected as a juror in a
2 murder case. The State is seeking the death penalty.

3 A Uh-huh. (Affirmative).

4 Q You and your fellow jurors have gone through the, the,
5 the guilt or innocence phase of the trial. And based on
6 your deliberations, based on the law and the facts and the
7 evidence presented to you, you have found the defendant
8 guilty of the murder. So, the question of guilt or
9 innocence has been decided and been put away.

10 A Uh-huh. (Affirmative).

11 Q That's no longer before you.

12 A Uh-huh. (Affirmative).

13 Q But in this situation, the State seeks the death
14 penalty. So, you and your fellow jurors are about to walk
15 back into the courtroom and make a determination, based on
16 the sentencing phase of the trial, based on new evidence,
17 new testimony as to what the appropriate penalty would be.

18 Do you understand the situation I've asked you to put
19 yourself in?

20 A Yes, sir, I do.

21 Q I also asked you to read a sheet of paper for me in the
22 back that described three different jurors.

23 Did you do that?

24 A Yes, I did.

25 Q Do you remember that?

Individual Juror Qualification

1 A Briefly.

2 Q All right. I'm gonna go back over those three jurors
3 with you---

4 A Okay.

5 Q ---so that I'm sure you and I are on the same page.

6 A Okay.

7 Q The first juror I described on that piece of paper is
8 someone, who walking into that courtroom, would of already
9 made up their mind. That person believes that, in, in all
10 cases where someone is found guilty of a murder, that the
11 only appropriate penalty is death. So, walking into that
12 courtroom, with the defendant already having been found
13 guilty of murder, that decision, that, that juror has
14 already made up their mind that they're gonna vote for
15 death.

16 A Uh-huh. (Affirmative).

17 Q The second type of juror I described is someone, who
18 walking into the courtroom, is also already made up their
19 mind. They believe that, in no circumstances, does the
20 State have the right to impose the sentence of death against
21 someone whose committed a crime. And so, that juror has
22 already made up his or her mind that she's, she or, he or
23 she is gonna vote for life regardless of what is presented
24 in the sentencing program because that's the only
25 appropriate sentence.

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q The third individual that I've indicated, the juror
3 walking into the courtroom, hasn't made up his or her mind
4 yet. That juror is going to have to listen to the evidence
5 during the sentence phase, consider the evidence that's been
6 presented at that phase, and then make a decision as to
7 which of the two is the most appropriate punishment.

8 Now, now, do you understand or remember the three
9 people---

10 A Yes.

11 Q ---I've described?

12 A I do, yes, sir.

13 Q Okay. Now, having said that, which of those three
14 jurors would best, best resemble how you would feel walking
15 into the courtroom in that situation?

16 A The first one.

17 Q The first one.

18 So, it's your belief that, in all situations, a, the
19 appropriate penalty is death?

20 A Yes, sir.

21 Q All right. Now, at this point in time I'm going to ask
22 that the attorneys wish to ask you any additional questions.

23 A Okay.

24 THE COURT: Does the defense wish to ask any additional
25 questions?

Individual Juror Qualification

1 MR. RECKENBEIL: Nothing from the defense, Your Honor.

2 THE COURT: Does the State wish to ask any additional
3 questions?

4 SOLICITOR GOWDY: Just briefly, Your Honor.

5 THE COURT: Yes, sir.

6 EXAMINATION

7 BY SOLICITOR GOWDY:

8 Q If I understood you correctly, you said that you would
9 be a type one juror that would always give death?

10 A Yes, sir.

11 Q Do you believe that all killings are the same?

12 A Meaning -- what do you mean are the same?

13 Q Well, Moses killed a man in the Old Testament.

14 A Uh-huh. (Affirmative).

15 Q Paul held the coats while Steven was stoned. David
16 conspired to commit the murder of Uriah---

17 A Uh-huh. (Affirmative).

18 Q ---the husband of Bathsheba.

19 would you punish all of those killings the same?

20 A I just look at -- I mean my beliefs are if you kill
21 somebody by not accident, you should be killed the same way.
22 I mean that's just my beliefs.

23 Q Fair enough. Fair enough. Thank you.

24 A You're welcome.

25 THE COURT: All right, ma'am. I want to thank you very

Individual Juror Qualification

1 much for your responses to our questions. At this time
2 you're free to go.

3 WITNESS: Okay.

4 THE COURT: Thank you, ma'am.

5 WITNESS: Thank you.

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

8 THE COURT: All right. Without further comment from
9 either side, the Court finds that juror disqualified.

10 MR. RECKENBEIL: Yes, sir. Thank you.

11 THE COURT: All right. We're gonna recess for lunch.
12 We'll be back at two o'clock.

13 Mr. Solicitor, before we begin the first juror, I'll
14 take up the issue that you raised at the side bar.

15 SOLICITOR GOWDY: Yes, sir.

16 THE COURT: So, be prepared to discuss that at that
17 time.

18 SOLICITOR GOWDY: Yes, Your Honor.

19 THE COURT: Thank you very much. We're in recess until
20 two o'clock.

21 (Whereupon, Court was in recess for the lunch hour.)

22 THE COURT: All right. Mr. Solicitor, you indicated
23 there was something you wanted to take up with the Court.

24 SOLICITOR GOWDY: May it please the Court, Your Honor?

25 THE COURT: Yes, sir.

Individual Juror Qualification

1 SOLICITOR GOWDY: Mr. Allen and I worked over the lunch
2 hour and we have reached an agreement that is acceptable to
3 both of us. And I thank the Court for its willingness to
4 take up the matter. But due to Mr. Allen's cooperativeness,
5 we're able to expedite and there will be no delays.

6 THE COURT: All right. Well, my understanding was that
7 in, just to put on the record, there was an issue concerning
8 the, perhaps the production of certain, not reports, but
9 underlying data for witness' testimony concerning perhaps
10 medical treatment and things of that nature.

11 And so, you've been able to work that out, is that
12 correct?

13 SOLICITOR GOWDY: Yes, sir, Your Honor.

14 THE COURT: And is that true, Mr. Allen?

15 MR. ALLEN: That is true, Your Honor.

16 THE COURT: All right. Any need to put anything on the
17 record concerning your agreement?

18 SOLICITOR GOWDY: Not from my standpoint, Your Honor.

19 THE COURT: Mr. Allen.

20 MR. ALLEN: No, Your Honor.

21 THE COURT: All right. We're ready to continue then
22 with jury qualification.

23 When we broke earlier we had just completed Panel
24 Number Seven. We're now on Panel Number Eight. And I
25 believe Mr. Troy Williams, 289, is the first juror in that

Individual Juror Qualification

1 panel.

2 You can bring him in.

3 TROY WILLIAMS, having been previously
4 sworn, testified as follows:

5 EXAMINATION

6 BY THE COURT:

7 Q All right, sir. I believe your name would be Troy
8 Williams?

9 A Yes, sir.

10 Q Is that correct?

11 A Yes, sir.

12 Q All right. Mr. Williams, first of all, I want to thank
13 you for your continued cooperation in our process. I
14 realize it can be an inconvenience at times, and I, and I,
15 again, want to thank you.

16 Let me explain to you what we're doing at this point in
17 time. We're in the process of continuing to qualify members
18 for the jury to be selected, for the jury panel to be
19 selected from that group. And at this point in time, this
20 is our opportunity to meet with individuals and go over some
21 matters and, concerning perhaps your opinions on certain
22 things and your beliefs about certain things.

23 For that reason, the questions that we're about to ask
24 you or go over with you don't have a right answer. They
25 don't have a wrong answer. They simply have whatever your

Individual Juror Qualification

1 answer is.

2 So, we're not looking for any particular answer. We
3 just would like to hear your positions and feelings
4 concerning certain matters, and that will allow the
5 attorneys and the Court to be able to intelligently select
6 members for the jury panel.

7 A Yes, sir.

8 Q So -- now, we're not here -- I understand you're not
9 use to sitting in a seat with a microphone surrounded by
10 lawyers and court reporters. And so, if you, at any time,
11 feel uncomfortable or have a problem, let me know and we'll
12 try to address those issues.

13 Okay, sir?

14 A Yes, sir.

15 Q All right. I'm gonna ask the questions first. I'll
16 allow the attorneys then to follow-up with some additional
17 questions.

18 I will remind you that you were placed under oath
19 earlier on Monday concerning these matters. You're still
20 under oath now. I have to be sure that's on the record.

21 Do you understand that?

22 A Yes, sir.

23 Q All right. Now, the first question I have, since we
24 talked on Monday, has anyone talked to you about the case,
25 contacted you, or have you been exposed to any information

Individual Juror Qualification

1 that might cause you to form an opinion about this case?

2 A No, sir.

3 Q All right. Now, have you ever participated or
4 responded, in any way, to any blog or Internet
5 communications or sites concerning issues involving the
6 death penalty?

7 A No, sir.

8 Q Have you ever participated in any political meetings,
9 demonstrations, rallies that might focus or have, as its,
10 one of its issues, the death penalty?

11 A No, sir.

12 Q Now, sir, I'm going to go over some matters with you
13 now that, that have to do with a sheet of paper that I had
14 you look at before you came in. It had a list of potential
15 witnesses on it.

16 Do you remember that sheet of paper?

17 A Yes, sir.

18 Q I don't want you to identify anyone by name off of that
19 issue during my questioning. But I do want to ask you some
20 questions about your review of that document.

21 Now, sir, after having reviewed the document, is there
22 anyone on that list with whom you might have any social,
23 business, or personal connection?

24 A I'd say no, not in that regard.

25 Q Well, so, do you feel that you have some connection

Individual Juror Qualification

1 with somebody on the list?

2 A Yes, sir.

3 Q And can you describe to me what that connection might
4 be?

5 Not who the person is, but what it might be.

6 A I see them at the disabled hunting event.

7 Q And how often---

8 A Every, every year.

9 Q Once a year?

10 A Once a year.

11 Q Okay, sir. Now, would -- if that person, in fact, did
12 end up testifying, and we're not sure everybody on that list
13 is going to testify, but if that person did testify during
14 the trial, would that, in any way, affect your ability to be
15 impartial to both the State and the defense in the case?

16 A No, sir.

17 Q And would you be willing and able to weigh the evidence
18 presented by that witness just like you would any other
19 witness in the trial?

20 A Yes, sir.

21 Q All right. And also about that list, do you believe
22 that you are related, either now or formerly, with, to
23 anybody on that list either by blood or marriage?

24 A No, sir.

25 Q Okay. Now, I'm going to go over some matters with you

Individual Juror Qualification

1 now that are a little more personal in nature. I want to
2 tell you now we're not trying to invade your privacy. Based
3 on the way you're talking to me and our, your answers so
4 far, you seem to be a person who would not be threatened by
5 the fact I'm going to ask you about your opinions.

6 Is that correct?

7 A That's correct, sir.

8 Q All right. Now, I will tell you that eventually I will
9 be going to the subject of the death penalty cause that's an
10 issue that's involved potentially in this case. And I want
11 to explain to you, as I did earlier, that the trial is
12 divided into two, two segments. The first part has to do
13 with guilt or innocence on the charges that have been
14 brought. One of the charges is murder. And for that
15 particular crime, the State is seeking the imposition of the
16 death penalty.

17 For that reason, and for that charge alone, if the
18 defendant were, were found guilty of that charge, we would
19 hold a second trial on the issue of the appropriate
20 punishment. The same jury will handle both of those
21 particular proceedings, and the only issue at the second
22 trial is the appropriate penalty, and the possible choices
23 are life imprisonment without parole or the death penalty,
24 and the jury will make that determination if we get to that
25 point.

Individual Juror Qualification

1 But we're kind of putting the cart in front of the
2 horse because we're not to that point at this time.
3 However, I hope you understand that the same jury handles
4 both trials and this will be our only opportunity to discuss
5 that phase because, once the jury's selected, we couldn't
6 discuss that with them.

7 So, I hope you don't, in any way, hold our discussions
8 concerning penalties against the defendant or any defense
9 that he might raise in the first part of the trial because,
10 again, this is the only chance we have to discuss it. And
11 so, I hope you understand that concept.

12 A Yes, sir. I do

13 Q Do you understand that, sir?

14 Q Now, the first thing I'm gonna ask you about is how you
15 would accept the law. And at some point in time during the
16 trial the judge will instruct the jury concerning the law.

17 would you be willing, if you were serving on a jury, to
18 listen to the law as you were instructed by the judge?

19 A Yes, sir.

20 Q And would you be willing to accept the law, as given by
21 the Court, and apply it to the facts as you find them to be?

22 A Yes, sir.

23 Q Now, sir, is that still true, if when you're listening
24 to the judge give you the law, you don't like what you hear,
25 you don't like the law that your hear, or you somehow

Individual Juror Qualification

1 disagree with the law that's given to you, could you set
2 those feelings aside and take the law as the judge gives it
3 to you and apply it to the facts?

4 A Yes, sir.

5 Q The next question has to do with pretrial publicity and
6 there has been some mention of this case in the media. Both
7 the print media and on broadcast media.

8 And the first question I have, and I don't need to know
9 to the extent at this time, have you been exposed to any of
10 that or have you seen any of that material or heard that
11 material?

12 A I have not seen it or read it. The people I work with,
13 you know, they bring up some stuff and I said I can't
14 discuss anything.

15 Q Okay. So, you stopped them when they started the
16 discussion?

17 A I stopped them, sir.

18 Q Okay. Very good.

19 Then it sounds like to me, but I want to be sure, are
20 you the kind of juror who could set aside anything that you
21 might of heard, read, or seen either before the trial or
22 even something that you might hear during the trial and
23 decide the case purely upon the evidence presented in the
24 trial and the law as instructed during the trial?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, two concepts I want to be sure we're clear on and
2 I want to go over them with you and see if you have any
3 problem with those concepts.

4 Under the law and Constitution of our state and the
5 United States, a person, who is a defendant in a criminal
6 trial, is always presumed to be innocent. Therefore, the
7 defendant has no burden of proof whatsoever in a criminal
8 case because he is presumed to be innocent.

9 The second concept is that the State always has the
10 burden of proving a defendant, accused of a crime, guilty of
11 that crime beyond a reasonable doubt. And if the State
12 fails to meet that burden, the State has failed to meet its
13 burden of proof.

14 Do you understand those two concepts?

15 A Yes, sir.

16 Q Now, do you have any problem with applying those two
17 concepts to this case if you were selected?

18 A No, sir.

19 Q Now, I want to ask you a question.

20 Is it your belief that if a person has been arrested,
21 accused of a crime, charged, and even indicted that they
22 must be automatically guilty of the crime?

23 A No, sir.

24 Q So, are you the kind of individual who would be willing
25 to listen to the evidence, listen to the testimony, listen

Individual Juror Qualification

1 to the law as presented to you, evaluate those things, and
2 based upon your evaluation of those things, you could find a
3 person not guilty of a crime that they're charged with.

4 Is that true?

5 A Yes, sir.

6 Q By the same token, if you find that the State has met
7 its burden of proof and proved the guilt beyond a reasonable
8 doubt, you would have, I assume, no problem with finding a
9 defendant guilty of a crime that's charged.

10 Is that also true?

11 A That is correct, sir.

12 Q Now, sir, I take it then that you would be able to make
13 up your mind, depending upon the strength of the evidence
14 and what they, the testimony and evidence showed, and find
15 the person either guilty or not guilty.

16 A Yes, I could.

17 Q Correct statement?

18 A Yes, sir.

19 Q All right. We're gonna go back to talking about the
20 death penalty again cause I've reached that point where I do
21 want to discuss it with you. And I do, will explain to you
22 that for all the other charges that are involved in this
23 case, the judge, the judge will impose the penalty should a
24 guilty verdict be reached. But for the one case where the
25 charge is murder and the death penalty is sought, the jury

Individual Juror Qualification

1 will set the penalty for that particular crime.

2 Do you understand that if we get to that point?

3 A Yes, sir.

4 Q Now, under those circumstances, the same jury that is
5 convicted the defendant of the crime of murder also
6 considers the penalty in a separate trial and separate
7 phase. But you'll hear additional evidence, more testimony
8 concerning those issues that would be involved with
9 sentencing.

10 Do you understand that as well?

11 A Yes, sir.

12 Q Now, I want you to put yourself in a situation.
13 Theoretically, let's say you've been selected as a juror in
14 a murder case where the State is seeking the death penalty.
15 You and your fellow jurors have listened to all the
16 evidence, you've deliberated, and you've reached a verdict
17 that the defendant is guilty of the crime as charged.

18 Now, since the State is seeking the death penalty, you
19 and your fellow jurors will be coming back to the courtroom
20 to begin the sentencing phase of the trial, the second phase
21 of the trial. I put a sheet of paper back there in the
22 waiting room for you to look at that described three
23 different kinds of jurors.

24 Do you remember that paper?

25 A Yes, sir.

Individual Juror Qualification

1 Q I'm going to go over those three types of jurors again
2 so I'm sure you and I are talking about the same thing.

3 The first juror that I described to you was a juror
4 who, when walking back into the courtroom, has already made
5 up his or her mind. That juror is of the belief that if
6 someone has been found guilty of committing a murder that
7 there's only one possible punishment that can be given and
8 that is the death penalty. So, that juror, in all
9 situations such as that, would sentence a defendant to
10 death.

11 The second juror I described is another juror who is
12 also already made up his or her mind. That juror has a
13 belief that the State has no right, in any circumstance, to
14 take someone's life in punishment for a crime. So, that
15 juror has already decided to vote for life imprisonment
16 regardless of the evidence that's presented during the
17 sentencing phase of the trial.

18 Now, the third person or juror that has been described
19 is a juror, who when walking back into that courtroom,
20 doesn't really have his mind made up one way or the other as
21 to how he's going to vote. Either for life imprisonment or
22 death. That jurors gonna have to wait and listen to the
23 evidence and the testimony and then make a decision as to
24 what the appropriate penalty might be.

25 Now, do you understand my description of those three

Individual Juror Qualification

1 types of jurors?

2 A Yes, sir.

3 Q Now, I also asked you to put yourself in the position
4 that you were walking back into the courtroom with your
5 fellow jurors after having found someone guilty of murder,
6 which one of the three jurors I described to you would most
7 closely resemble your position as you came back into the
8 courtroom?

9 A Number three, sir.

10 Q All right. Now, I take it then, sir, that based on
11 that answer, keeping in mind that the fact that the
12 defendant is already been found guilty and guilt or
13 innocence is no longer a concern, that you would be willing
14 to listen to the facts and evidence presented in a
15 sentencing phase of the case, is that correct?

16 A Yes, sir.

17 Q And if the evidence justified it, after listening to
18 it, you would be willing to sentence someone to death if you
19 felt the evidence justified it?

20 A Yes, sir.

21 Q And by the same token, if you found that the evidence
22 did not justify the death penalty, you also would be willing
23 to sentence someone to life in prison without parole if the
24 evidence did not justify the death penalty?

25 A That is correct.

Individual Juror Qualification

1 Q So, you would listen to the facts and circumstances and
2 then make a decision concerning those factors?

3 A Yes, sir.

4 Q All right, sir. Now, I want to go on and talk to you
5 about one personal matter to be sure I, we have an
6 understanding.

7 I mentioned yesterday, on Monday, I want to say
8 yesterday, on Monday I mentioned that the jury in this case,
9 once it's impaneled, once it's chosen, will be sequestered.
10 What that means is that you will be spending the day in the
11 courtroom and at night you'll be in a hotel. They'll be
12 people escorting you to and from court and be with you most
13 of the, almost all of the time. Your access to the outside
14 world will be limited. They'll be limited communication,
15 and there will be limited things on television and print
16 media and things available to you for your, for your use.

17 Do you understand what that means?

18 A Yes, sir.

19 Q Okay, sir. Now, my question to you about that is that
20 if you were in that situation, I realize it will be an
21 inconvenience in anybody's life. I understand that.

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

25 A No, sir.

Individual Juror Qualification

1 Q Would it pose a serious risk of danger to the health or
2 well being of anyone who is dependent upon you?

3 A No, sir.

4 Q Now, we've reached the stage where I'm going to allow
5 the attorneys to follow-up on the questions I've asked you.
6 We allow the defense to go first. And I see Mr. Reckenbeil,
7 the individual who's standing, so he must be gonna ask the
8 questions.

9 You may proceed, Mr. Reckenbeil.

10 MR. RECKENBEIL: Yes, sir.

11 May it please the Court, Your Honor?

12 EXAMINATION

13 BY MR. RECKENBEIL:

14 Q Mr. Williams, seeing from your jury questionnaire --
15 first of all, I appreciate you filling that out, and I
16 appreciate you being here from your service.

17 A Yes, sir.

18 Q Understand that you are an RN and you work at Steadman
19 Hawkins?

20 A Yes, sir.

21 Q Just to disclose to you, my last name is Reckenbeil.
22 My wife is a doctor with Steadman Hawkins. She works down
23 at the Sports Medicine Group in Greenville for Doctor
24 Season.

25 I see, by your shaking your head, you might not see her

Individual Juror Qualification

1 too often. She works down in Greenville.

2 A In Greenville, I don't even know her.

3 Q Good.

4 Okay. So, just by that token that you might run into
5 her and you see the last name Reckenbeil, would that, in any
6 way, make you a fair and impartial juror as a, knowing that
7 you have a spouse being an attorney and you're working with
8 the other spouse you, in your same organization?

9 would that have any bearing on you?

10 A Absolutely not.

11 Q Good. Okay. Just wanted to disclose that because you
12 might run into her and I didn't want that to be a problem
13 later on down the road in the, in the, in the jury trial.

14 Also, I was looking at your jury questionnaire, and I
15 was taken by, by a couple things that you said. I want to
16 just talk to you about that.

17 And I looked at where you were talking about your
18 religious beliefs and comes in quotation with or the
19 question about the death penalty. And I'm just gonna read
20 what you said. It says God has the power to give and take
21 life, but wants us to follow the law of the land. And
22 absolutely respect everyone's opinion. I think that's spot
23 on.

24 Could you just explain a little bit what you mean by
25 that?

Individual Juror Qualification

1 A Well, God has given each state or the country the
2 ability to create laws, and he is asked us, as individuals
3 or people in this country, to abide by the law. And so,
4 that's what I would do is abide by the law in whatever the
5 law is.

6 Q Okay. And the law in South Carolina that we're under
7 doesn't say that it's mandatory that anyone ever receives
8 the death penalty. Understanding that, and that if, in
9 fact, we get to the sentencing phase, there would be two
10 options and the law of the land talks about the fact of life
11 in prison or a death penalty sentence.

12 Based upon that answer, is there any way that would
13 shape your opinion as to you would lean one way or another?

14 A No, I'd have to go back to what the, the judge
15 questioned about is weigh the evidence, whatever the
16 evidence is---

17 Q Okay.

18 A ---and, you know, go by that.

19 Q Sure.

20 Besides what I just read to you, quoting off your jury
21 questionnaire, do you have any other opinion or do you have
22 a personal view about the death penalty besides that?

23 A I do not.

24 Q Either for it or against it, just based upon what
25 you've just said, and that is the law of the land it's

Individual Juror Qualification

1 allowed to be implemented, but then again doesn't have to be
2 implemented?

3 A That's correct.

4 Q Okay. Now, understanding the fact that my client has
5 been charged or has, there's been notice served upon my
6 client about the fact that they're seeking the death
7 penalty, the State of South Carolina is, does that, in any
8 way, cloud your judgment or give you a preconceived notion
9 of the guilt or innocence of Mr. Torres.

10 A No, I don't know the individual. I don't even know the
11 background behind the incident.

12 Q Yes, sir.

13 A The first time I'd heard it was Monday when---

14 Q When the judge was talking about it?

15 A ---when the judge talked about it.

16 Q Okay.

17 A So, you know, I'd, I'd have to go by, you know, if I
18 was selected, I'd have to go by and weigh the, the evidence
19 and make a decision based upon that.

20 Q Okay. Now I want you to do what the judge is asked you
21 to do. Put yourself in the position where we've already had
22 a conviction. And again, you know, we're not insinuating
23 that there's going to be a conviction, but this is our one
24 time opportunity that we got to have a chance to talk to you
25 about it.

Individual Juror Qualification

1 Putting yourself in the fact that there's already been
2 a conviction, the jury is made a determination unanimously
3 that murder has happened, and understanding murder is an
4 unlawful killing of an individual with some malice and
5 aforethought, you now have an opportunity where you'd come
6 back out of the jury room, do you have a, a realistic
7 expectation that you could put out of your mind the fact
8 that you're coming to a second phase, putting the first
9 phase -- I understand you're gonna hear facts about the
10 murder and those sorts of things in the guilt and innocence
11 phase.

12 But can you, as a juror, be fair and impartial coming
13 back out to that second part, to that whole new fact of
14 where it's sentenced as to life or death?

15 A I could.

16 Q Okay. Cause understand, in that second part of that
17 case, it's a whole new ball game. The State's gonna come in
18 with some sort of evidence of what they're gonna talk about
19 as aggravation. They're gonna talk about stuff that's gonna
20 make it worse, heighten it.

21 The first thing I want to ask you is that, in your
22 mind, is there a situation is that no matter what happens,
23 the factual situation, is there a fact scenario that you can
24 envision, that no matter what, you would vote for death?

25 A Repeat the question. I'm not sure---

Individual Juror Qualification

1 Q Is there, is there a factual situation in your mind
2 that you can think of that no matter what happens you're
3 gonna vote for death?

4 A No.

5 Q And vice versa---

6 A Right.

7 Q ---on the other hand---

8 A Exactly.

9 Q ---you wouldn't just say there's a factual situation in
10 which you're just gonna vote for life?

11 A No, I mean that's something I'd have to hear, you know,
12 the evidence, and, you know, hear the complete story and,
13 and know exactly what went on to be able to make a decision
14 like that.

15 Q Right.

16 A I mean that's a tough decision.

17 Q Yes, sir.

18 A Either way.

19 Q And on the flip side of the coin, as I was talking
20 about, the State's gonna have an opportunity to present
21 aggravation in that second phase. The defense is also gonna
22 present mitigating evidence, and what I mean by mitigating
23 evidence is that the defense is gonna present stuff that
24 would lessen, that would be some sort of condition for
25 mercy.

Individual Juror Qualification

1 would you have a problem in considering both sides of
2 the coin there of aggravation as well as mitigation?

3 A No, I would not.

4 Q Okay. Now, as you have seen, and I appreciate your
5 answer, answers and your candor and I know it's an
6 uncomfortable position, thinking of your mind in the fact
7 where you have now heard everything, there's been a
8 determination of guilt or innocence, you now have a finding
9 of all the evidence in the aggravation and the mitigation
10 evidence, you've come to an opinion one way or another. Be
11 it the fact that you've decided in your mind that, you know
12 what, it meets the fact that I think the death penalty or,
13 you know what, I don't think it should be. I think it
14 should be life in prison.

15 Do you have the ability, of when you go back in the
16 jury room, understanding it's gonna be emotional,
17 understanding people are gonna have their opinions about it,
18 are you of the fact that you could hold on to your
19 convictions, hold steadfast to your opinion?

20 A Yes, sir.

21 Q Okay. Knowing the fact that it could be a situation
22 where there could be 11 people saying one way and you could
23 be the one person on, on the opposite end of the spectrum,
24 could you be that person that holds fast to that opinion?

25 A Yes, sir, I've been there before.

Individual Juror Qualification

1 Q Been there before?

2 A Yes, sir.

3 Q Okay. Understanding, in fact, that just one vote
4 either way could make a determination?

5 A (Witness nods affirmatively.)

6 Q Okay. Thank you, Mr. Williams. I appreciate it.

7 THE COURT: Mrs. Crick.

8 SOLICITOR CRICK: Thank you, Your Honor.

9 THE COURT: Yes, ma'am, you may proceed.

10 SOLICITOR CRICK: Thank you.

11 EXAMINATION

12 BY SOLICITOR CRICK:

13 Q Good afternoon, Mr. Williams. I appreciate you being
14 here as well as -- I'm with the prosecution team and I know
15 it's an awkward position to be in with, us trying to delve
16 into your personal thoughts and opinions and beliefs. So, I
17 won't be long.

18 But Mr. Reckenbeil just asked you about a situation
19 where you may have been the only one who had a certain
20 opinion, and you said you've been in that situation before.

21 What -- could you describe that for us?

22 A I've been in the leadership position in my job field
23 and I've actually been the leader where I've had to make
24 decisions and other people, you know, decided that that
25 wasn't the correct way of doing whatever. And being in that

Individual Juror Qualification

1 position, I've had to make the decision based on my training
2 and ability to perform my job. I've had to stick my ground
3 and make that decision.

4 Q I got you.

5 So, if I understood you correctly, there's nothing
6 about your personal beliefs, religious beliefs, anything of
7 that nature, that would prevent you from imposing a death
8 sentence?

9 A That is correct.

10 Q And there's nothing that would prevent you from
11 imposing a life sentence?

12 A That's correct.

13 Q It would just depend on the evidence that you hear?

14 A That's correct, ma'am.

15 SOLICITOR CRICK: That's it, Your Honor.

16 Thank you so much.

17 THE COURT: Any other follow-up questions from the
18 defense?

19 MR. RECKENBEIL: No, Your Honor.

20 THE COURT: Mr. Williams, let me just go over the final
21 few things I want to discuss with you today. Again, we're
22 in the qualification process for the jury. I'm not sure
23 exactly how long that's gonna go on. But it's not gonna go
24 on that much longer.

25 Once we've completed that, we'll be telling the

Individual Juror Qualification

1 individuals who are in the jury pool to come back and we
2 will be striking a jury. And if you are called and asked to
3 return for that process, I will tell you you should come
4 prepared to stay for the full week. Once we start the case,
5 we'll go to the completion of it. And once we pick the
6 jury, you will be, you would be sequestered if you were
7 selected. And you'll be staying with us for that period of
8 time. So, whatever you need to stay a week, bring it with
9 you when you come back.

10 WITNESS: Okay.

11 THE COURT: All right. You've given us some contact
12 information on how to get in touch with you.

13 I assume it's up-to-date and correct?

14 WITNESS: The best way is my cell phone. I'm not sure
15 if I put my cell phone number on there.

16 THE COURT: All right. Before you leave, if you'll see
17 this young lady. Tonya's her name right here.

18 WITNESS: Okay.

19 THE COURT: She'll, she'll get that from you and be
20 sure we know how to get in touch with you.

21 The last thing I want to mention to you, I've given you
22 instructions concerning contact or discussions. Sounds like
23 you're following those. But I want you to continue to
24 follow them until we tell you to, to stop doing that.

25 Okay, sir?

Individual Juror Qualification

1 WITNESS: Yes, sir.

2 THE COURT: All right. You may step over and speak
3 with her.

4 You want to step over, Tonya, so we can get that
5 information?

6 CLERK: Yes, sir.

7 (Pause.)

8 THE COURT: Thank you, sir. You're free go to at this
9 time.

10 (The following takes place outside the presence of the
11 juror.)

12 THE COURT: The State's position in regard to Mr.
13 Williams?

14 SOLICITOR GOWDY: The State would submit that he's
15 qualified.

16 THE COURT: Defense?

17 MR. RECKENBEIL: He's qualified.

18 THE COURT: Subject to your prior objections, is that
19 correct?

20 MR. RECKENBEIL: Yes, sir.

21 THE COURT: All right. The Court finds that he is
22 qualified, and he'll be placed on that list.

23 Next juror is Number 183, Brooke McCombs.

24 (Pause.)

25 THE COURT: Mrs. McCombs is still going over the

Individual Juror Qualification

1 witness list. As soon as she's ready we'll bring her in.

2 BROOKE MCCOMBS, having been previously
3 sworn, testified as follows:

4 EXAMINATION

5 BY THE COURT:

6 Q All right, ma'am. Your name is Brooke McCombs?

7 A Yes, sir.

8 Q All right. Mrs. McCombs, thank you for your
9 cooperation in coming back today. I appreciate that. Let
10 me just go over a couple of things with you so you'll maybe
11 feel a little more comfortable about where you're sitting
12 and what you're doing.

13 A Okay.

14 Q I can understand that sitting in a courtroom in front
15 of a microphone surrounded by lawyers, judges, and court
16 reporters is something you're not use to. And certainly
17 we're not here to try to embarrass anyone or cause for you
18 any concern. We're going to ask some questions. The
19 questions will apply to certain things about you and the
20 things that, your opinions and beliefs. And for that
21 reason, the questions that we're going to ask you do not
22 have right or wrong answers. They only have whatever answer
23 you have. It's your answers.

24 A Okay.

25 Q We're not here to try to invade your privacy. And if,

Individual Juror Qualification

1 at any time during our questioning, you think that, that
2 there's a problem, stop and let me know that, and we'll try
3 to deal with that.

4 okay?

5 A Okay.

6 Q All right. Now, I'm going to go over some matters with
7 you initially, and then I'll allow the attorneys to
8 follow-up on the questions that I've asked.

9 Do you understand what we, we're going to do?

10 A Yes, sir.

11 Q All right. My first thing I want to point out to you
12 is that you were placed under oath on Monday to tell the
13 truth about these matters. You remain under oath at this
14 time for this discussion.

15 Do you understand that?

16 A Yes, sir.

17 Q I need to put that on the record to be sure you've been
18 reminded.

19 All right. Now, ma'am, has anybody contacted you about
20 the case, talked to you about the case, or have you been
21 exposed to any information about the case since our
22 discussion on Mondays, Monday that would cause you to form
23 an opinion or some opinion about this case.

24 A No, sir.

25 Q Have you ever participated in or responded to any blog

Individual Juror Qualification

1 or Internet site that has to do with the imposition of the
2 death penalty?

3 A No, sir.

4 Q Have you ever attended or participated in any political
5 gathering, meeting, demonstration, or anything like a rally
6 concerning the imposition or the non-imposition of the death
7 penalty?

8 A No, sir.

9 Q Now, my next question has to do with a list of
10 witnesses I believe that you've just looked over, is that
11 right?

12 A Yes, sir.

13 Q I don't want you to identify anybody on that list by
14 the way.

15 A Okay.

16 Q What I do want to ask you though, after looking over
17 the list, is it your belief that there's anyone on that list
18 that you have any social, business, or personal connection
19 with or to?

20 A No, sir.

21 Q Is there anyone on that list that you have a belief
22 that you're related to by either blood or marriage either
23 now or formerly?

24 A No, sir.

25 Q Now, I'm going to ask you, in a few minutes, some more

Individual Juror Qualification

1 personal questions as I indicated about certain topics, and,
2 again, we're not trying to invade your privacy. We are
3 trying to find out some things about how you feel on certain
4 subjects. That will allow the lawyers and the Court to make
5 intelligent decisions concerning participation in this jury
6 once it's selected.

7 Do you understand that, ma'am?

8 A Yes, sir.

9 Q All right. You seem to be someone who would not feel
10 threatened by us asking about those things, is that true?

11 A True.

12 Q Okay. Now, I, I want to point out to you that I told
13 you on Monday, this trial, especially the one for the charge
14 of murder, will be divided into two segments or two parts.

15 A Yes, sir.

16 Q The first part will have to do with guilt or innocence
17 of that charge.

18 A Yes, sir.

19 Q Should the defendant be found not guilty by the jury of
20 that charge, that would end the case. There would not be a
21 second hearing.

22 However, if the defendant were found guilty of the
23 charge of murder, the State is seeking the imposition of the
24 death penalty for this particular offense that's been
25 alleged. So, therefore, the same jury that was selected to

Individual Juror Qualification

1 hear the guilt phase of the trial would then have to hear
2 the sentencing phase of the trial. So, we're gonna be
3 talking a little bit about penalties today before we've ever
4 started the trial on whether or not the, that is necessary.

5 The reason for that is, once we start the trial, the
6 same jury hears both sides. We won't have an opportunity to
7 stop and pick the jury over again. So, we're only gonna do
8 that once, and so, we need to talk about the possibility of
9 that particular hearing taking place and your feelings about
10 that.

11 But what I'm telling you is the fact that we're talking
12 about penalties today should not be held against the
13 defendant or any defense that he might raise to the original
14 charges. It's simply we have to talk about it some time and
15 this is the only chance we have to do that.

16 A I understand.

17 Q Okay. Now, first of all, I'm gonna talk to you about
18 your views concerning the law that will be used in the
19 trial.

20 A Okay.

21 Q During the, the course of the trial, the judge, and
22 that will be me in this particular case, will be instructing
23 the jury concerning the law to be applied to the facts.

24 Now, would you be willing to listen to that law as
25 instructed by the Court?

Individual Juror Qualification

1 A Yes, sir.

2 Q Would you be willing to accept the law as charged by
3 the Court and apply it to the facts as you find them to be?

4 A Yes, sir.

5 Q Now, is that still true even though, when you hear me
6 state the law, you might not like what you hear or you might
7 disagree with what you hear, would you still be willing to
8 set aside those feelings and apply the law as it's charged
9 to the facts?

10 A Yes, sir.

11 Q Now, there's been some publicity about this case both
12 in the print media and in the broadcast media. I'm aware of
13 that.

14 Have you been exposed to any of that?

15 A Not to my knowledge. I don't recall anything.

16 Q Okay. All right. Then my question really is somewhat
17 theoretical, but are you the kind of person, that if you
18 were on the jury, that you could set aside anything that
19 you've heard, seen, or read either inside, excuse me, prior
20 to the trial or during the trial that occurred not in the
21 courtroom, and decide the case solely upon the evidence as
22 presented during the trial?

23 A I believe so, yes, sir.

24 Q All right. Now, ma'am, two concepts that I've
25 discussed on Monday I want to be sure we've got a clear

Individual Juror Qualification

1 understanding on and how you would handle those things.

2 First of all, in our state, in our nation, the laws and
3 the Constitution provide that a defendant, someone whose
4 been charged with a crime, is always presumed to be
5 innocent. Therefore, the defendant does not have to prove
6 his innocence. The defendant has no burden of proof at all
7 in a criminal case.

8 Do you understand that concept?

9 A Yes, sir.

10 Q The second concept or theory under the law is that the
11 State always has the burden of proof in a criminal case.
12 It's the State's burden to prove the defendant guilty beyond
13 a reasonable doubt of the charges that have been alleged.

14 Do you understand that concept?

15 A Yes, sir.

16 Q All right. Now, ma'am, taking those two concepts and
17 that you do understand them, are you or would you be willing
18 to apply those concepts in this case if you were selected as
19 a juror?

20 A Yes, sir.

21 Q Now, ma'am, is it your belief that because someone
22 might have been accused of a crime, then arrested, and
23 indicted that they're automatically guilty of the crime?

24 A No, sir.

25 Q So, I take it then I could describe you as a juror who

Individual Juror Qualification

1 would listen to the evidence, weigh the evidence, listen to
2 the law as presented to you, and based on how you find those
3 things to be, you could find a person guilty or not guilty
4 of the crime that was charged?

5 A Yes, sir.

6 Q Either way?

7 A Uh-huh. (Affirmative).

8 Q Depending on how you find the facts?

9 A Yes, sir.

10 Q All right. Now, I'm going to talk to you now about the
11 death penalty in particular because that is something that
12 we do have to talk about. Again, I've explained, this is
13 the only chance we have to do it. That issue will come up
14 only after the jury has found the defendant guilty of the
15 crime of murder for which the State seeks that penalty. And
16 once that has happened, the same jury will come back into
17 the courtroom, will hear additional evidence concerning that
18 issue, the, what is the appropriate penalty. The two
19 choices that a jury would have in that situation would be
20 life imprisonment without parole or the death penalty.
21 Those would be the two choices.

22 So, do you understand how that process works?

23 A Yes, sir.

24 Q And that would be the same jury that participated in
25 the first part of the trial.

Individual Juror Qualification

1 Now, I want you to put -- I want you to envision
2 yourself in this situation and I'll tell you the situation.

3 A Okay.

4 Q You have been selected and you are serving on a jury in
5 a murder case in which the State is seeking the death
6 penalty. You and your fellow jurors have heard all of the
7 evidence in the guilt part of the trial.

8 A Okay.

9 Q You have weighed the evidence, you have deliberated,
10 and you have determined that the defendant is, in fact,
11 guilty of the crime charged and have found him so. Since
12 the State is seeking the death penalty, you're on the same
13 jury that now must come back into the courtroom and decide
14 the issue of the appropriate penalty, either death or life
15 imprisonment.

16 So, do you understand the situation where I've put you?

17 A Yes, sir.

18 Q All right. Now, you also were shown a paper in which
19 three different types of jurors were described outside the
20 courtroom.

21 A Yes, sir.

22 Q Do you remember that paper?

23 A I do.

24 Q Now, ma'am, I'm going to -- just to be, to be sure you
25 and I are on the same page as far as that particular paper,

Individual Juror Qualification

1 I described on that paper three different types of jurors.

2 A Yes, sir.

3 Q Number one, the first juror is a person who's walking
4 back into the courtroom in that situation, already has their
5 mind made up as to how they're gonna vote. That particular
6 juror believes that when anyone is found guilty of a murder
7 the only appropriate penalty is the death penalty, and that
8 juror then would vote in every case for someone to be put to
9 death in that situation.

10 A Right.

11 Q The second juror who's walking back into that courtroom
12 also has already made up his or her mind. That juror has
13 the belief and the opinion that the State never has the
14 right to take one, someone's life in connection with the
15 commission of a crime or as a punishment for the commission
16 of a crime. So, that juror also has already made up his or
17 her mind and is all, gonna vote against the death penalty
18 and in favor of life every single time that issue comes up.

19 A Uh-huh. (Affirmative)."

20 Q The final juror, number three, is coming into that
21 courtroom not having made up his or her mind. That juror
22 does not know exactly what to do at that point in time. He
23 doesn't have his mind made up as to whether he's gonna vote
24 for life imprisonment or gonna vote for the death penalty.
25 That juror will have to wait, listen to the evidence during

Individual Juror Qualification

1 the second part of the trial, decide and weigh that evidence
2 before making a determination as to whether or not to vote
3 or impose the death penalty or life imprisonment without
4 parole.

5 Now, do you understand the three types of jurors that I
6 just described?

7 A Yes, sir.

8 Q Now, which of those three types of jurors best
9 described you if you were in that situation?

10 A The third type.

11 Q All right. Now, ma'am, I take it, from that response,
12 that you would be willing, having already found the
13 defendant guilty of murder and the issue of guilty is no
14 longer a concern, you would be willing then to listen to the
15 additional facts and evidence presented at the second stage
16 of the trial.

17 Is that correct?

18 A Yes, sir.

19 Q And if that evidence justified it, you would be willing
20 and able to sentence someone to death if you found that
21 necessary?

22 A Yes, sir.

23 Q And by the same taken, if the evidence, as you hear
24 during that second part of the trial, did not justify a
25 death penalty, or for any other reason, you would be willing

Individual Juror Qualification

1 to sentence someone to the sentence of life imprisonment.

2 Is---

3 A Yes, sir.

4 Q ---that also true?

5 A Uh-huh. (Affirmative).

6 Q So, that means, depending on the facts and
7 circumstances, you could sentence someone to life or you
8 could sentence someone to death.

9 Is that a true statement?

10 A It is.

11 Q Now, ma'am, last thing I'm gonna go over with you
12 before I let the other attorneys ask questions.

13 I indicated on Monday that the jury would be
14 sequestered in this case. Now, that's a fancy legal phrase
15 for meaning that once you're selected you'll be with us.
16 You'll be staying in a hotel. You'll be taking your meals
17 with your fellow jurors. Your access to the outside world
18 will be limited. We make, let you make limited phone calls.
19 But we screen television. We screen print media, anything
20 like that that you would be looking at. And so, for that
21 period of time you would be sequestered.

22 Now, I realize that's an inconvenience in anyone's
23 life. I understand that already.

24 The real question I'm asking you is if you were put in
25 that situation, and if you were selected and sequestered,

Individual Juror Qualification

1 could, would that, in any way, pose a serious risk of danger
2 to your health or your well being?

3 A No, sir.

4 Q Would it, in any way, pose a serious risk of danger to
5 the health or well being of anyone who might be dependent
6 upon you?

7 A My children would probably be upset. But they'll live.

8 Q Okay. So, that would not be a danger to their health
9 or well being?

10 A No.

11 Q Okay. Well, you've answered the questions that I have.
12 I thank you very much. We allow the defense to go first in
13 following up with my questions.

14 A Okay.

15 Q I see Mrs. Hodges rising.

16 You may proceed, Mrs. Hodges.

17 MRS. HODGES: Thank you, Your Honor.

18 May it please the Court?

19 THE COURT: Yes, ma'am.

20 EXAMINATION

21 BY MRS. HODGES:

22 Q Mrs. McCombs, my understanding is you have a five year
23 old and an eight month old?

24 A Nine months now.

25 Q Nine months now.

Individual Juror Qualification

1 A Yes, ma'am.

2 Q But he's eating solid foods or getting, getting---

3 A Mostly, yes.

4 Q Okay. So, in terms of that child's nutrition, that can
5 be covered if you're sequestered?

6 A It can be covered, yes, ma'am.

7 Q Okay. All right. Just wanted to make, make sure.

8 There were a couple of things I think you had shared
9 with us both on Monday as well as in your questionnaire.

10 A Uh-huh. (Affirmative).

11 Q I just wanted to tell you I appreciate and we all
12 appreciate your candor and the questionnaire. It's probably
13 the only time you're gonna have this many people kind of
14 trying to pry into your private life out in public.

15 So, one of the things you would of mentioned is that
16 you did have a family member that was killed in I guess
17 this, the incident happened in '96 or was the---

18 A I'm, I'm pretty sure it was '96.

19 Q Okay. And that, that was your uncle, is that correct?

20 A It was.

21 Q And the Solicitor's Office was involved in that
22 prosecution?

23 A Uh-huh. (Affirmative).

24 Q I know that Mr. Gowdy and Mrs. Crick were not with the
25 solicitor's Office in 1996. But for parts of 1996

Individual Juror Qualification

1 Mr. Barnette was.

2 Do you know if he was involved in the prosecution of
3 that case?

4 A I don't recall him being involved.

5 Q Okay.

6 A I have seen him out in other areas of my, you know, out
7 in the public.

8 Q Okay.

9 A So -- but I don't remember him being involved in that
10 case, no.

11 Q Anything from the experience of your -- did the, did
12 the, the case involving your uncle go to trial?

13 A It did, yes, ma'am.

14 Q Okay. Was it a, a death penalty prosecution or, or was
15 it---

16 A I don't recall that it was a death penalty. I know
17 that the sentence was life.

18 Q Okay. Anything from the experience that -- were you,
19 were you involved in the trial of that case or---

20 A I did sit in on the trial, yes, ma'am.

21 Q Okay. Anything involved in that experience for you
22 that would cause you some concern in sitting on the trial in
23 this case knowing that obviously one of the charges in this
24 case is, is murder?

25 A Other than both being violent kind of crimes, I don't

Individual Juror Qualification

1 see any similarities.

2 Q Okay.

3 A If that's -- I mean is that what you're asking me?

4 Q Well, I mean just in terms of you had a family member
5 killed, and now you're gonna be sitting on a jury with
6 somebody who's accused of killing somebody else.

7 A Right.

8 Q I mean do you think you could be fair to both the State
9 and the defense knowing you've gone through that experience?

10 A I believe I could, yes, ma'am.

11 Q Okay. Now, you mentioned that you see Mr. Barnette out
12 in other places.

13 Can you tell me a little bit about that?

14 A I use to nanny for a family here in Spartanburg.

15 Q Uh-huh. (Affirmative).

16 A And one of the children attended church with
17 Mr. Barnette's family I think.

18 Q Okay. Would that experience have -- would that affect
19 you, in any way, in this case?

20 A I don't believe so.

21 Q All right. And I notice you also sat on a jury
22 yourself in which Mr. Barnette was the prosecutor.

23 A Yes, ma'am.

24 Q Anything from that experience that, that -- I think
25 that was an armed robbery case?

Individual Juror Qualification

1 A I believe it was, yes, ma'am.

2 Q Yeah. Convenient store robbery.

3 Anything about that that, that would affect you since
4 one of the charges involved in this case is armed robbery?

5 A No, ma'am.

6 Q Okay. Your husband works for the Herald-Journal?

7 A He does, yes, ma'am.

8 Q What, what does he do for them?

9 A He's a sports copy editor. He does page design and
10 layout.

11 Q Okay. He doesn't come home and tell you stuff about
12 what's going on at the Journal or stories or anything like
13 that?

14 A Occasionally he, he does. I, you know, there's always
15 something going on. But he works mostly at night. He's
16 there sort of second shift when sports are going on.

17 Q Okay.

18 A So, a lot of things that are going on in the news side
19 he doesn't see---

20 Q Got you.

21 A ---until -- and he comes home like 3:00 in the morning.
22 So, we don't do much talking when he gets home.

23 Q I understand that.

24 The -- so, there's nothing in, that, that you can, that
25 this whole process sort of triggered any memories of him

Individual Juror Qualification

1 coming home and talking about this case or anything like
2 that?

3 A No, ma'am, and I, I really racked my brain on, ever
4 since we got the letter trying to make sure that -- cause I
5 do read the paper. So, I don't -- nothing about this stands
6 out in my mind. So --.

7 Q Okay. And I appreciate that and I appreciate your
8 candor in that, in that respect.

9 We'll get kind of down to the nitty gritty of this
10 case.

11 Do you have personal views, opinions about the death
12 penalty?

13 A I believe that there are cases in which the death
14 penalty should be applied, and I do believe that there are
15 cases in which, when the death penalty doesn't apply. I
16 don't -- it's not something that I would take lightly.

17 Q Okay.

18 A But---

19 Q Can you think of any type of situation or, or factual
20 scenario or type of case in which you would think that the
21 death penalty would be the only appropriate penalty?

22 A I'm sure there's something in my mind that right this
23 second I can't think of one that, that would be the only---

24 Q Okay. And in this type of case we don't even get to
25 that, that issue and decision unless and until the jury has

Individual Juror Qualification

1 made a decision and convicted on a murder charge.

2 A Uh-huh (Affirmative).

3 Q And that's the way it is in any death penalty case.

4 And we're talking murder, we're talking about basically the
5 willful killing of another human being with malice

6 aforethought. That basically means somebody's done it with
7 kind of an evil intent. You know, kind of, kind of somebody
8 just had a, a, kind of a heart fatally bent on mischief.

9 A Uh-huh. (Affirmative).

10 Q And it also means that the jury heard all of the
11 evidence and that if there was anything that could rise to
12 the level of a defense that would basically excuse the
13 killing, that the jury has basically rejected that evidence.

14 A Right.

15 Q And so, basically you've got a situation where
16 someone's been convicted. Basically the jury, you know,
17 knows that person's responsible, is held that person
18 responsible, and there's no doubt about the actual guilt on
19 the murder charge.

20 A Uh-huh. (Affirmative).

21 Q We then, at that point, move into the, a phase of
22 dealing with where the State has the opportunity to produce
23 aggravating circumstances. Basically---

24 A Right.

25 Q ---it's something that's gonna make this, this

Individual Juror Qualification

1 particular murder case worse than in comparison to other
2 murder cases. And that, that, that point, what the State's
3 theory is that, you know, the case is justified, those
4 circumstances justify imposing the death penalty and that's
5 what the jury thinks would be the appropriate thing to do.

6 On the other hand, the defense has the opportunity to
7 present, present mitigating factors, something that lessens
8 the severity of the punishment, something that, either in
9 fairness or in mercy, basically the jury feels is not an
10 appropriate, that the death penalty is not an appropriate
11 response. That life without parole, you know, or some
12 lesser charge, you know, basically in this case only the
13 life without parole is the appropriate penalty.

14 A Uh-huh. (Affirmative).

15 Q Do you think that you could consider those mitigating
16 factors in, in making your decision?

17 A I do.

18 Q Okay. It -- I kind of asked you if there's any type of
19 factual scenario that you would automatically consider that
20 the death penalty would be the only appropriate option.

21 Is there any type of scenario that you would think that
22 the life sentence would be the only appropriate option?

23 A Not, not without knowing just the details of something
24 I --.

25 Q So, you basically are gonna need to hear details and,

Individual Juror Qualification

1 and facts and evidence surrounding it?

2 A I would. I mean I just couldn't make that judgment
3 without knowing---

4 Q Okay.

5 A ---everything.

6 Q Okay. I take it from just kind of talking with you
7 today, you're the type of person that basically would not
8 feel hesitant about being able to express an opinion in the
9 jury room, and then, and what your opinions are.

10 Is that, is that fair?

11 A I'm not hesitant to express my opinion on most things.

12 Q Right.

13 A So, a jury room would not be an issue for me I don't
14 think. But --.

15 Q Okay. And obviously, you know, you'd want your opinion
16 respected and you'd be able to respect the opinions of the
17 other jurors?

18 A Yes, ma'am.

19 Q If it came down to a situation where, you know, there's
20 a difference of opinions, and you were perhaps the only
21 person -- and, and I'm not saying which side, you know, one
22 way or the other in terms of death or life sentence. But
23 you basically had, in your mind, made a decision of what the
24 appropriate sentence is. Your 11 other jurors didn't agree
25 with you.

Individual Juror Qualification

1 what would you do in that kind of situation?

2 A well, I'd like to think I would stand firm in what I
3 believed.

4 Q Okay. Do you think, do you think that, that you would
5 be somebody who could be intimidated or coerce or kind of
6 pulled along into, into changing your opinion?

7 A No.

8 MRS. HODGES: Okay. Bare with me just a moment.

9 THE COURT: Yes, ma'am.

10 (Pause.)

11 Q Thank you, ma'am.

12 THE COURT: Mrs. Crick.

13 SOLICITOR CRICK: Thank you, Your Honor.

14 THE COURT: Yes, ma'am.

15 EXAMINATION

16 BY SOLICITOR CRICK:

17 Q Good afternoon, Mrs. McCombs.

18 A Afternoon.

19 Q I'm Cindy Crick and I'm on the prosecution team in this
20 case, and I just want to follow-up with a couple of
21 questions that Mrs. Hodges has already asked you.

22 A Okay.

23 Q One of them is -- actually you had mentioned -- and I
24 apologize for delving into it cause I'm sure it's not easy.
25 But in talking about your uncle---

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q ---and the defendant was prosecuted in that case, and
3 received a life sentence, is that correct?

4 A Yes, ma'am.

5 Q Was that a situation where the death penalty was an
6 option?

7 A I do not recall. My mother asked me -- I was a high
8 school student at the time. My mom did not want me in the
9 courtroom during the sentencing phase. So, I don't remember
10 in that -- it's not something that I would go home and ask
11 her about.

12 Q And so, it wasn't something that you would of been very
13 involved in at the time or concerned with whether or not
14 what it was or wasn't at the time?

15 A I recall that it was fairly emotional for our whole
16 family. I recall that some of my family members were more
17 vocal in one aspect or the other. I -- thinking about
18 talking about it right now, I think that, I think some of my
19 family members were upset that maybe the death penalty
20 wasn't being sought. But like I said, I was a high school
21 student. I think I was like in the 11th grade.

22 Q Right.

23 A I didn't, you know, meet with attorneys or things like
24 that and I didn't---

25 Q You're not sure?

Individual Juror Qualification

1 A I don't remember a lot about it. I remember sitting in
2 the courtroom. I remember testimony and then being asked to
3 step out by my parents. So, that's -- I'm not sure.

4 Q Okay. That's fine.

5 The other question I was gonna ask you is when you did
6 serve as a juror in a case---

7 A Uh-huh. (Affirmative).

8 Q ---and Mr. Barnette was the prosecutor in that case.

9 A Yes.

10 Q You know, did -- Mr. Barnette is all -- but was there
11 anything about his prosecution of the case that would of
12 given, left a bad taste in your mouth for any reason?

13 A No.

14 Q Anything that law enforcement may have done in the
15 context of that case that would have caused you to feel
16 maybe negatively towards law enforcement?

17 A No, not at all.

18 Q Do you remember what the verdict was in that case?

19 A I believe that we found the defendant not guilty.

20 Q Do you happen to remember what the issue was or what
21 the reason was for that?

22 A It seems like -- I know that there was a video.

23 Q Okay.

24 A And it seems like there was a lot of discussion -- I'm
25 not a hundred percent on that cause it's been several years

Individual Juror Qualification

1 ago. But it seems like there was some discussion about
2 maybe not being able to tell for sure if the person in the
3 video was who we were seeing in the courtroom.

4 Q Got you.

5 It was a convenience store---

6 A Uh-huh. (Affirmative).

7 Q ---surveillance kind of situation?

8 A Yeah, I remember just thinking man, I saw these things
9 on television. They look more clear. And guess what, they
10 don't. So---

11 Q In real life, sometimes no.

12 Okay. I am gonna just, to wrap it up, she did ask you
13 about your views on the death penalty.

14 A Uh-huh. (Affirmative).

15 Q And I think you said sometimes it should apply and
16 sometimes it shouldn't.

17 A Yes.

18 Q Is there anything in your religious views or just moral
19 views that causes you to think one way or another about the
20 death penalty?

21 A No, I am a member of a baptist church and I've been
22 told that baptist churches do often have a stand on the
23 death penalty. If mine does, it's not something we discuss
24 probably for obvious reasons.

25 Q Right.

Individual Juror Qualification

1 A But I think that the Bible says a little bit about
2 both, and that would be my stand that sometimes it's
3 applicable and sometimes it's not, that we're accountable to
4 man's laws. So, I think that would be, Biblically, what I
5 believe.

6 Q So, it just sort of comes from a personal thought or---

7 A Right.

8 Q ---place in your heart?

9 A Like I said, if we have a stand on it in my church I
10 don't know what it is. And, of course, we have a stand on a
11 lot of things I don't necessarily agree with.

12 Q Got you. I got you.

13 One thing I did want to clarify and make sure that you
14 realize, and I think the judge was pretty good explaining
15 this, is that the law never requires, would require you to
16 give the death penalty. In other words, there's no set of
17 circumstances or facts in which the law would say if this,
18 this, and this exists you have to give the death penalty.

19 A Right.

20 Q You will always have the option of life and that means
21 life without parole, which means, if that's the sentence,
22 the person is not coming out of prison except in a coffin
23 essentially.

24 A Right.

25 Q Knowing that and knowing that that's always gonna be an

Individual Juror Qualification

1 option in your heart of hearts, do you think that you would
2 still be able to sign that verdict form and actually
3 sentence someone to death if the circumstances were
4 appropriate?

5 A I would not be able to take it very -- it wouldn't be a
6 lightly undertaken thing, but --.

7 Q Right.

8 A Yes, if the circumstances and having seen evidence and
9 all of those things factored in, I believe that yes, I'd,
10 because like I said, sometimes I believe that the death
11 penalty is applicable and sometime it's not. So, in my
12 heart, if, if those things were true, yes, I could.

13 SOLICITOR CRICK: Okay. Your Honor, I think that's it.
14 Thank you so much.

15 THE COURT: Any follow-up questions from the defense?

16 MRS. HODGES: Actually, judge, a question I forgot to
17 ask just real briefly.

18 THE COURT: Yes, ma'am.

19 EXAMINATION

20 BY MRS. HODGES:

21 Q You had indicated I think on Monday that you knew
22 Tammy, that you either know or was acquainted with Tammy
23 Waley.

24 A Yes. And I do recall now how I have met her.

25 Q Okay. wonderful.

Individual Juror Qualification

1 A A friend of mind is running for office and she is
2 assisting on his campaign.

3 Q Okay.

4 A And we were introduced at one of his campaign
5 functions.

6 Q Okay. And is that the, the part-time campaign you
7 listed as your job as---

8 A No. No, ma'am, this is something separate.

9 Q Something separate?

10 A Uh-huh. (Affirmative).

11 Q Okay. Have y'all had any contact other than, other
12 than that one sort of meeting at a campaign function?

13 A No, I'm, I'm sure we've been at other events together
14 because of that. But that's the only time we were
15 introduced.

16 Q So, having met her at that one, one function, would
17 that affect your ability to be a juror in this case?

18 A I don't believe so, no, ma'am.

19 MRS. HODGES: Okay. Thank you, Your Honor.

20 THE COURT: Thank you.

21 Mrs. McCombs, thank you very much for your cooperation
22 today. Let me just go over a couple of things with you
23 before you leave.

24 First of all, we're in the process of interviewing
25 people for the jury.

Individual Juror Qualification

1 WITNESS: Yes, sir.

2 THE COURT: We're not selecting the jury today. That
3 will occur though in the not too distant future.

4 WITNESS: Right.

5 THE COURT: When we do that, you, you would receive a
6 call or possibly receive a call to come back to the
7 courthouse for jury selection.

8 WITNESS: Okay.

9 THE COURT: Now, I indicated about the sequestration.

10 WITNESS: Right.

11 THE COURT: If you were selected on that occasion to
12 serve on the jury you would go immediately into
13 sequestration. So, if you're called to come back to the
14 courthouse for jury selection, bring with you everything
15 that you would need to stay for a week.

16 WITNESS: Okay.

17 THE COURT: Do you understand that?

18 WITNESS: Okay.

19 THE COURT: Be prepared.

20 Okay. Now, also, the contact information that we have
21 with your paper, paperwork, is it still accurate?

22 WITNESS: Yes, sir.

23 THE COURT: That's how we get in touch with you?

24 WITNESS: It is.

25 THE COURT: All right. And the final thing, I

Individual Juror Qualification

1 instructed you on Monday not to have any contact with
2 anyone, discuss the case with anyone, listen to or read any
3 media reports. That order still stands until---

4 WITNESS: Yes, sir.

5 THE COURT: ---such time as we tell you otherwise.

6 WITNESS: Okay.

7 THE COURT: Thank you very much. You're free to go,
8 ma'am.

9 WITNESS: Thank you.

10 (The following takes place outside the presence of the
11 juror.)

12 THE COURT: State's position on Mrs. McCombs?

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

14 THE COURT: Defense position?

15 MRS. HODGES: Your Honor, subject to our other motions,
16 she's qualified.

17 THE COURT: I will mark her on the qualified list.

18 SOLICITOR GOWDY: Your Honor, could I have one moment
19 to consult with defense counsel on, on---

20 THE COURT: Yes, sir.

21 (Pause.)

22 SOLICITOR GOWDY: Thank you, Your Honor.

23 THE COURT: I'd ask the attorneys to approach briefly.

24 (Whereupon, a bench conference was held out of the
25 hearing of the jury at this time.)

Individual Juror Qualification

1 THE COURT: All right. As to the next juror on the
2 list, Juror Number 186, Mr. Tony McDowell, Mr. McDowell has
3 written, has brought to the Court a letter to the Court
4 concerning a problem, he, a legal problem he has in the
5 Family Court. It does appear, from the documents he is
6 supplied, that he is to attend a hearing on October
7 27th that places him under some duress as far as his job
8 and his employment.

9 Based on that, I've reviewed this with the attorneys
10 that are involved. I am going to release Mr. McDowell from
11 this jury. I will ask that the clerk reschedule him to
12 another term of court after the end of October.

13 And so, at this point in time I'm going to mark this as
14 a Court's Exhibit, the documents, and you can inform Mr.
15 McDowell he has been released, Mr. Bailiff.

16 BAILIFF: Yes, sir.

17 (Whereupon, the note from the juror and affidavit were
18 marked as Court's Exhibit No. 3 for identification purposes
19 only at this time.)

20 THE COURT: That means the next person we will be doing
21 will be Tiny Twitty. She would not have seen the jury list,
22 I mean the witness list. We do that just before they come
23 in. So, it will be a moment before she's had a chance to go
24 over that and she'll be ready to go forward.

25 (Pause.)

Individual Juror Qualification

1 THE COURT: All right. Is the State ready to proceed?

2 SOLICITOR BARNETTE: State's ready, Your Honor.

3 THE COURT: Defense ready to proceed?

4 MR. ALLEN: Yes, Your Honor.

5 TINA TWITTY, having been previously
6 sworn, testified as follows:

7 EXAMINATION

8 BY THE COURT:

9 Q All right. Ma'am, your name is Tina Twitty.

10 Did I get that right?

11 A Yes.

12 Q Okay. Mrs. Twitty, first of all, I want to thank you
13 very much for your cooperation in our process. I understand
14 that it's an inconvenience and I appreciate the fact that
15 you're here and you're continuing to, to cooperate with us.
16 Thank you very much.

17 A Yes, sir.

18 Q Now, a couple of things I want to go over with you
19 before we start. I realize that where you're sitting,
20 sitting is somewhat of an uncomfortable position for you.
21 Not everybody gets to sit at a witness stand surrounded by
22 lawyers, and judges, and, and court reporters.

23 And so, I, first of all, want to tell you that we'll
24 try to make you as you, comfortable as we can. If you have
25 any problems during our proceedings today that you want to

Individual Juror Qualification

1 take up with me or want us to stop, let me know and we'll be
2 glad to do that.

3 Okay, ma'am. We'll, we'll discuss that with you.

4 Now, I want to remind you that earlier this week, on
5 Monday, you took an oath to tell me the truth about jury
6 service.

7 Do you remember that?

8 A Yes, sir.

9 Q And I'm reminding you of that fact because you're still
10 under that same oath today for this discussion.

11 Are you aware of that as well, ma'am?

12 A Yes, sir.

13 Q Okay. Now, we're going go over some matters with you.
14 We're trying to gather information to be in a position to
15 select a jury shortly, and we're going to go over some
16 questions that have to do with your opinions, beliefs, on
17 certain subjects. And for that reason, there are no right
18 answers and there's no wrong answers to our questions.
19 We're simply trying to find out about you and gather some
20 information about you.

21 Do you understand what, what I'm saying, ma'am?

22 A Yes.

23 Q Okay. Now, my first question for you, and I'll ask the
24 first questions and then we'll allow the attorneys to
25 follow-up on the questions that I've asked you.

Individual Juror Qualification

1 Since we talked earlier this week on Monday, has anyone
2 contacted you about the case?

3 Have you heard, read, or seen anything about the case?

4 Have you been exposed to any information about the case
5 or anything that might of caused you to form an opinion
6 about this case?

7 A Well, I saw some coverage on the news.

8 Q Since Monday?

9 A Yes.

10 Q All right. Ma'am, did, did you watch that or did you
11 step away from that?

12 A No, I didn't watch it. I -- it was just on---

13 Q Okay.

14 A ---while I was getting ready.

15 Q You happened to see it and then you did not pay
16 attention to it?

17 A Yes.

18 Q Okay. Now, ma'am, I take it then that that wouldn't
19 have caused you to form an opinion about the case?

20 A No, sir.

21 Q Okay. So, you still are, do not have any opinion about
22 the case?

23 A No, sir.

24 Q Okay. Now, ma'am, have you ever participated in any
25 Internet, at any Internet location or site or any blog

Individual Juror Qualification

1 concerning issues involving the death penalty?

2 A No, sir.

3 Q Have you ever participated in any political activity,
4 such as demonstrations, rallies, or meetings, at which the
5 death penalty was a focus or an issue that was discussed?

6 A No, sir.

7 Q I'm going to ask you about a list of witnesses.

8 I believe you just looked at that list, is that
9 correct?

10 A Yes, sir.

11 Q I don't want you to name anybody by name off of that
12 list. I don't want their names used in the courtroom.

13 okay?

14 A Okay.

15 Q But I am gonna ask you generally about the list.
16 You've reviewed the list.

17 And after reviewing the list, is there anyone on that
18 list that you believe that you have any social, business, or
19 personal relationships with?

20 A No, sir.

21 Q Are you, in, in fact, related by blood, marriage, or
22 former marriage to anyone who's listed on that list?

23 A No, sir.

24 Q Now, I want to now talk to you about some more personal
25 matters. I'm gonna ask you some things about your opinions

Individual Juror Qualification

1 or your beliefs. And so far your demeanor tells me that
2 perhaps you could discuss these things without feeling
3 threatened.

4 Is that true?

5 A Yes, sir.

6 Q We're going to be discussing things, and one of the
7 things we'll eventually discuss will be the death penalty
8 because I've already made you aware that that's an issue in
9 this case. In a case where the State is seeking a
10 conviction for murder, they also have the right to seek a
11 conviction, for that conviction the death penalty or that
12 penalty of death for that particular crime.

13 Now, a little -- we're kind of putting the cart before
14 the horse because we've not yet held the guilt or innocence
15 phase of the trial, the first part of that trial. So,
16 there's, there's been no finding of guilt on any crime
17 charged at this point in time. But we're also gonna be
18 talking about penalties.

19 The reason for that is the same jury that decides the
20 question of guilt or innocence on the charges, if the
21 defendant is found guilty on the murder charge, would have
22 to return and hold the trial on the question of what is the
23 appropriate penalty, either life imprisonment without parole
24 or death.

25 Do you understand how that process works?

Individual Juror Qualification

1 A Yes.

2 Q Well, since -- because of that reason, we have to talk
3 about you concerning penalty matters, because once the trial
4 is started, the jury's selected, we won't have another
5 opportunity to do that before we get there perhaps. So, we
6 are, in fact, talking about penalty matters before we've
7 ever determined whether we need to hold that hearing or not.

8 For that reason -- the reason I'm telling you all this
9 is I don't want you, in any way, to hold against the
10 defendant or any defenses he may have raised to the original
11 charge the fact that we have discussed penalties because we
12 don't have any other time to discuss, to discuss that.

13 Do you understand that?

14 A Yes.

15 Q Okay. Now, the first questions I'm going to ask you is
16 about your application of the law in the case if you were
17 selected as a juror.

18 If you are participating in a trial, the judge will
19 instruct you concerning the law.

20 Are you willing to listen to the judge's instruction on
21 the law?

22 A Yes.

23 Q And ma'am, would you be willing to accept that charge,
24 that instruction on the law and apply it to the facts as
25 you, a juror, might find them to be in any case?

Individual Juror Qualification

1 A Yes.

2 Q Now, is that still true if, when you're listening to
3 the judge charge the law, you realize that you don't agree
4 with the law or you may not like what the law says, would
5 you still be willing to set aside those feelings and apply
6 the law as the judge gives it to you?

7 A Yes.

8 Q Now, there has been some pretrial publicity. We've
9 talked just a moment about that already.

10 And my question to you is would you be able to set
11 aside any information that you may have gathered about this
12 case from any source at all including things you've heard,
13 read, or seen about the case outside the courtroom, or
14 things you might hear outside the courtroom during the
15 trial?

16 Would you be willing to set aside all of that
17 information and decide this case purely upon what you hear
18 inside the courtroom?

19 Could you do that?

20 A Yes.

21 Q Two concepts I want to go over with you to be sure you
22 understand them. We talked briefly about these on Monday.
23 But I want to emphasize these to you and be sure we
24 understand them.

25 The first one is, under the Constitution and laws of

Individual Juror Qualification

1 our state and nation, a defendant is always presumed to be
2 innocent of any crime for which that defendant has been
3 charged. That means a defendant has no burden of proving
4 anything whatsoever since the defendant comes into the
5 courtroom presumed to be innocent.

6 Do you understand that?

7 A Yes, sir.

8 Q The other concept is that the same laws that make that
9 provision also provide that the State has the burden of
10 proving the defendant's guilt of the crime charged by proof
11 beyond a reasonable doubt. So, the burden of proof in a
12 criminal case always rests with the State.

13 Do you understand that as well?

14 A Yes, sir.

15 Q Now, could you apply both of those concepts to this
16 case if you were selected as a juror in the case?

17 A Yes, sir.

18 Q Now, ma'am, is it your belief that because someone has
19 been arrested, someone has been accused of a crime, someone
20 has been indicted, because those factors exist that they are
21 automatically guilty of the crime?

22 A No, sir.

23 Q So, I take it, ma'am, that you would be willing to
24 listen to the evidence that's presented during a trial,
25 listen to the law as given to you by the judge, and after

Individual Juror Qualification

1 weighing that information, if you find it correct or find it
2 proper, right, you would have the ability to find someone
3 not guilty if that's what you found?

4 A Yes, sir.

5 Q Would you also have the ability, if you find that the
6 State met its burden of proof and established guilt beyond a
7 reasonable doubt, could you issue a verdict of guilty
8 against another person?

9 A Yes.

10 Q So, depending on your consideration of the facts and
11 circumstances and the law presented to you, you could find
12 someone either guilty or not guilty depending on the
13 strength of the evidence?

14 A Yes, sir.

15 Q Is that true?

16 A Yes, sir.

17 Q All right. We're going to get back to talking about
18 the death penalty a little bit in some more detail at this
19 point in time. Generally judges decide the penalties in
20 criminal cases. The only exception to that rule is in a
21 murder case where the State seeks the death penalty and only
22 in that case, if the defendant is found guilty, if the
23 defendant is found guilty, do we then get to the point where
24 a jury decides the appropriate punishment. And in this
25 case, that is life in prison without parole or the death

Individual Juror Qualification

1 penalty. Those would be the two choices that a jury would
2 have.

3 Do you understand that?

4 A Yes, sir.

5 Q And do you understand that, in that second trial
6 concerning the penalty conducted by the same jury, you would
7 receive additional evidence. There would be other witnesses
8 testify on that issue alone.

9 Do you understand that as well?

10 A Yes, sir.

11 Q All right. Now, ma'am, I want you to put yourself or
12 imagine yourself in a particular situation.

13 Okay. And the situation is that you were selected to ,
14 serve on a jury in a murder case. That same murder case,
15 the State was seeking the death penalty in. You have heard
16 all the evidence in the trial. You and your fellow jurors
17 have gone to the jury room and deliberated and come to the
18 verdict unanimously that the defendant is guilty of the
19 crime of murder.

20 And so, that issue, the issue of guilt or innocence now
21 for that defendant has been placed behind you. That's
22 already been a finding on that point.

23 So, now you and your fellow jurors, because the State
24 is seeking the death penalty, are about to walk back into
25 the courtroom to begin what's called the sentencing phase or

Individual Juror Qualification

1 the second phase of that trial. That is where you consider
2 the appropriate punishment, life in prison without parole or
3 death.

4 So, do you understand the situation I've put you in?

5 A Yes, sir.

6 Q All right. Also outside the courtroom I had a sheet of
7 paper describing three different jurors.

8 Do you remember that sheet of paper?

9 A Yes, sir.

10 Q I'm going to go over those three different jurors and
11 be sure we understand what we're talking about.

12 The first juror I described on that sheet of paper is
13 one whose already made up his or her mind before he walks
14 into the courtroom for that second trial. That juror
15 believes that, for any person who is found guilty of a
16 murder, that the only appropriate punishment would be death.
17 So, that juror will vote, in all situations such as this,
18 for the death penalty.

19 The second juror is one who also has already made up
20 his or her mind because that juror believes that the State
21 never has the right to take anyone's life in punishment for
22 a crime. And so, that juror will always vote for the life
23 sentence, and would never vote for the death sentence in all
24 cases similar, similar to the one we're talking about. So,
25 that juror's already made up his or her mind too.

Individual Juror Qualification

1 The third juror is a juror who is walking into that
2 courtroom who has not made up his or her mind. That juror
3 has yet to decide what the appropriate penalty is. That
4 juror is going to have to listen, wait and listen to the
5 evidence as presented during that trial. And after hearing
6 that evidence, would then make a decision as to whether or
7 not to impose the life sentence or the death sentence. So,
8 that juror is coming into that hearing not knowing exactly
9 what that juror is going to do at that point in time.

10 Now, ma'am, do you understand the three different types
11 of jurors I just described to you?

12 A Yes, sir.

13 Q Now, which of those three types of jurors do you feel
14 would best describe you as you came back into the courtroom
15 in that situation?

16 A I would probably be juror number one.

17 Q Number one?

18 A Number one.

19 Q All right. So, ma'am, it would be your belief that in
20 all cases where a defendant has been found guilty of a
21 murder that the death penalty should be imposed?

22 A Yes, sir.

23 Q All right, ma'am. At this point in time I'll allow the
24 attorneys to follow-up with any questions that they would
25 like to ask of you.

Individual Juror Qualification

1 A Okay.

2 THE COURT: First of all, for the defense.

3 MRS. HODGES: I have no questions for Mrs. Twitty, Your
4 Honor. Thank you.

5 THE COURT: Does the State wish to ask any questions?

6 SOLICITOR GOWDY: Very briefly, Your Honor.

7 THE COURT: Yes, sir.

8 EXAMINATION

9 BY SOLICITOR GOWDY:

10 Q Good afternoon, ma'am.

11 A Good afternoon.

12 Q As His Honor so artfully put it, there are no right
13 answers. There are no wrong answers. They're just Mrs.
14 Twitty's answers and nobody's gonna try to talk you out of
15 those. I just want to make sure I understand your
16 prospective correctly.

17 Do you believe that all killings are the same?

18 A No, sir.

19 Q If all killings are not the same, should the punishment
20 be the same for all killings?

21 A No, sir.

22 Q Would you agree with me that there are homicides or
23 killings where life imprisonment would be the proper
24 punishment?

25 A Yes, sir.

Individual Juror Qualification

1 Q And you would agree with me that there are
2 circumstances, if they're aggravated, where capital
3 punishment or the death penalty would be appropriate?

4 A Yes, sir.

5 Q All right. Would you be able to fairly weigh and
6 balance all of the information given to you as a juror?

7 A Yes, sir.

8 Q Would you listen to whatever the defense had to say, if
9 anything, and they don't have an obligation to say anything,
10 but if they did say something, would you be able to consider
11 the facts and circumstances that they presented to you in an
12 effort to maybe try to get you to go towards life?

13 A Yes, sir.

14 Q Would you be fair minded about it?

15 A Yes, sir.

16 Q What are generally your views on capital punishment?

17 A I feel that you should be punished, you know, for
18 murdering someone cause I don't think you have the right to
19 take anyone's life. But if your life is being threatened
20 and you see self-defense as the only way, that's, that's the
21 only way I see it being acceptable.

22 Q Well, that's a wonderful point.

23 If your life is threatened and you act in self-defense,
24 you're actually not guilty of anything. That's a legal
25 justification, a legal defense to murder. You probably

Individual Juror Qualification

1 would not even be charged and you certainly would not be
2 convicted.

3 So, the only category of killings we're talking about
4 now is when there is a conviction, there's no defense. It's
5 somebody's taking another person's life without just cause
6 or legal provocation.

7 Could you still give life in a circumstance where
8 somebody intentionally killed someone else and had a bad
9 spirit about them, but could you still give life in that
10 circumstance?

11 A No, sir.

12 Q You think all intentional homicides should be treated
13 and sentenced the same?

14 A Yes, sir.

15 Q Okay. Thank you.

16 THE COURT: Any further questions?

17 MRS. HODGES: No, sir. Thank you.

18 THE COURT: Mrs. Twitty, I want to thank you very much
19 for your participation in our hearing. At this point in
20 time you're free to go.

21 WITNESS: Okay.

22 THE COURT: Thank you very much, ma'am.

23 (The following takes place outside the presence of the
24 juror.)

25 THE COURT: All right. The Court finds Mrs. Twitty to

Individual Juror Qualification

1 be disqualified from the jury pool.

2 All right. Our next juror in this pool is Toria
3 Murray.

4 TORIA MURRAY, having been previously
5 sworn, testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q Good afternoon.

9 A Hello.

10 Q Your name is Toria Murray, is that correct?

11 A That's correct.

12 Q And Mrs. Murray, I want to thank you very much for your
13 participation in our process. I understand it's an
14 inconvenience and we'll try to make it as small an
15 inconvenience as we can.

16 Okay?

17 A Okay.

18 Q Now, ma'am, a couple of things I want to go over with
19 you before we begin. What we're doing is we're still
20 qualifying members for the jury panel. We've called you in
21 to go over some matters with you that would involve your
22 personal beliefs and feelings about things.

23 So, for that reason, the questions that I'm going to
24 ask you and the questions for which the, the attorneys will
25 follow-up to my questions, there are no right or wrong

Individual Juror Qualification

1 answers to those questions. There's only your answers to
2 the questions because we're just finding, trying to find out
3 more about you. That information will assist us in
4 selecting a jury in the not too distant future.

5 You understand what we're doing?

6 A Sure do.

7 Q I understand that sitting in that, that seat in a
8 courtroom surround by lawyers and, and court officials is
9 not where you usually are on a day like today. So, if it,
10 at any time, you feel uncomfortable about what we're doing,
11 just let me know and we'll try to take care of that for you.

12 Okay?

13 A All right.

14 Q The first thing I have to do is I must remind you that
15 you're still under oath from our original discussions at
16 this time.

17 Do you understand that?

18 A I understand.

19 Q All right. I've got some questions for you now.

20 The first question is have you ever participated at any
21 website or blog or another location that may have expressed
22 opinions concerning the death penalty?

23 A No.

24 Q Have you ever participated in any type of
25 demonstrations, political activity, rally, or meeting that

Individual Juror Qualification

1 might focus on the issue of the death penalty?

2 A No.

3 Q Since we talked on Monday, has anybody contacted you,
4 talked to you, have you heard, read, or seen anything about
5 the case or been exposed to any information that might cause
6 you to have formed an opinion about this case at this time?

7 A No.

8 Q Now, my next questions are going to have to do with the
9 list of people that you saw outside, the list of potential
10 witnesses.

11 Did you go over that list?

12 A Yes.

13 Q All right. Now, I don't want you to name anyone by
14 name off of that list inside the courtroom.

15 A Okay.

16 Q But I am gonna ask you some questions about it.

17 The first question I'm going to ask you is was there
18 anyone on that list, after you reviewed it, that you
19 believed that you have any social, business, or personal
20 connections with?

21 A No.

22 Q Do you believe that you are, are related by either
23 blood or marriage to any of the individuals listed on that
24 list?

25 A No.

Individual Juror Qualification

1 Q So, you don't know of any connections you have with
2 anyone listed on that list?

3 A No.

4 Q Okay. Now, I'm going to go over some matters in just a
5 few minutes. These are going to be more personal questions
6 about your beliefs. Obviously we're not trying to invade
7 your privacy. You do appear someone who is too, secure
8 enough in your opinions and your beliefs that we could talk
9 about those without you being, feeling threatened.

10 Is that true?

11 A That's true.

12 Q All right. And as I indicated, there are no right or
13 wrong answers to my questions. They're just your answers
14 and that's what we're looking for. We are going to talk
15 about the death penalty because that is an issue that could
16 potentially come up in this case.

17 I explained on Monday that case, the trial in this case
18 will be divided into two segments. The first trial will
19 have to do with guilt or innocence or the charges that have
20 been lodged against the defendant. One of those is the
21 charge of murder and for that particular offense the State
22 is requesting or seeking the death penalty. Because of that
23 request, it is necessary, should the defendant be found
24 guilty and that's, we're, we haven't started the trial at
25 this point in time, but should he be found guilty, then that

Individual Juror Qualification

1 same jury that hears the guilt phase would go into a second
2 phase of the trial to determine the appropriate penalty for
3 that, that guilty verdict. The two choices then would be
4 life imprisonment without parole or the death penalty.
5 Those are the two things that a jury could do in that
6 situation.

7 Now, it's premature, I know, to talk about penalties
8 before we've ever gotten to the point where we need to do
9 that or not. But I hope you appreciate the fact, that once
10 the jury is selected, the same jury hears both cases.
11 There's no break in-between and there won't be any other --
12 well, there is a brief break of a waiting period. But no
13 break for the changing of the jury. And so, this will be
14 the only time we can talk to potential witness, jurors both
15 about the, the guilt phase and the penalty phase.

16 So, don't take from the fact that we're talking about
17 this issue at this time taking any, have any bad feelings
18 about the defendant or his defenses that he might raise.
19 It's simply this is the time that we have to talk about
20 this.

21 Do you understand that?

22 A I understand.

23 Q Okay. The first thing I want to talk to you about is
24 how you would apply the law in the case.

25 Do you understand, that at some point in time during

Individual Juror Qualification

1 the trial, the judge will instruct the jury concerning the
2 law to be applied in the case.

3 would you be willing to listen to the judge's
4 instructions on the law?

5 A Yes.

6 Q And would you be willing to accept the law as the judge
7 charges it and apply it to the facts as you find them to be?

8 A Yeah.

9 Q Now, is that true even though when you hear the judge
10 charge the law you might disagree with what the law is and
11 you might not like what the law is?

12 Could you set those feelings aside and still apply the
13 law as the judge charges it to you?

14 A Yes.

15 Q Now, there has been some pretrial publicity in this
16 case both in the broadcast and the print media. I don't
17 know whether you've been exposed to that.

18 Have you seen or heard anything about the case in the
19 media?

20 A It was in the paper.

21 Q Okay. You saw an article in the newspaper?

22 A Right.

23 Q Was that recently or was that back when this incident
24 occurred a year or so ago, more than a year ago?

25 A I can vaguely remember it a year or so ago and it was

Individual Juror Qualification

1 recent.

2 Q All right. Now, I'm going to ask you if you are the
3 kind of juror who is willing to set aside any information or
4 knowledge that you may have seen about the case, anything
5 you've heard, seen, or read, any information also that might
6 occur during the trial, could you set aside that information
7 and decide the case purely and solely upon the evidence you
8 hear in the courtroom?

9 A Yes.

10 Q And is it your belief that your, the information that
11 you did hear or read, in any way, would cause you to have
12 any opinion at this time about this case?

13 A No.

14 Q Now, I'm going to go over two different concepts under
15 the law and be sure you understand them, and I'm going to
16 inquire about your ability to apply your use of these
17 concepts.

18 The first concept is, under the law and the
19 Constitution of our state, criminal defendants are always
20 presumed to be innocent. That means that a defendant does
21 not have to prove his innocence. We presume that, that
22 innocence. So, the defendant, therefore, has no burden of
23 proof in the case.

24 Do you understand that concept?

25 A I do.

Individual Juror Qualification

1 Q The other one is that the State does have the burden of
2 proof in a case. That means the State, before someone can
3 be found guilty, must prove that guilt beyond a reasonable
4 doubt.

5 Do you understand that concept as well?

6 A I do.

7 Q And would you be willing to apply those concepts to
8 this case if you were selected on a jury?

9 A I will.

10 Q Now, is it your belief that anyone who has been accused
11 of a crime, or arrested for a crime, indicted for a crime,
12 that because of those facts, that they're automatically
13 guilty of the offense?

14 A No.

15 Q I assume then that you would be willing to listen to
16 the evidence, the law, weigh those factors, and if, after
17 weighing those factors, your belief was that the State had
18 not met its burden of proof, that you could find someone not
19 guilty of a crime?

20 A Correct.

21 Q By the same token, if you find that the State did meet
22 its burden of proof and did prove someone guilty beyond a
23 reasonable doubt, would you be able to render a verdict of
24 guilty against another person?

25 A Correct.

Individual Juror Qualification

1 Q So, I think this describes you, after hearing your
2 answers, that you would listen to the evidence, determine
3 the strength of the evidence from the testimony, what the
4 evidence showed and listen to the law, and then you could
5 either find a person guilty or not guilty.

6 Is that true?

7 A That's true.

8 Q Now we're going to talk about this, the question of the
9 death penalty. I told you we would get to this point and
10 we'll discuss that at this time. And I've also indicated to
11 you that if we get to that stage of the trial, the same jury
12 that is heard the guilt phase of the trial would hear the,
13 the penalty phase and -- but now that trial would involve
14 new testimony, new witnesses, perhaps some of the other
15 witnesses who testified, but they would be testifying
16 concerning what was the appropriate penalty and the issues
17 that would surround that particular matter as opposed to the
18 question of guilt or innocence because that's already been
19 decided.

20 Do you understand how that would work?

21 A Right.

22 Q Now, I want you to imagine or put yourself in a
23 position at this point in time theoretically. You are
24 serving on a jury in a murder case. For that murder, the
25 state is seeking the death penalty, and you and your fellow

Individual Juror Qualification

1 jurors have heard all of the evidence in the case. You've
2 deliberated, you've heard the law, and you've come to the
3 unanimous verdict that the defendant is, in fact, guilty of
4 the crime of murder.

5 So, at this point in time that issue has been resolved
6 and has been ended. You and your fellow jurors are,
7 therefore, in the position of getting ready to walk back
8 into the courtroom to begin the sentencing phase of the
9 trial where the additional evidence will be presented on
10 that issue.

11 I asked you to read a paper outside in the hall that
12 described three different jurors.

13 Do you remember that?

14 A I do.

15 Q I'm going to go over those three possible jurors with
16 you to be sure we're talking about the same things.

17 The first juror I described on that paper is somebody
18 who, when walking back into the courtroom, has already made
19 up his or her mind. That juror has a belief that when any,
20 anytime someone is found guilty of a murder that the only
21 appropriate punishment for that is death. So, that juror
22 coming back into the courtroom would vote for the death
23 penalty in every case such as this.

24 The other type of juror, number two, has also already
25 made up his or her mind. That juror has a belief that the

Individual Juror Qualification

1 State never has the right to take a life in punishment for a
2 crime, and, therefore, that particular juror will always
3 vote for the life imprisonment and never vote for the death
4 penalty. And so, that juror also has already made up his or
5 her mind.

6 The third juror I described is someone who is coming
7 back into that courtroom, and that particular juror has not
8 made up his or her mind concerning the subject. That juror
9 is going to have to wait and listen to the testimony, weigh
10 the testimony concerning that issue, and then make a
11 determination as to what that juror believes is the most
12 appropriate punishment for the crime of murder for which the
13 conviction has already occurred.

14 Do you understand the three types of jurors I just
15 described?

16 A I do.

17 Q Now, ma'am, which of those three types of jurors would
18 best describe you as you were walking back into the
19 courtroom in that situation?

20 A The third one.

21 Q All right, ma'am. I take it then that that means that
22 you would have to listen to the evidence in the, in the
23 sentencing phase, phase of the trial, that you would
24 consider the evidence and weigh that evidence before
25 reaching a decision, is that correct?

Individual Juror Qualification

1 A That's correct.

2 Q And based on what that evidence showed you, should the
3 evidence indicate that the death penalty, penalty was
4 appropriate, that you could issue a, a verdict of death
5 against a defendant?

6 A Yes.

7 Q Is that true?

8 A That's correct.

9 Q And also, by the same token, if the evidence indicated
10 that the death sentence was not appropriate, or for any
11 other reason, you could sentence someone to life
12 imprisonment without parole in that situation as well.

13 Is that also correct?

14 A That's correct.

15 Q And the decision in that case would depend upon the
16 evidence that you hear and the facts that are presented to
17 you.

18 Is that also correct?

19 A That's correct.

20 Q The final thing I want to go over with you, I have
21 mentioned at the beginning of the trial that the jury in
22 this case would be sequestered. What that means is that
23 once the jury is selected, the jury will be in the courtroom
24 during the day, and in the evenings will be staying at a
25 hotel. There will be SLED agents there to assist you and be

Individual Juror Qualification

1 sure that you're not bothered by anyone. Your outside
2 activities would be limited as far as who you could get in
3 touch with and what types of media or print material you
4 would be able to receive.

5 We expect the trial to last anywhere from five to seven
6 days. Can't tell you exactly how long that will occur.
7 About a week is what we're looking at. And so, during that
8 period of time you would be in what we call sequestration.

9 Do you understand that, ma'am, how that works?

10 A I do.

11 Q And I realize that's an inconvenience in anyone's life.
12 I appreciate that fully.

13 Okay. But my, my real question is if you were in
14 sequestration, would that situation, in any way, pose any
15 real danger of, of harm to either your health or your well
16 being?

17 A No.

18 Q Or would that situation pose any real danger or risk to
19 the health or well being of anyone who is dependent upon
20 you?

21 A No.

22 Q That completes my questions. We're gonna allow the
23 attorneys to follow-up and ask you some, some additional
24 questions. We allow the defense to go first.

25 And it is---

Individual Juror Qualification

1 MR. ALLEN: Okay. I'll go.

2 THE COURT: ---Mr. Allen.

3 You may proceed, Mr. Allen.

4 EXAMINATION

5 BY MR. ALLEN:

6 Q Mrs. Murray, my name is Clay Allen. And I, along with
7 John Reckenbeil and Kathy Hodges, are representing Tony
8 Torres in this case. And I appreciate your willingness to
9 be here as well as earlier in the week and your answers to
10 these questions and the answers to the questions that you
11 had provided to us in the questionnaire.

12 If -- let's see. I understand that you had previously
13 applied for a, a job with the solicitor's office?

14 A Correct.

15 Q Is that correct?

16 A That's correct.

17 Q And is there anything about that experience that will
18 sway you one way or the other in connection with this case?

19 A No.

20 Q I mean you, you will -- is, is that some time ago or
21 recently?

22 A It was in June.

23 Q In June?

24 A Uh-huh. (Affirmative).

25 Q of 2008?

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q Okay. But you could listen to the evidence and give
3 both the State and the defense a fair and impartial trial?

4 A That's correct.

5 Q Okay. Secondly -- well, let me, let me just ask you a
6 little bit more.

7 Can you, can you tell me a little bit more about what
8 you remember or what stands out in your mind about what you
9 read in the paper about this case in particular?

10 A I remember when the, someone breaking in their house
11 and killing the two people. I didn't remember about what he
12 said yesterday about the hammer or about the sexual assault.

13 Q Okay. And the information that you mentioned about the
14 hammer and the sexual assault, you got that information
15 during the---

16 A From y'all.

17 Q Okay. The questioning on Monday?

18 A Yeah. Right.

19 Q Okay. How, if, if at all, how does that information or
20 any information that you gathered so far, that you've heard
21 so far, how, how does that affect you as a potential juror
22 in this case?

23 In other words, does it affect you at all?

24 A It's very upsetting.

25 Q Yes, ma'am, I understand.

Individual Juror Qualification

1 But are -- you know, when you say it's very upsetting,
2 I mean -- and I don't want to put words in your mouth.

3 A Right.

4 Q Feel free to disagree with anything I say. But I'm
5 just trying to get an understanding of what you mean.

6 I mean is there something you, you can express a little
7 bit better or---

8 A I can't think of a word. You know, it's just a, it was
9 a really bad crime. I mean---

10 Q Yes, ma'am.

11 A ---bad crimes upset me.

12 Q Okay. I understand that.

13 A Right.

14 Q If you heard evidence about, as you, as you termed it,
15 a bad crime or a really bad crime, would that affect you, in
16 any way, in making a decision in this case?

17 A No, I'd have to go by the evidence.

18 Q Yes, ma'am.

19 Okay. And you could keep an open mind and listen to
20 all the evidence?

21 A Right.

22 Q Including any evidence that may be offered later on
23 like through the defense or anything like that?

24 A Right.

25 Q Okay.

Individual Juror Qualification

1 A Both sides.

2 Q Ma'am, if -- I also wanted to ask you about a response
3 that you -- and I think I recall you making on the
4 questionnaire---

5 A Right.

6 Q ---Where -- there was a question about if your church
7 or place of worship had a position on the death penalty, and
8 I believe that your explanation is that you wrote I do not
9 know if I could convict with the death penalty case.

10 A Yeah, I've been thinking seriously about that, and the
11 Ten Commandments says do not kill. But then also in the
12 Bible there's contradictions. So, you know, I have to go by
13 the law.

14 Q Okay. So, I guess -- well, let's just -- let me just
15 ask you point blank.

16 How do you feel about the death penalty as a potential
17 punishment for murder?

18 A By law, it would be right. I guess, because I'm
19 sensitive, it's hard to take, but by law it would be right.
20 So, I'd go by the law.

21 Q Okay. And -- okay. Let me ask you another question.

22 How do you feel about life imprisonment without the
23 possibility of parole as a potential sentence in a murder
24 case?

25 A Well, that's, that's fine too.

Individual Juror Qualification

1 Q I'm sorry.

2 A That's, that's fine also.

3 Q Okay. In the, in determining an appropriate sentence,
4 of course, the jury doesn't get to that point, point until,
5 as the judge indicated, that a jury, that means if you were
6 sitting on a jury, you and the 11 other jurors, all agree
7 that an individual had, is guilty of murder, the willful
8 killing of another person with malice aforethought. And, of
9 course, in that finding of guilty, the jury would of
10 determined that the individual had no defense or that there
11 was no defense to it. There's no question that or that he's
12 guilty, that he did it, he's responsible for it, and that
13 he's guilty, and that decision's been made. It's at that
14 point that the next stage comes up.

15 But I guess my question is with the, at the point where
16 the jury's determined somebody is guilty of murder, do you
17 believe that the death penalty would be the only appropriate
18 punishment for such a guilty murder?

19 A No, I would -- either or, whichever one the judge
20 allowed.

21 Q Whichever one the judge's allowed?

22 A Right.

23 Q Okay. Either the death penalty or the life in prison?

24 A Without, with a chance of parole.

25 Q Without the possibility of parole?

Individual Juror Qualification

1 A Right.

2 Q Now, before we get to that stage, of course, as the
3 judge indicated, there would be a, essentially a second
4 trial or second phase of the trial. The State or you would
5 hear evidence presented in matters of aggravation.

6 what I mean by that is information which tend to show
7 that, that the murder is, is worse than, than other murders.
8 I'm not saying that any murder is good, by all means. But
9 I'm, what I'm saying is---

10 A More cruel.

11 Q More cruel or for, for whatever reason---

12 A Right.

13 Q ---makes this case worse.

14 A Right.

15 Q You would also hear evidence in mitigation, and would
16 you like for me to explain what that means?

17 A If you could.

18 Q Okay. It's different than a defense. A defense is,
19 you know, it's information which indicates that someone is
20 not guilty of a crime. But obviously in a situation where
21 mitigation is being presented, the decision about a defense
22 is already been made I mean because the jury's found the
23 individual guilty of murder.

24 But mitigation is any information or any evidence,
25 which in fairness or in mercy, is, is enough to justify some

Individual Juror Qualification

1 sentence other than the death penalty.

2 Do you follow what I'm saying now there?

3 A Right.

4 Q It could take many different forms or anything that's
5 acceptable to the individual juror that would indicate that
6 something other than death is appropriate.

7 Do you follow what I'm saying?

8 A Right.

9 Q Would you be able to consider, in a murder case where
10 an individual has been found guilty of murder, both types of
11 evidence, aggravation and mitigation?

12 A Yes.

13 Q Do you understand that even in a case where aggravation
14 has been proven and a juror is never required to vote or
15 impose the death penalty?

16 Do you understand that?

17 A Okay.

18 Q In other words, the juror, for whatever reason
19 acceptable to that juror, is always allowed to vote for life
20 imprisonment without the possibility of parole.

21 Do you follow what I'm saying?

22 A Hu huh. (Negative).

23 Q In other words, what I'm trying to say is do you
24 understand that the death penalty is never required?

25 A Okay.

Individual Juror Qualification

1 Q Okay. That a juror is always free to vote for the
2 death penalty or not to vote for the death penalty in the
3 case where they have found the aggravating circumstances.

4 A I didn't know it was ever up to the jury. I thought it
5 was always up to the judge.

6 Q Okay.

7 A It isn't?

8 It is?

9 Q Well, again, I'm, I'm not allowed to give you the law.

10 A Okay.

11 Q But---

12 THE COURT: Well, ma'am, let me, let me break in here.

13 As I indicated to you, there's two phases of the trial.

14 WITNESS: Okay.

15 THE COURT: The second phase is the sentencing phase.

16 WITNESS: Okay.

17 THE COURT: And at that point in time, in the
18 sentencing phase, that's after someone has been found
19 guilty---

20 WITNESS: Okay.

21 THE COURT: ---of the original crime of murder?

22 WITNESS: Right.

23 THE COURT: The jury determines whether the appropriate
24 sentence is one of two things, either death or life in
25 prison without parole. The jury meets, hears evidence on

Individual Juror Qualification

1 that subject, and then makes a decision as to which penalty
2 would be the most appropriate.

3 So, in this case, where a death, a murder has been
4 committed, the State is seeking the death penalty, once the
5 jury finds the defendant guilty of the murder, the second
6 phase of that trial is the sentencing phase where the jury
7 makes a determination, based on new evidence and new
8 testimony, as to what the most, most appropriate penalty is.
9 One of those two. Either death or life in prison without
10 parole.

11 Do you understand what we're saying now?

12 WITNESS: So, the jury will decide which of the two?

13 THE COURT: Which of those two---

14 WITNESS: If they're found guilty, the jury actually
15 decides which of the two it would be?

16 THE COURT: For the murder.

17 WITNESS: For the murder.

18 THE COURT: That's the second phase of the trial.

19 WITNESS: Okay.

20 THE COURT: That's what that's about.

21 WITNESS: Okay.

22 THE COURT: Okay. Do you understand what we're talking
23 about now?

24 WITNESS: Yeah, I didn't realize the jury decides that.

25 THE COURT: Yeah, it's up to the jury to decide that,

Individual Juror Qualification

1 and I was asking you earlier, if you were a juror coming
2 back into the courtroom for that phase of the trial, the
3 sentencing phase, you indicated you would be most like juror
4 number three. That is the juror who hasn't made her mind up
5 yet, that she would have to listen to the evidence, listen
6 to the facts, and then make a determination as to which
7 penalty was the most appropriate.

8 You remember me asking you about that?

9 WITNESS: Yeah, I remember that. I still thought that
10 it was your decision if it was, that, a, a judge's
11 decisions, that it was gonna be either or.

12 THE COURT: It normally is the judge's decision to set
13 punishments. The exception to that rule is in this case
14 where there's been a, a---

15 WITNESS: Okay.

16 THE COURT: ---murder alleged. Should the verdict for
17 that crime be guilty, then the jury must determine the,
18 which is the appropriate penalty.

19 WITNESS: Okay.

20 THE COURT: One of those two.

21 WITNESS: Okay.

22 THE COURT: Okay. So---

23 WITNESS: I got you.

24 THE COURT: ---we cleared that up for you?

25 WITNESS: I got you.

Individual Juror Qualification

1 THE COURT: All right. Now you may proceed.

2 Q (Mr. Allen) Now, I guess having cleared that, that
3 up---

4 A Okay.

5 Q ---I mean do you still think that you are the type of
6 juror that can listen to both sides or both evidence?

7 A Yeah.

8 Q And do you feel as if you could, if you believed it's
9 appropriate, vote for the death penalty?

10 A Yes.

11 Q Okay. Understanding that you're never required to do
12 so?

13 A Yes.

14 Q Do you also think that you could, if you believe it's
15 appropriate, vote for life in prison without the possibility
16 of parole?

17 A Yes.

18 Q Okay. Now, of course, we're not trying to question
19 anybody's opinion. Everybody's entitled to their own
20 opinion. We're just trying to find out what your opinions
21 are.

22 A Okay.

23 Q I hope you, I hope you understand that.

24 A Yeah.

25 Q Do you -- and do you, of course, believe that

Individual Juror Qualification

1 everybody's opinion should be treated with respect just like
2 you'd want your opinion to be treated with respect?

3 A Right.

4 Q Let me ask you if you, after considering all the
5 evidence, I mean we're talking again about the penalty
6 phase, all the evidence has been presented, evidence in
7 aggravation, evidence in mitigation, and the jury is
8 deliberating, and you're discussing it with fellow jurors,
9 in the event that you have decided what you believed is the
10 most appropriate penalty, but your, but you, the other
11 jurors disagreed with you, what would you do?

12 In other words, would you stand by your opinion if you
13 believed that that was the most appropriate penalty?

14 A I guess it would depend on the reason why they decide
15 what they decide. I would listen to all their, their
16 opinions and drawn mine from, from -- I'll consider
17 everything.

18 Q Yes, ma'am.

19 A Not just solely what I thought. Just consider
20 everything.

21 Q Yes, ma'am.

22 And I'm not trying to jump even ahead to the point
23 where everything has been discussed freely---

24 A Okay.

25 Q ---as was allowed and essentially that there's nothing

Individual Juror Qualification

1 else to discuss or it's all been discussed before, and
2 you're still at that situation where you believe differently
3 with all the other jurors as to the appropriate penalty,
4 would you be able to stay with your opinion?

5 A Yeah, I would be.

6 MR. ALLEN: Okay. One second, judge.

7 THE COURT: Yes, sir.

8 (Pause.)

9 Q Thank you, Mrs. Murray. I apologize for the questions.

10 A Okay.

11 Q But thank you for your answers.

12 THE COURT: State may proceed.

13 SOLICITOR BARNETTE: May it please the Court, Your
14 Honor.

15 THE COURT: Mr. Barnette.

16 EXAMINATION

17 BY SOLICITOR BARNETTE:

18 Q Mrs. Murray, I'm Barry Barnette from the Solicitor's
19 office. I'm part of the prosecution team.

20 A Okay.

21 Q In listening to Mr. Allen's, Allen's questions as well
22 and looking at your questionnaire, I notice you wrote on
23 there I do not know if I could convict with the death
24 penalty.

25 obviously you've thought about that if you wrote that

Individual Juror Qualification

1 down in your questionnaire?

2 A Right.

3 Q What is changed since then?

4 A I -- like I told him, I was thinking about what the
5 Bible says and it's all different circumstances in the Bible
6 and all different contradictions and that's what changed.

7 Q Let me ask you this question. I know mentioned,
8 mentioned the Ten Commandments.

9 A Right.

10 Q Thou shalt not kill.

11 A Right.

12 Q Obviously that's one of the Ten Commandments.

13 A Right.

14 Q And obviously that's an influence in your decision
15 obviously cause you mentioned that.

16 A But then I have to think of the Bible as a whole
17 instead of just, just the Ten Commandments. I have to think
18 of it as a whole. And so, there's contradictions and all in
19 the Bible and you just -- that's what changed my mind cause
20 I was thinking of it as a whole book.

21 Q Do you feel like the Ten Commandments are more
22 important than any other part of the Bible?

23 A The whole book is the most important.

24 Q Okay. When -- but if I understood right, you said you
25 couldn't, I guess even after the judge asked you the

Individual Juror Qualification

1 questions when we first initially started, you still thought
2 he would be determining the sentence.

3 A Right.

4 Q So, you felt at that you couldn't even convict at the
5 point of that cause you was afraid the judge might give him
6 the death penalty, is that right?

7 A No, that's not what I -- that's not what I thought I
8 said.

9 Q Well, I don't know. I was just reading that. I'm
10 just, I'm just looking off there.

11 A Okay. No, I, I could convict if, if it, you know,
12 depends on the evidence.

13 Q Uh-huh. (Affirmative).

14 Yes, ma'am.

15 In the, looking at the evidence or whatever, the death
16 penalty itself, what's your basic belief about that?

17 I know you've talked about religious beliefs.

18 Is there anything else that forms that because I know
19 it's a tough decision obviously.

20 A Right.

21 Q I know you're struggling with it even going through our
22 questions, and I apologize for asking you these questions.

23 A Right.

24 Q But obviously when you go back in that jury room,
25 you're gonna have to make a tough decision---

Individual Juror Qualification

1 A Right.

2 Q ---from there. And it's a decision where you have to,
3 obviously you have personal experiences, your religion and
4 stuff like that. I notice you're a very religious lady just
5 looking at your information and everything.

6 In that situation, is there one, one that jumps more at
7 you, the life without parole or the death penalty?

8 Which one?

9 And like I said, the judge is not gonna tell you what
10 to do.

11 A Right.

12 Q The law won't tell you what to do.

13 A Right.

14 Q And you got to remember death is an option, but you
15 don't have to vote that option. Life without parole is
16 always an option.

17 A Right.

18 Q In that situation, knowing life without parole is
19 always an option, you don't have to give the death penalty,
20 would you more likely give life without parole?

21 A I think it depends on the crime.

22 Q What crimes would you consider for the death penalty?
23 Under what, what circumstances?

24 Would it be a 9-11 type situation, Oklahoma City type
25 situation?

Individual Juror Qualification

1 A Yeah.

2 You said 9-11 and what else?

3 Q An Oklahoma City.

4 A Right.

5 Q The bombing of Oklahoma City.

6 A Right.

7 Q Would that be the only situation that you consider the
8 death penalty in that situation?

9 A Right.

10 Q So, it'd have to be that---

11 A Or just, just -- I don't know. Just really bad heinous
12 crime. I mean just really, you know, where the people
13 really suffered.

14 Q Would it have to be that level that we're talking
15 about, 9-11 or Oklahoma City type crimes?

16 A Wouldn't have to be that many. It just depends on the
17 individuals.

18 Q Would you---

19 A But the crime happened too.

20 Q Would that be the only class that you would look at?

21 A Yeah, if it was bad enough, right.

22 Q I know Mr. Allen asked you about this also and I'm
23 sorry for asking you these questions.

24 A It's okay.

25 Q Let's say 11 people back in the jury room have one,

Individual Juror Qualification

1 they were pushing for one type of verdict and you had your
2 type of verdict, which is the opposite of theirs, would you
3 go with that group to agree with them on the verdict?

4 A Would I go with the group if they all were, were voting
5 for something that I didn't want?

6 Q Yes, ma'am, if there were 11 of them that voted a
7 different way than you were, and you-all had discussed and
8 everything, would you go along with that group?

9 A It's so -- well, I told him that I would hold my own.
10 But that's, that's an extremely hard question cause if you,
11 you'll listen to everybody -- and, hu, it's a hard question.
12 If I was determined and I just didn't, didn't see it their
13 way at all, yeah, I would just -- I would stay with my own
14 way if I, if I just couldn't see it their way of, their
15 looking at that, the evidence and all. I don't -- this is
16 just a hard question. Yeah, I would, I would, I would stick
17 to, to, to what I thought the evidence was.

18 Q So, back in the jury room, and, of course, this is the
19 decision that---

20 A This is already after it's decided, right?

21 Q Well, after we've had the guilt phase.

22 A Already, already the guilt phase.

23 Q Okay. Right. We're in the sentencing phase here and
24 11 jurors are sitting there with you, and they got their
25 opinion, and you're the 12th person, if you sign the verdict

Individual Juror Qualification

1 form, that will be the verdict, would you go along with that
2 verdict?

3 And there's no right or wrong answers.

4 A Well, I hadn't never thought about this before. I told
5 him one thing and I, now that I would just stick with what I
6 thought is that they're guilty and that this, they should
7 be, this should be done to them, and if they all thought---

8 Q Like I said, there's no, there's no wrong -- what we're
9 trying -- I know we're digging deep and feelings and things
10 like that. But there's no right or wrong answers from you
11 there.

12 A They've already just been -- they already are guilty,
13 and I guess everybody else -- oh, geez. I feel like I would
14 just -- I'm contradicting what I said to him. Like I might
15 would just, what everybody else decided just -- geez.

16 I, I sort of feel like I would -- is this a, a group
17 talking about it and all, I feel like I probably just would
18 tend to go, because we all discussed it and everything, we
19 all tend to go with the group cause we all, we have
20 discussed it. And I said one thing to you and one thing
21 else to him.

22 Q What do you believe in your heart of hearts that you
23 would do?

24 A I, I feel like I probably would go with the group
25 because we had been there and discussed it, we all found,

Individual Juror Qualification

1 found him guilty, and that I, that I would go with -- since
2 we all was a group with that, it's like I'd go with the
3 group on sentencing.

4 Q And that's the answer you believe---

5 A Yeah.

6 Q ---in your heart?

7 A Right.

8 Q And I understand, like I said, there's no right or
9 wrong answers. But I know it's a tough, tough subject we're
10 talking about.

11 A It is.

12 SOLICITOR BARNETTE: One moment, Your Honor, please.

13 (Pause.)

14 Q Ma'am, just one or two more questions. I'm sorry.

15 I know you've reconsidered your position from the time
16 you filled out the questionnaire---

17 A I have.

18 Q ---to the point where we came here today.

19 A Right. I've reconsidered it again.

20 Q What, what, what guarantees -- and like I said, I know
21 you've thought a lot about this. You can tell.

22 What would, what -- could your position change from now
23 until the end of the trial in your reconsideration?

24 A No, because I didn't think this seriously about it when
25 I was writing that down. That was just a, just a brief

Individual Juror Qualification

1 thought in me. That was just a brief thought. I thought
2 seriously since this cause didn't, I didn't know, you know,
3 this is a murder trial or anything when I filled that out,
4 and I didn't have to think about it so hard.

5 Q But how did you learn it was a murder trial?

6 A When I came here with you-all. No, when I called and
7 said why is it two weeks and he said it's a murder trial.
8 And that was after I had already filled that paper out.

9 Q But obviously you've been seriously thinking about it
10 the last---

11 A Oh, yeah.

12 Q ---fifteen or twenty minutes or whatever time you been
13 up here I know.

14 But in your heart of hearts, when you came down and you
15 was that 12th person, would you want to make that decision?

16 A This is two different answers. I wouldn't want to.
17 But I would.

18 Is that not, that not sufficient?

19 Q No, there's no right or wrong answer.

20 A Okay.

21 Q I'm not gonna tell you -- I can't tell you the answer.
22 The judge can't tell you and Mr. Allen can't tell you.

23 A Okay. Well, that's what I would, what I would say. I
24 wouldn't want to, but I would.

25 Q Could you make that decision if it was the ultimate

Individual Juror Qualification

1 penalty in that situation?

2 Could you make that ultimate decision?

3 A Yeah.

4 Q I know---

5 A It would be hard. But I would.

6 Q But it would have to be a heinous crime, so heinous, in
7 your opinion, 9-11, Oklahoma City, anything like that?

8 A Yeah.

9 Q Thank you, ma'am. I appreciate -- I'm sorry for asking
10 you those questions. Thank you.

11 A Okay.

12 THE COURT: Any follow-ups from the defense?

13 (Pause.)

14 MR. ALLEN: No, Your Honor.

15 THE COURT: Thank you.

16 All right, ma'am. At this point in time we're going
17 to -- this ends your discussion with us. Let me go over
18 just a couple of things with you.

19 Should you be called to come back for jury selection,
20 I've told you there will be a sequestration of the jury, you
21 should come back with sufficient clothing, whatever, to stay
22 for a week.

23 WITNESS: Okay.

24 THE COURT: So, be prepared for that eventuality should
25 you be called back.

Individual Juror Qualification

1 Also, is the contact information that you've given us,
2 is that correct?

3 WITNESS: That's correct.

4 THE COURT: And finally, the instructions that I've
5 given you about not gathering any information or discussing
6 the case with anyone continues until we tell you otherwise.

7 WITNESS: Okay.

8 THE COURT: Okay. You're free to go. Thank you,
9 ma'am.

10 WITNESS: Will I hear yea or nay about -- will I hear
11 that I haven't---

12 THE COURT: You'll hear from, you'll hear from the
13 Clerk's office.

14 WITNESS: Either, either way?

15 THE COURT: Yes, ma'am.

16 WITNESS: Okay.

17 THE COURT: Okay. Thank you very much.

18 (The following takes place outside the presence of the
19 juror.)

20 THE COURT: State's position?

21 SOLICITOR GOWDY: Your Honor, the, the State believes
22 that she is unqualified for the same reason that Juror 251
23 yesterday was unqualified. Juror 251 yesterday was
24 otherwise qualified, albeit death penalty, but otherwise
25 qualified until she said that she would, you would go along

Individual Juror Qualification

1 with the crowd. This will -- while, while very earnest in
2 all frankness, there's been ambiguity from the time she
3 filled out her initial questionnaire until the time she just
4 left the courtroom. And she too was very clear on
5 Mr. Barnette's questioning that she too would go acquiesce
6 and go along with the crowd.

7 And the analysis I would suggest to the Court,
8 respectfully, should be the same for both jurors.

9 THE COURT: Defense's position.

10 MR. ALLEN: I'm going to concur with the solicitor.

11 THE COURT: I would find her disqualified as well.
12 I'll make that finding.

13 All right. We're gonna take about a five minute break
14 before we begin with Panel Number Nine. The first one will
15 be Mr. Solesbee when we return.

16 Thank you very much.

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

18 THE COURT: All right. Mr. Bailiff, we'll start with
19 Mr. Tony Solesbee.

20 BAILIFF: Yes, sir.

21 THE COURT: Number 248.

22 TONY SOLESBEE, having been previously
23 sworn, testified as follows:

24 EXAMINATION

25 BY THE COURT:

Individual Juror Qualification

1 Q Good afternoon.

2 A Afternoon.

3 Q Your name must be Tony Solesbee, is that right?

4 A That's right.

5 Q Mr. Solesbee, thank you for your patience. We've got a
6 few more things we want to go over with you about your jury
7 service. Let me explain briefly to you what we're going to
8 be doing this afternoon.

9 I'll be, first of all, asking you some questions that I
10 have from the Court. When I finish, I will allow the
11 attorneys to follow-up on the questions that I've asked you.
12 I will tell you now that we're going to be asking you,
13 asking you about some of your beliefs, and opinions, and
14 positions on certain things.

15 For that reason, I will tell you that, that the
16 questions, the question we're about to ask you have no right
17 or wrong answers. They simply have your answers. Whatever
18 you wish to tell us about those things is what we will know.

19 And of course, I'll remind you you took an oath on
20 Monday to tell us the truth. You're still under oath at
21 this time to answer truthfully, honestly, and completely.

22 Do you understand that, sir?

23 A Yes, sir.

24 Q okay. Now, if, at any time during our process you feel
25 uncomfortable about what's going on, you let me know and

Individual Juror Qualification

1 we'll try to rectify that situation.

2 The first thing I want to ask you is since we talked on
3 Monday, has anybody contacted you or have you read or heard
4 or seen anything or have you gathered any information that
5 would cause you to form any opinions concerning this case
6 since our meeting on Monday?

7 A I think it was on the six o'clock news. You know,
8 there was just a little short thing about the---

9 Q Well, did you watch that?

10 A Well, I was watching it and it came on, yeah. I mean
11 it just---

12 Q Well, I ordered you---

13 A I wasn't---

14 Q Did you watch the entire report and listen to it?

15 A Yes, sir.

16 Q All right, sir. Now, did that contain any information
17 that caused you to form any opinions about this case?

18 A No.

19 Q So, your position, as far as your opinions on the case,
20 is not changed since Monday?

21 A No, sir.

22 Q All right, sir. Now -- and are you still in a
23 position, as you indicated on that, to give a fair and
24 impartial trial to both the State and the defense in this
25 case?

Individual Juror Qualification

1 A Yes, sir.

2 Q All right, sir. I'm gonna ask you some questions,
3 other questions.

4 First of all, have you ever participated in or
5 responded to any blog or Internet site that has as its
6 subject the death, the death penalty?

7 A No.

8 Q Have you participated in any demonstrations, rallies,
9 meetings, or other political activities in which the issue
10 of the death penalty was an issue that was being discussed?

11 A No.

12 Q Now, while you were sitting in the hall, I suppose the
13 bailiff should have let you look at a list of potential
14 witnesses.

15 Is that true?

16 A Those list of names, yeah.

17 Q List of names, yes, sir. I don't want you to name any
18 of those people by name in the courtroom. But I want to ask
19 you some questions.

20 First of all, after reviewing that list, did you have
21 any social, business, or personal connections with anyone's
22 name or anyone who appeared on that list?

23 A Not that I know of.

24 Q Are you related, in any way, by marriage now or
25 formerly or by blood to anyone on that list?

Individual Juror Qualification

1 A No.

2 Q So, as far as you know, you have no connection with the
3 potential witnesses in this case?

4 A Right.

5 Q All right, sir. I'm going to be asking you a series of
6 questions that have to do with your beliefs, and we will be
7 asking, getting to the point where we will ask about the
8 death penalty because that is an issue that could come up in
9 this case. We're not trying to invade your privacy, but we
10 are trying to determine some things that would assist you in
11 selecting the jury that should occur shortly.

12 Now, you seem to be someone who won't feel threatened
13 by us talking about your beliefs.

14 Is that true?

15 A True.

16 Q And as far as the death penalty is concerned, I hope
17 you understand, and I explained on Monday, but I'll explain
18 again, in this case, they're several charges lodged against
19 the defendant. One of which is the charge of murder. For
20 that charge, the State has requested the imposition of the
21 death penalty.

22 For that reason, excuse me, should a jury determine
23 that the defendant is guilty of a murder in this case, we
24 will conduct a separate hearing. We call it the sentencing
25 phase of the trial in which the same jury that heard, heard

Individual Juror Qualification

1 the guilt or innocence phase will come in and hear evidence
2 concerning the appropriate sentence to be imposed.

3 The jury will have two choices. The choices will be
4 either death or life imprisonment without parole. Those are
5 the two choices, choices during the sentencing phase.

6 Now, I'm gonna tell you now it's a little bit strange
7 that we're putting the cart in front of the horse in talking
8 about that because we haven't gotten to the point where the
9 defendant's been found guilty of that, that particular
10 charge. And I hope you understand, that by talking about
11 this, this is the only time that we have to talk about it.
12 Because once we select a jury, we'll go through that first
13 trial. Once it's concluded, if necessary, we will then go
14 through the second trial. We won't have time to stop and
15 talk about it again at that point in time.

16 Do you understand that, sir?

17 A Yes, sir.

18 Q Okay. So, I don't want you to think any less of the
19 defendant or any less of any defenses that he may rise,
20 raise as to his guilt or innocence simply because we're
21 talking about penalty, penalty at this time because we have
22 no choice but to do that.

23 Do you understand that, sir?

24 A Yes, sir.

25 Q Okay. First of all, I'm gonna ask you about your

Individual Juror Qualification

1 opinions concerning the law. During the trial, the judge
2 will charge you concerning the law to be applied in this
3 case.

4 Do you understand that?

5 A Yes, sir.

6 Q And would you be willing to listen to the law as
7 instructed by the judge?

8 A Yes, sir.

9 Q And would you be willing to apply the law as it's
10 instructed to you to the facts that you find to exist?

11 A Yes, sir.

12 Q Now, would that be true even though, when you hear the
13 judge charge you concerning the law, that you might not like
14 the law or you might disagree with what it says, but you
15 would, would you be willing to set those feelings aside and
16 apply the law as it's given to you to the facts as they
17 exist in the case?

18 A Yes, sir.

19 Q Now, there has been some pretrial publicity and you and
20 I just talked about it briefly. I've got another question
21 I'm going to ask to you about that. I want to find out if
22 you, if selected as a juror, would be able and willing to
23 set aside any information or knowledge that you might have
24 about the case from any source at all, anything that you may
25 of heard, read, or seen about the case outside the courtroom

Individual Juror Qualification

1 or anything that you might hear outside of the courtroom
2 during the trial and decide the case purely and solely upon
3 the evidence that's presented during the trial and the law
4 as given to you during that trial?

5 A Yes, sir.

6 Q You could do that?

7 A (Witness nods affirmatively.)

8 Q Sir, you have to answer me verbally cause---

9 A All right. Yes, sir.

10 Q Yeah.

11 okay. Thank you. We can't take that down on tape if
12 you just nod.

13 okay, sir?

14 A Okay.

15 Q Now, there's a couple of concepts I want to be sure you
16 understand and I'm going to go over those with you. I want
17 to be sure you understand these. We've already talked about
18 them, but I want to talk with them, with, about these with
19 you personally.

20 First of all, under the Constitution and the laws of
21 our state, a criminal defendant is always presumed to be
22 innocent until and unless the State proves guilt beyond a
23 reasonable doubt. But throughout the trial, the defendant
24 will be presumed to be innocent. And for that reason, the
25 defendant never has a burden of proof in the trial. The

Individual Juror Qualification

1 defendant is never required to prove himself innocent since
2 we presume that he's innocent.

3 Do you understand that concept?

4 A Yes, sir.

5 Q Also, sir, under the laws and Constitution of our
6 state, the State does always have that burden of proof.
7 It's the State's burden to prove the defendant guilty of the
8 crime charged beyond a reasonable doubt. So, the burden of
9 proof is all upon the State in a criminal case.

10 Do you understand that?

11 A Yes, sir.

12 Q So, given those two concepts you tell me you
13 understand, would you be able to apply them to a trial if
14 you were selected on a jury?

15 A Yes, sir.

16 Q Now, sir, is it your belief that if someone is
17 arrested, accused of a crime, even indicted of a crime, that
18 they are automatically guilty of the crime?

19 A No.

20 Q All right, sir. So, that means that you would be
21 willing to listen to the evidence in a case if you were on a
22 jury, listen to the law, and based on how you determine
23 those things to be, the circumstances as you find them to
24 be, that it is possible that you could find someone not
25 guilty of a charge?

Individual Juror Qualification

1 A Yes.

2 Q Is it also true that if you were sitting on a case and
3 considered the evidence and the law presented and you find
4 that the State meets its burden of proof beyond a reasonable
5 doubt, that you could also issue a guilty verdict against
6 another person?

7 A Yes, sir.

8 Q So, I take it, and tell me if this describes you, that
9 you are a person who, if serving on a jury, would listen to
10 the evidence, weigh the evidence, and depending upon the
11 strength of that evidence, you could find someone either
12 guilty or not guilty of the crime that's before you?

13 A Yes, sir.

14 Q We're going to talk about the death penalty in
15 particular at this point in time. I hope you understand and
16 I'm, I'll go over this with you again so it's crystal clear.
17 There's two steps to the trial. The first step is guilt or
18 innocence. Once that's determined, the same jury that heard
19 that would hear the sentencing phase should the first case,
20 the trial for murder end in a guilty verdict. Then there
21 would be a second hearing on the issue of the appropriate
22 punishment.

23 Do you understand that?

24 A Yes, sir.

25 Q Now, sir, at that second hearing there would be

Individual Juror Qualification

1 additional evidence presented on the subject of the
2 appropriate penalty. That evidence would be presented both
3 by the State and the defense. There may be new witnesses
4 even that testify at that point in time on that issue, what
5 is the appropriate penalty.

6 Now, the only two possible penalties that will be given
7 to a jury, and the jury must choose between those two, would
8 be life imprisonment without parole or the death penalty.
9 Those would be the two choices.

10 Do you understand that?

11 A Yes, sir.

12 Q Now, I also want you, at this point in time, to put
13 yourself in the position in a certain situation
14 theoretically in your mind. Let's say that you were
15 selected as a juror in a murder trial that, in which the
16 State is seeking the death penalty. You heard all the
17 evidence. You've deliberated with your fellow jurors. You
18 have gone back into deliberation and, and heard the law from
19 the judge. And based on all of that information, you and
20 your other jurors find the defendant guilty of the murder.
21 So, the issue of guilt or innocence has been resolved. The
22 defendant has been found guilty of the murder.

23 The State is seeking the death penalty in the case.
24 So, you and your fellow jurors are coming now from the jury
25 room coming back to the courtroom to begin the sentencing

Individual Juror Qualification

1 phase of the trial. That's where the evidence will be
2 presented concerning what is the appropriate sentence.

3 Do you understand that situation?

4 A Yes, sir.

5 Q And that's the situation I want you to envision
6 yourself in. Also gave you a sheet of paper, before you
7 came into the courtroom, that described three possible
8 jurors, and I'll go over those with you again to remind you
9 which ones we're talking about.

10 Number one would be a juror who would be walking into
11 the courtroom who would already have made up his mind. That
12 juror believes that once a person is convicted of a murder
13 that the only appropriate penalty is the death penalty. And
14 so, that juror, on every occasion including on this
15 occasion, would vote for the death penalty before hearing
16 any of the evidence.

17 The next juror is one who's walking down that same hall
18 and that juror also has made up his or her mind. That juror
19 believes that the State never has a right to take a life in
20 punishment for the commission of a crime. And so, that
21 juror has already made up his or her mind to vote for life
22 regardless of what the evidence says and will do that in all
23 cases.

24 The third juror is someone who's walking down that same
25 hall and that juror has not made up his or her mind as to

Individual Juror Qualification

1 exactly what penalty or punishment is appropriate. That
2 juror is going to have to wait and listen to the testimony,
3 to the evidence presented. And once they've heard that
4 evidence presented concerning the appropriate sentence, then
5 make a decision as to which of those two penalties would be
6 appropriate.

7 Do you understand the situation I've put you in?

8 A Yes, sir.

9 Q You understand those three different types of jurors
10 that I've told you about?

11 A Yes, sir.

12 Q Now, sir, of the three types of jurors that I've
13 described to you, which one of those jurors do you feel best
14 describes you in that situation?

15 A Number three.

16 Q I take it from your answers then that you would be able
17 to keep in mind that the defendant has already been
18 convicted of the murder, is no longer a concern as to
19 whether he's guilty or innocent, but you would be willing to
20 listen to the facts and the evidence on the sentencing phase
21 of the trial.

22 Is that true?

23 A Yes, sir.

24 Q And if the evidence at that phase of the trial
25 justified it, you would be willing to sentence the defendant

Individual Juror Qualification

1 to death.

2 Is that true?

3 A Yes, sir.

4 Q And on the other hand, if you found that the evidence
5 presented at the sentencing phase of the trial did not
6 justify the death penalty or if you had any other reason,
7 you would be willing to sentence the defendant to life in
8 prison.

9 Is that also true?

10 A Yes, sir.

11 Q So, you could sentence someone to life or you could
12 sentence someone to death depending on the facts and
13 circumstances as you find them to be?

14 A Yes, sir.

15 Q Now, the last thing I'm going to ask you is a more
16 personal question. I've indicated to you that the jury,
17 when selected in this case, will be sequestered. What that
18 means is that once you're selected, you'll be in the Court
19 all day and at night you'll be staying at a hotel here
20 provided by the county. While there, you'll be accompanied
21 by SLED agents to be sure that no one has any contact with
22 you.

23 You'll have limited contact with people on the outside.
24 Some contact. But limited. And what you could watch on TV
25 and what you can read in the newspapers and that sort of

Individual Juror Qualification

1 thing would also be limited. We expect the length of the
2 trial to be anywhere from five to seven days in length once
3 it begins.

4 My question to you, and I realize that situation is an
5 inconvenience in anybody's life, I understand that. That's
6 not my question.

7 But what my question is, if you were in that situation
8 and you were sequestered, would that situation pose a
9 serious risk of danger to either your health or the, or your
10 well being?

11 A Not that I know of.

12 Q Okay, sir. And if you were in that situation, would
13 that situation pose a serious risk of danger to the health
14 or well being of anyone who is dependent upon you?

15 A No.

16 Q All right. That completes my questions. I told you
17 I'd let the attorneys at this point in time to follow-up on
18 my questions. We allow the defense to go first, and I see
19 Mr. Allen standing up.

20 You may proceed.

21 MR. ALLEN: Thank you, Your Honor.

22 EXAMINATION

23 BY MR. ALLEN:

24 Q Good evening, Mr. Solesbee.

25 A Good evening.

Individual Juror Qualification

1 Q Again, my name is Clay Allen. I, along with John
2 Reckenbeil and Kathy Hodges, are representing Tony Torres in
3 this case. We appreciate your being with us today answering
4 these questions. And again, we're not trying to re -- we
5 just simply want to find out how you feel about certain
6 things. And as the judge said, they're certainly no right
7 or wrong answers. Just how you feel.

8 I want to ask you a little bit more about the
9 information that you have seen like through the news
10 reports.

11 Do you recall if, if anything stands out in your mind
12 about what you saw either on television -- was it on
13 television or in the newspaper?

14 A Television.

15 Q Television.

16 And was this over the weekend as well as, as I think
17 you said Monday night as well?

18 A I think it's Sunday night and Monday.

19 Q Sunday night and Monday.

20 Is there anything that stands out in your mind about
21 what you saw, any information or anything that stands out in
22 your mind about what you saw?

23 A I mean it, again, just says that he was charged---

24 Q Right.

25 A ---you know with this.

Individual Juror Qualification

1 Q Okay. And as a result of his being charged, would that
2 have any affect on you as far as any preconceived notions
3 that you may have about this case?

4 A No.

5 Q So, you're coming in here obviously with no
6 preconceived notions, is that correct?

7 A Right.

8 Q Okay. Sir, how do you feel about the death penalty or
9 do you have any opinions about the death penalty as an
10 appropriate punishment for murder?

11 A I mean I know it's harsh. But then, you know, if a
12 person takes another person's life, then, you know, you
13 know, I think it's, you know, all for it.

14 Q Okay. You said you---

15 A You know, if -- you know, you know, a brutal murder,
16 you know, one person taking another person's life --

17 Q Yes, sir.

18 A -- you know, I think, you know, it would be justified,
19 you know, if they was found guilty.

20 Q Okay. Now, if the individual were found guilty, you
21 indicated it would be justified. I guess what I want -- but
22 the question I've got is this.

23 Again, as the judge indicated, as the juror -- if you
24 and the 11, other 11 jurors, if you're selected on a jury,
25 and you found the individual guilty of murder, and, of

Individual Juror Qualification

1 course, by that we're talking about a willful killing of
2 another person with malice aforethought, with evilness or
3 depravity of heart, and you and the other 11 jurors had
4 decided that that's no defense to this. In other words, if
5 one was offered, that, you've rejected that idea in other
6 words. This person is, beyond a reasonable doubt, guilty.
7 No question that he did. No question that he's responsible
8 for it. Guilty of that murder.

9 You understand what I'm saying?

10 A Yes, sir.

11 Q In that situation, do you feel as if the death penalty
12 is the only appropriate punishment for that guilty murder?

13 A I think so, yes.

14 Q Okay. And if you, along with the other 11 jurors, had
15 found an individual guilty of such a murder, would you not
16 consider any other form of punishment but the death penalty?

17 A I would think that depends on the case while, you know,
18 just all the circumstances.

19 Q Well, I kind of asked the question I guess twice.

20 A All right.

21 Q And I think I got two different answers. I mean so,
22 for---

23 A I mean if it was like self-defense type --

24 Q Okay.

25 A -- you know, that's different.

Individual Juror Qualification

1 Q But well, see, that's an interesting point and that's
2 not the first time that we've had, we've heard that. But
3 let me make sure that I'm clear on my, on my question.

4 If a jury finds an individual guilty of murder, again
5 the willful killing of another with malice aforethought,
6 that means that a person has -- there is no self-defense,
7 for example. That -- self-defense is a legal justification
8 or excuse to taking the life of another, you know, if that
9 applies.

10 But what I'm talking about is a situation where the
11 jury's found the person guilty of murder and that there is
12 no legal justification or excuse. There is no defense.

13 A Right.

14 Q Okay. So, again, my, my question is do you believe
15 that, in that situation, that the death penalty is the only
16 appropriate punishment?

17 A Yes, sir.

18 Q And that in that situation you would not even consider
19 life in prison as an appropriate punishment?

20 A No.

21 Q Okay. And I can tell by your answers, I think you
22 thought about this a good bit, your opinions on the death
23 penalty.

24 would that be right?

25 A Oh, yeah.

Individual Juror Qualification

1 Q And you're pretty firm in that opinion, right?

2 A Yes, sir.

3 Q Now, not that anybody's gonna try to talk you out of
4 it. But I don't suppose anybody could talk you out of it.
5 Is that a fair statement?

6 A I would think so, yeah.

7 MR. ALLEN: One second please.

8 (Pause.)

9 Q Thank you, Mr. Solesbee. If you'll -- I mean I'm
10 finished with my questions.

11 THE COURT: Any questions from the State?

12 SOLICITOR BARNETTE: Yes, sir, a few if I could.

13 THE COURT: Yes, sir.

14 EXAMINATION

15 BY SOLICITOR BARNETTE:

16 Q Mr. Solesbee, I'm Barry Barnette. I'm part of the
17 prosecution team along with Trey Gowdy and Cindy Crick.

18 A All right.

19 Q Mrs. Crick had to step out for a second. But just ask
20 you a couple of questions off of Mr. Allen's questions in
21 that situation.

22 When you look at murder, do you think there's different
23 types of murders?

24 A I mean -- no, not really. I mean a murder is a murder.

25 Q Uh-huh. (Affirmative).

Individual Juror Qualification

1 would you agree that like, for example, if somebody
2 shot somebody with a gun or somebody stabbed them or if a
3 situation where two people got in a fight type situation
4 that that's the same type of murder as one that was planned
5 or premeditated?

6 A I wouldn't think that, that would be the same type.
7 Not as premeditated.

8 Q Okay. Do you think it would be the same type or not
9 the same type?

10 A Not the same type.

11 Q Do you think there should be different types of
12 sentences concerning what type murder it is?

13 A No, I think it'd still be the same sentence.

14 Q Okay. You wouldn't change your mind, for example---

15 A You know---

16 Q ---if mitigating factors like we have in the second
17 phase, and there would be aggravating circumstances, which
18 would heighten the murder, and they're possibly mitigating
19 circumstances would be presented which would lessen it,
20 would you listen to those factors?

21 A I would listen to them, yeah.

22 Q And in those situations, if you looked at both sides or
23 whatever, is there different types of murder that you could
24 give life without parole?

25 A I guess I would -- I guess, you know, I could say yes,

Individual Juror Qualification

1 I would give life without parole.

2 Q But there's also---

3 A You know, it's just---

4 Q Okay.

5 A It's just kind of hard to -- you know, it's like if
6 you're saying if two people just got in a fight, then, you
7 know, one gets killed, I could see maybe, you know, where
8 that could be, you know, life without parole.

9 Q Uh-huh. (Affirmative).

10 A But if, you know, some -- you know, if a person just
11 comes in, shoots you, then, you know, I'd say no on that.

12 Q Uh-huh. (Affirmative).

13 But there would be different -- you would look at the
14 evidence and the facts?

15 A Yeah.

16 Q And you'd have to make your decision what the
17 appropriate penalty would be off that?

18 A Right.

19 Q And would you listen to the law the judge gave to you?

20 A Yes.

21 Q And you realize death, the death penalty, you don't --
22 the law will not require you to give it. The judge and the
23 Court won't require you to give it.

24 A Right.

25 Q Life without parole is always an option in that

Individual Juror Qualification

1 situation.

2 Could you look at the evidence and make a decision
3 between the death penalty and life without parole?

4 would that be two options available to you?

5 A I think I could.

6 Q And is there a murder such you could vote for life
7 without parole?

8 A I would -- I'd say no.

9 Q Okay. So, you'd say there's no, no murder that you
10 could vote life without parole?

11 A Right.

12 Q Okay. Thank you, sir.

13 THE COURT: Anything further?

14 MR. ALLEN: No, thank you, Your Honor.

15 THE COURT: All right. Mr. Solesbee, we have not
16 selected a jury at this point in time. We'll be calling
17 those we wish to come back for jury selection at a later
18 time. And those that we don't, we'll be notifying you that
19 you don't have to return.

20 So, at this point in time you're free to go.

21 Thank you very much, sir.

22 WITNESS: Thank you.

23 (The following takes place outside the presence of the
24 juror.)

25 THE COURT: The Court finds Mr. Solesbee disqualified.

Individual Juror Qualification

1 All right. The next one on our list is Andrew Gilpin,
2 Number 105.

3 ANDREW GILPIN, having been previously
4 sworn, testified as follows:

5 EXAMINATION

6 BY THE COURT:

7 Q Good afternoon.

8 A Afternoon.

9 Q I believe your name is Andrew Gilpin?

10 A Yes.

11 Q Is that correct?

12 A Yes, sir, that is.

13 Q Thank you very much for your patience today, and we're
14 going to go over some matters with you and I want to -- we
15 appreciate your cooperation thus far.

16 Let me explain to you what we're going to be doing.
17 I'm going to be asking you a series of questions to begin
18 with. When I finish, I'll let the attorneys follow-up.

19 A Uh-huh. (Affirmative).

20 Q Our purpose here is to gather some additional
21 information about you and your opinions and positions on
22 certain matters. For that reason, there are no right
23 answers. There's no wrong answers to our questions.
24 There's simply your answers. We're here just to gather the
25 information that you might be willing to share with us, and,

Individual Juror Qualification

1 of course, I'll remind you you're sworn to tell the truth
2 and to answer my questions fully, and completely, and
3 honestly.

4 Do you understand that, sir?

5 A Yes, sir, I do.

6 Q Okay. If, at any time in our process, you feel
7 threatened or have a problem, you let me know and we'll try
8 to alleviate those concerns.

9 A Uh-huh. (Affirmative).

10 Q My first question is since our meeting on Monday, have
11 you talked to anyone, has anyone contacted you, have you
12 gathered or been exposed to any information that may have
13 caused you to form an opinion about this case?

14 A No, sir, I have not.

15 Q Have you ever participated in or responded to any blog
16 or other Internet site concerning issues involving the death
17 penalty?

18 A No, sir, I have not.

19 Q Have you ever participated in any demonstrations,
20 political activities, rallies, or meetings where the focus
21 or one of the main issues discussed was the death penalty?

22 A No, sir, I have not.

23 Q All right, sir. I'm going to go over some, some
24 questions concerning a list of witnesses you reviewed
25 outside the courtroom.

Individual Juror Qualification

1 Do you recall that list?

2 A Yes, sir.

3 Q All right, sir. And have you had a chance to look it
4 over?

5 A Yes, sir, I did look it over.

6 Q I do not want you to identify anyone on that list by
7 name inside the courtroom.

8 A Okay.

9 Q Do you understand what I'm saying?

10 A Yes, sir.

11 Q All right. But I will ask you, and after reviewing the
12 list, is it your belief that you have any social, business,
13 or personal connections with any of those individuals listed
14 as potential witnesses on that list?

15 A No, sir, I do not.

16 Q Do you believe that you are related, now or formerly by
17 blood or marriage, to anyone listed on that list?

18 A No, sir.

19 Q I take it from your answers then, sir, that you have no
20 connection, to your knowledge, with anybody on that list?

21 A No connections.

22 Q All right. Now, I'm going to be asking you now some
23 questions that involve your positions or opinions on things
24 where -- again, we're not trying to invade your privacy in
25 any fashion. We're trying to find out how you feel about

Individual Juror Qualification

1 some matters. And those opinions are important to us in
2 jury selection that will take place later on.

3 Again, you seem like someone who is comfortable enough
4 in your opinions and positions that you won't feel
5 threatened by that process.

6 Is that true?

7 A Yes, sir.

8 Q And we're going to be asking you eventually about the,
9 the death penalty, and let me explain something to you so
10 that you understand the context in which we are asking these
11 questions.

12 First of all, this trial, as it goes forward on the
13 issue of murder, which is one of the indictments involved in
14 this case, the State, for that murder, has asked for the
15 imposition of the death penalty. By doing that, that, that
16 particular part of the case, if the defendant is found
17 guilty, and that has not occurred, we've not even started
18 the trial yet, but if he were found guilty, the same jury
19 that considers guilt or innocence would come back at a later
20 time, shortly thereafter---

21 A Uh-huh. (Affirmative).

22 Q ---and consider the issue of the appropriate sentence
23 to be imposed.

24 So, the same jury will be involved in both, both phases
25 of the trial if that's necessary.

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q We don't know if that's necessary yet. So, to a
3 certain extent, you might think well, talking about the
4 penalty phase is putting the cart before the horse except
5 for the fact that the same jury considers both, and before
6 this jury is picked, this is the only opportunity we have to
7 discuss both potential phases of the trial.

8 I'm telling you that so that you won't hold the fact
9 that we're talking about penalties today against the
10 defendant or against any of the defenses that he might
11 raise. It's simply the only convenient time that we have to
12 discuss these issues.

13 Do you understand that?

14 A Yes, sir.

15 Q Okay. I wanted to be sure you understood that concept
16 before we went forward and that you won't hold those things
17 against him or his legal position.

18 I'm gonna ask you about your beliefs or the way, the
19 way in which you apply the law in the case and be sure we
20 understand that.

21 At some point during the trial, the judge, that will be
22 me, I will be charging the jury concerning the law to be
23 applied in this case.

24 A Uh-huh. (Affirmative).

25 Q My question to you, would you be willing to listen to

Individual Juror Qualification

1 the law as charged by the judge in this case?

2 A Yes, sir.

3 Q And would you be willing to accept the law as it's
4 charged and apply it to the facts of the case as you, the
5 jury, find them to be?

6 A Yes, sir.

7 Q Now, is that true even if, while you're listening to
8 the judge charge the law, you disagree with something that's
9 said about in the law or you don't like the law that the
10 judge charges to you?

11 Could you set those feelings aside and still take the
12 law as it's charged and apply it to the facts as you find
13 them to be?

14 A Yes, sir, I could.

15 Q All right. Now, there has been some pretrial publicity
16 about this case.

17 A Uh-huh. (Affirmative).

18 Q And I want to find out, first of all, if you've been
19 exposed to any of that pretrial publicity in that fashion?

20 A Yes, sir, I was.

21 Q Okay. And can you tell me when that occurred?

22 A It was after I received the call to come to as a jury.

23 Q And in what form?

24 Was that in the print media or on television?

25 A It was in the print media, on the Internet.

Individual Juror Qualification

1 Q Okay.

2 A And it was---

3 Q You go to goupstate.com?

4 Is that where we are?

5 A No, I, I don't remember exactly where the site was at.

6 Q Okay.

7 A But basically it, were the charge -- it was the, almost
8 the charges that were read in Court the other day.

9 Q Okay.

10 A That was all there was.

11 Q All right. So, I assume that, from that, you have not
12 formed any particular opinions one way or another about the
13 issues involved in the case?

14 A No, sir, not, not at all.

15 Q All right. Would you be the type of juror, if you were
16 selected in this case, to put aside anything that you may
17 have heard, seen, or read outside the courtroom, either
18 during the trial or before the trial---

19 A Uh-huh. (Affirmative).

20 Q ---and decide the case purely upon the evidence
21 presented during the trial and the law that's presented at
22 that time as well?

23 A Yes, sir, I could.

24 Q Now, I want to go over two concepts with you that we
25 talked about briefly on Monday. I want to be sure we have a

Individual Juror Qualification

1 clear understanding about these things and how you would
2 approach.

3 The first thing is, under the Constitution and laws of
4 our country and state, a defendant is always presumed to be
5 innocent of the crime charged no matter what the seriousness
6 of the crime might be. Therefore, the defendant never has a
7 burden of proof or duty to prove himself innocent. He's
8 presumed to be innocent.

9 Do you understand that concept?

10 A Yes, sir.

11 Q The other concept is that the State does, according to
12 those same laws, have the burden of proving the defendant
13 guilty of the offenses that have been charged by proof
14 beyond a reasonable doubt.

15 Do you understand that the State has that burden
16 throughout the trial?

17 A Yes, sir.

18 Q Now, do you -- if you understand those, would you, if
19 you were sitting as a juror, be willing to apply those
20 principles to this particular case?

21 A Yes, sir.

22 Q Now, sir, I take it from what you have told me thus far
23 that it's not your belief that just because someone is
24 accused of a crime or charged with a crime, and even
25 indicted with a crime that they are automatically guilty of

Individual Juror Qualification

1 that crime.

2 Is that your, your belief?

3 A Yes, sir.

4 Q So, you would then be willing to sit as a juror in a
5 criminal case and be willing to listen to the law and the
6 evidence as presented to you, and based upon what you find
7 those things to be, and the circumstances that you have
8 learned, you could possibly find someone not guilty of a
9 crime as charged.

10 Is that true?

11 A Yes, sir.

12 Q Is it also true that if the State did meet its burden
13 of proof and did prove someone, to your satisfaction, guilty
14 beyond a reasonable doubt, that you could pass a verdict of
15 guilty against someone charged with a crime?

16 A Yes, sir.

17 Q So, I think I could describe you as an individual or a
18 juror who would listen to the evidence---

19 A Uh-huh. (Affirmative).

20 Q ---and based upon the strength of that evidence and
21 what's been presented as the law, you could find someone
22 either guilty or not guilty of any crime that you are
23 involved in a trial on?

24 A Yes, sir.

25 Q Now, we're gonna talk about the penalty phase of the

Individual Juror Qualification

1 trial. I told you we'd get to this point. And again, I
2 want to explain to you that there's two phases to the trial.

3 A Uh-huh. (Affirmative).

4 Q The first phase determines guilt or innocence on all
5 the charges that are pending, and, of course, one of those
6 charges is the charge of murder for which the death penalty
7 has been sought. And I'm telling you that if the jury
8 determines, and that's not been determined yet because the
9 trial hasn't, hasn't even started, but if the jury found the
10 defendant guilty of that murder, we'd hold that second trial
11 with the same jury to determine the appropriate penalty.

12 The only two choices at that hearing, that subsequent
13 trial would be life imprisonment without parole or the death
14 penalty.

15 A Uh-huh. (Affirmative).

16 Q You'd hear additional evidence during the second phase
17 of the trial from the same or perhaps even different
18 witnesses as to the appropriate level of punishment to be
19 given by the jury.

20 Do you understand how that process works?

21 A Yes, sir.

22 Q All right, sir. Now, I want you to put yourself in a
23 situation theoretically. You're on a jury. The jury is
24 trying the charge of murder. The State has sought the death
25 penalty for the murder. You and your fellow jurors hear the

Individual Juror Qualification

1 case, deliberate, take the law as given by the judge. And
2 after your deliberations, you have found the defendant
3 guilty of committing a murder.

4 So, the issues that might be involved in finding him
5 guilty or not guilty have been resolved.

6 A Uh-huh. (Affirmative).

7 Q He's been found guilty. We are now in the position
8 where, since the State sought the death penalty, of that
9 same jury coming back to the courtroom to decide the issue
10 of the appropriate punishment. And again, the two choices
11 are life imprisonment without parole or death.

12 Now, you're one of the jurors. You're coming down the
13 hall walking into the courtroom.

14 And do you remember a piece of paper that I had you
15 read in the hall that described three different kinds of
16 jurors?

17 A Yes, sir.

18 Q All right. I'm going to go over those with you again
19 to be sure we're talking about the same things.

20 A Uh-huh. (Affirmative).

21 Q Juror Number One on that paper was described as an
22 individual, who walking down the hall, would of already made
23 up his mind. That juror believes that when someone is found
24 guilty of a murder that the only appropriate punishment is
25 death. And so, every time that juror comes into a courtroom

Individual Juror Qualification

1 with someone who had already been found guilty of murder,
2 he's made up his mind that the only appropriate penalty is
3 death.

4 The second juror that we discussed is also already made
5 up his mind, his or her mind. That juror believes that the
6 State has no right whatsoever to ever take a life in
7 punishment for a crime. So, that juror has already made up
8 his or her mind that no matter what the evidence is that's
9 gonna be presented during the sentencing phase, that the
10 sentence will always be life, and that juror will do the
11 same thing in every situation such as this.

12 The third juror that I described is walking down the
13 hall, and that juror has not yet made up his or her mind as
14 to what the appropriate punishment might be. That juror is
15 going to have to wait and listen to the evidence that's
16 presented during the sentencing phase of the trial. And
17 after hearing that evidence, will have to weigh the evidence
18 and decide what is the appropriate punishment. Be it life
19 in prison without parole or death.

20 Now, do you understand three different jurors I've
21 described?

22 A Yes, sir.

23 Q Now, I've put you in the situation where you're walking
24 down the hall with your fellow jurors.

25 You understand the situation?

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q Which of those three jurors would best describe you in
3 that situation?

4 A Juror Number Three.

5 Q All right. I take it from that answer now that you
6 mean that you would be willing to, even after finding the
7 defendant guilty of murder---

8 A Uh-huh. (Affirmative).

9 Q ---that issue having been resolved, you would be
10 willing to come back into the courtroom and hear the
11 evidence, weigh the evidence presented during the sentencing
12 phase of the trial, and make a determination as to what of
13 the two choices would be best.

14 Is that true?

15 A Yes, sir.

16 Q And after weighing the evidence, if you deemed it
17 appropriate, you could sentence an individual to the penalty
18 of death, is that correct?

19 A Yes, sir.

20 Q Or if you find that the evidence does not justify that
21 penalty or for any other reason you happen to find, you
22 could also sentence someone, in that situation whose been
23 found guilty of a murder, to life imprisonment without
24 parole?

25 A Yes, sir.

Individual Juror Qualification

1 Q So, I take it then you would weigh the facts and
2 circumstances then and make a decision based on those facts
3 and circumstances.

4 A Yes, sir.

5 Q Is that a correct statement?

6 A Yes, sir, it is.

7 Q One last thing I want to go over with you. I've
8 explained to you that the jury in this case will be
9 sequestered. What that means is that once the jury is
10 seated, you will not be allowed to go back home. You'll be
11 here. You'll be hearing the case during the day. In the
12 evening you'll be staying in a hotel. You would be taking
13 your meals with your fellow jurors. Your access to the
14 outside world would be limited. We allow some telephone
15 conversations, but they are monitored.

16 A Uh-huh. (Affirmative).

17 Q And we also would be filtering or preventing you from
18 seeing certain things on television and receiving certain
19 things in the print media.

20 A Uh-huh. (Affirmative).

21 Q Now, do you understand that situation?

22 A Yes, sir.

23 Q We expect the trial, once it begins, to last for about
24 five to seven days. Can't say exactly what's gonna -- it
25 depends on several factors. And I realize that if you were

Individual Juror Qualification

1 put in this situation it would be an inconvenience to
2 anyone's life. I understand the inconvenience involved.

3 A Yeah.

4 Q What my real question is that if you were in that
5 situation, you were sequestered, would that situation pose a
6 substantial risk to either or a real risk to either your
7 health or your well being?

8 A No, sir, it would not.

9 Q Would it pose a substantial risk to the health or well
10 being of anyone who is dependent upon you?

11 A No, sir.

12 Q You've finished answering my questions at this point in
13 time.

14 A Okay.

15 Q We allow the attorneys to follow-up on those questions.
16 The defense goes first and I see Mr. Reckenbeil is the one
17 who's standing.

18 So, you may proceed.

19 MR. RECKENBEIL: Thank you, Your Honor.

20 May it please the Court.

21 EXAMINATION

22 BY MR. RECKENBEIL:

23 Q Mr. Gilpin, good evening. My name is John Reckenbeil.
24 I'm one of the attorneys for the defendant, Tony Torres.

25 A Yes, sir.

Individual Juror Qualification

1 Q First of all, sir, I'd like to thank you for a couple
2 of things. Number one is that you served our nation in the
3 Gulf war back in the early 90's, and I, I appreciate your
4 service to this country.

5 A Thank you.

6 Q As the judge told you is that there's two forms of a
7 greater service to this country.

8 A Uh-huh. (Affirmative).

9 Q You've already performed number one.

10 A Uh-huh. (Affirmative).

11 Q And now you've met your obligation head on with number
12 two, the fact that you, you've been called to jury duty in a
13 very serious, serious matter. I appreciate your filling out
14 that questionnaire. I've reviewed it and I want to talk to
15 you a little bit about what I've reviewed.

16 A Okay.

17 Q I see in your questionnaire that you applied for a
18 position as a law enforcement officer.

19 A Yes.

20 Q Which division and which office was it that you applied
21 for?

22 A When I got out of the Marine Corp. I still had desires
23 to be a law enforcement officer. I tried to -- I applied
24 for the Highway Patrol and I was disqualified because I wear
25 glasses.

Individual Juror Qualification

1 Q Yes, sir.

2 A And I didn't have Lasix surgery at the time and they
3 disqualified me at that point. About a year later I applied
4 for Greenville County Sheriff's Department, and I was
5 disqualified based upon a few too many speeding tickets.

6 Q Okay.

7 A So, that was it. And then at that point that ended my
8 trying to pursue a law enforcement career.

9 Q That was back in the early 90's?

10 A Yes, sir, shortly after I got out of the Marine Corp.

11 Q Okay. All right. Now, the, the judge was talking to
12 you about you had some exposure about this case.

13 A Yes.

14 Q You read it on an Internet site.

15 A Yes, sir.

16 Q And that you saw what you thought was pretty much
17 similar to the indictments that were read by the judge the
18 other---

19 A Yes, sir.

20 Q ---morning.

21 Anything specific that stands out in your mind about
22 that?

23 A No, sir, it was, it was almost verbatim of the
24 accusations, the charges that were read in the court the
25 other day.

Individual Juror Qualification

1 Q Okay.

2 A Nothing specific. After I read it, and the reason I
3 went there when I got the summons in Court, I was just, I
4 was curious as to what this summons was about.

5 Q Sure.

6 A I saw the gentleman's name, Torres, and I, I googled
7 his name and it came up and basically, basically read the
8 accusations against him. At that point I said, I said I'm
9 probably not gonna read anymore.

10 Q Sure.

11 A If I do get chosen, I want to be available to sit
12 fairly and judge fairly. So, I stopped any pursuit of
13 knowledge of the trial at that point.

14 Q Do you know how long ago that was that you---

15 A Four weeks. At least four weeks ago.

16 Q Four weeks ago?

17 A Yes, sir.

18 Q Now, when you read the indictments or, on the
19 Internet---

20 A Uh-huh. (Affirmative).

21 Q ---what was your reaction when you read the facts?

22 A Probably my main reaction was this was a serious trial.

23 Q Yeah.

24 A That was, that was it. I mean you, you felt for the
25 victims in the trial because it was a, a violent crime. But

Individual Juror Qualification

1 just really implied the seriousness of, of sitting on the
2 jury---

3 Q Sure.

4 A ---was the, was the biggest impact.

5 Q Right.

6 But I think what the Court would or I'd like to know---

7 A Yeah.

8 Q ---and I'm sure what the State's want to know is that,
9 after reading that, did that give you any sort of
10 preconceived notion that you couldn't sit fair and impartial
11 as a juror?

12 A No, sir, it did not.

13 Q Okay. And you took that information, once you received
14 your summons, once you looked at that, and that was it, you
15 stopped looking for more information?

16 A Yes, sir, I did.

17 Q All right. Do you have a general view on the death
18 penalty?

19 A I guess my general view would be -- I, I don't
20 necessarily have one. I'm not necessarily for it. I'm not
21 necessarily against it. I do believe that it can be applied
22 in certain cases, and I do believe that mercy can be shown
23 and can not be applied in certain cases.

24 Q All right. So, there's no specific fact scenario that
25 you would say that automatically a person deserves death?

Individual Juror Qualification

1 A No, sir.

2 Q All right. Flip the coin, no specific fact scenario
3 that would say a person deserves life in prison for a
4 murder?

5 A I'm sorry. Could you---

6 Q I asked you the question on both---

7 A Yeah.

8 Q Flip the coin.

9 A Yeah.

10 Q When you say there's no specific fact scenario that you
11 can say in your mind that a person deserves to die---

12 A Yes.

13 Q ---automatically.

14 And automatically you can't say in your mind that a
15 person deserves life in prison?

16 A Yes, sir, that's correct.

17 Q All right. Now, understanding that if, in fact, we get
18 to a second part or phase of this, of this trial.

19 A Uh-huh. (Affirmative).

20 Q This is our only opportunity to talk about this.

21 A Yes.

22 Q And the judge said to you he wants you to put yourself
23 kind of in the future frame, chance of you've already got a
24 conviction.

25 A Yeah.

Individual Juror Qualification

1 Q Now an individual's already been convicted of murder.

2 A Uh-huh. (Affirmative).

3 Q The jury's decided. Twelve people unanimously, after
4 they, hearing all the facts and evidence, that it was a
5 willful, unlawful killing with malice aforethought. It was
6 a murder.

7 A Uh-huh. (Affirmative).

8 Q Okay. You're now coming back out of that jury room.
9 Two separate games if you want to put---

10 A Yeah.

11 Q It's two separate trials.

12 A You have the ability to put behind you what you've
13 heard in that first trial to be fair and impartial in that
14 second trial?

15 A To be completely honest, I, I can't say that I would be
16 able to forget everything that I heard. But I do hope that
17 I would have the ability to judge the second part of the
18 trial with the evidence that was presented at the time. So,
19 yeah, I, I believe I could set aside the things that I had
20 been exposed to at that time and judge fairly if you would
21 say the punishment part of the trial.

22 Q Would you come in with any sort of preconceived notions
23 to that second trial putting any sort of burden on the
24 defendant to prove anything to you in order---

25 A No.

Individual Juror Qualification

1 Q ---that you not implement the death penalty?

2 A No, sir.

3 Q All right. So, coming into that second phase, even
4 though -- I appreciate your candor.

5 A Uh-huh. (Affirmative).

6 Q You might have some feelings and some thoughts in your
7 mind. You're gonna hear different evidence as we just
8 talked about. You're gonna hear the State talk about
9 aggravation, making the murder worse.

10 A Uh-huh. (Affirmative).

11 Q In other words, that's what aggravation basically is.

12 A legal term or kind of a term of art.

13 would you have the ability to both take into
14 consideration what the State's gonna present, and then have
15 an opportunity to listen to what the defense would say cause
16 the defense is gonna have an opportunity to present evidence
17 in mitigation, and mitigation basically is a term of art
18 talking about lessening the, asking for mercy---

19 A Uh-huh. (Affirmative).

20 Q ---too, of the murder.

21 would you have the ability to take both of those in
22 consideration before you make your decision?

23 A Yes, sir, I could.

24 Q All right. Now, understanding that once you do come up
25 to a, an opinion---

Individual Juror Qualification

1 A Uh-huh. (Affirmative).

2 Q ---after you make a decision, it's your own opinion,
3 and I understand, being in the military, that you have had
4 to make a lot of decisions and a lot of time you had to
5 follow orders.

6 A Uh-huh. (Affirmative).

7 Q And I also see, from your jury questionnaire, that you
8 served on a civil case.

9 A Yes, sir.

10 Q Was there a finding of responsibility and, on the
11 defendant?

12 You found for the plaintiff or was it for the
13 defendant?

14 A We found for the, the plaintiff.

15 Q Found for the plaintiff?

16 A Yes, sir.

17 Q So, you and -- you -- were you here in South Carolina
18 when you were---

19 A Yes, sir, I was. I was in Anderson County.

20 Q Anderson County.

21 A Yes.

22 Q So, it was a, it was a State Court case.

23 So, it was all 12 of you deciding that, in fact, the
24 plaintiff should receive some sort of compensation?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, going back in that deliberation, I want to put it
2 in the same context of, of this case.

3 A Uh-huh. (Affirmative).

4 Q Talking about the fact of going into, after the
5 sentencing, hearing all the facts and evidence.

6 A Yeah.

7 Q You know going back into that deliberation people are
8 gonna have opinions.

9 A Yes, sir.

10 Q People have different things that they're gonna talk
11 about.

12 A Yes, sir.

13 Q Do you have the ability, if you make a decision about
14 the sentencing phase, that you can stick to your own
15 opinion?

16 A Yes, sir, I can.

17 Q And do you have the ability to articulate like you did
18 back in that civil case of, when you were finding for that
19 plaintiff in this case?

20 A Yes, sir.

21 Q You have a---

22 A Yes, sir, I---

23 Q ---have an opinion?

24 A Yes, sir, I could.

25 Q And the last thing I'm gonna ask you about is that it

Individual Juror Qualification

1 seems that you were unanimous in that civil case.

2 But my question is, is that I want to think of that
3 fact situation that you might be that one person and there
4 might be 11 other people that might have a different view
5 and they might have a different opinion than you.

6 A Uh-huh. (Affirmative).

7 Q Do you have the ability to hold on to that opinion or
8 would you be swayed just because the fact that 11 other
9 people are making a decision going one way or would you be
10 swayed to go along with the other 11 just because the fact
11 the other 11 have that view?

12 A No, sir. And in a case like this, I would, once I'd
13 come to my opinion and my decision, it would be my opinion
14 and my decision and I would stick with it. It wouldn't be
15 swayed.

16 Q Good. Mr. Gilpin, thank you very much for answering my
17 questions.

18 A Thank you.

19 THE COURT: Mr. Barnette.

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

22 THE COURT: Yes, sir.

23 EXAMINATION

24 BY SOLICITOR BARNETTE:

25 Q Good evening, sir.

Individual Juror Qualification

1 A Good evening.

2 Q My name's Barry Barnette and this is Trey Gowdy. We're
3 representing the State. And again, I -- we want to, we
4 appreciate your service to our country and, and also we
5 appreciate your service here.

6 A Thank you.

7 Q Like I said, I know it's very important, and like Judge
8 Couch said, it's probably two of the most important things
9 we do for our country.

10 A Uh-huh. (Affirmative).

11 Q Like I said, I'm just gonna ask you a few questions,
12 and again, I appreciate -- you seem like you thought through
13 this and obviously it's a serious case.

14 A Uh-huh. (Affirmative).

15 Q You're exactly right. And it's a situation where, if I
16 understood right, you could listen to the case, and make a
17 decision based off the evidence you hear in the courtroom,
18 and that in a situation could you, if evidence presented
19 itself, could you give a death verdict in this case?

20 A Yes, sir, I could.

21 Q And at the same time, if the evidence showed otherwise,
22 you would give -- you could give life without parole
23 sentence in a situation?

24 A Yes, sir.

25 Q And you would listen to the law that the judge gave to

Individual Juror Qualification

1 you?

2 A Yes, sir.

3 Q Again, we appreciate you being here and thank you for
4 answering my questions.

5 A All right.

6 THE COURT: Any follow-ups from the defense?

7 MR. RECKENBEIL: No, sir, Your Honor.

8 THE COURT: All right. Mr. Gilpin, just a couple of
9 things I want to go over with you at this point in time.
10 We're in the process of still qualifying jurors for the
11 pool. I expect that to go on for another day or so or
12 somewhere in that neighborhood. Once we have completed
13 qualifying a sufficient number to the pool, we'll be calling
14 jurors to come back to the courthouse for jury selection.
15 Because from that pool, some will be selected and some will
16 not be selected even from that pool.

17 But if you're called back to the courthouse for jury
18 selection, I will tell you now come prepared to stay for the
19 week. If you're selected, you will go immediately into
20 sequestration. So, you need to have with you everything
21 that you need to be able to do that.

22 Do you understand that, sir?

23 WITNESS: Yes, sir.

24 THE COURT: Now, the information you've given us for
25 contact information, is it correct?

Individual Juror Qualification

1 WITNESS: Yes, sir.

2 THE COURT: All right. And the last thing I want to go
3 over you with you, on Monday I gave you an order or
4 direction not to gather any information or discuss the case
5 with anyone or listen to, read, or watch any media reports
6 concerning the case. That order continues until such time
7 as we tell you that it is ended.

8 Do you understand that as well?

9 WITNESS: Yes, sir, I do.

10 THE COURT: All right, sir. At this point in time
11 you're free to go. Thank you for coming and helping us.

12 WITNESS: Thank you.

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

15 THE COURT: State's position?

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

17 THE COURT: Defense position?

18 MR. RECKENBEIL: Qualified.

19 THE COURT: All right. The Court will find him
20 qualified as well. He'll be placed on that list.

21 All right. The next juror that we will be considering
22 is Lynda Glugover I suppose is how we pronounce that.
23 Number 109.

24 LYNDALUGOVER, having been previously
25 sworn, testified as follows:

Individual Juror Qualification

1 EXAMINATION

2 BY THE COURT:

3 Q All right. Good afternoon, ma'am.

4 A Good afternoon.

5 Q Ma'am, your name I believe is Linda Glugover, is that
6 correct?

7 A Correct.

8 Q Did I pronounce that correctly?

9 A It's Glugover. But that's fine.

10 Q Glugover.

11 A Yes, sir.

12 Q Okay. All right. Well, I'm sorry I mispronounced it.
13 But I pronounced it phonetically I guess. I'm sorry.

14 Mrs. Glugover, there's a couple of things I want to
15 discuss with you about our talk, discussion this afternoon.

16 First of all, you were here Monday and at that time you
17 took an oath to tell us the truth about the jury
18 qualification process. We're still in that process today.
19 And so, the oath still applies to your answers today.

20 Do you understand that, ma'am?

21 A Yes, I do.

22 Q All right. We're going to go over some matters at this
23 point in time with you. I'm going to start off by asking
24 you some questions. After I finish I'll give the attorneys
25 an opportunity to follow-up on my questions. What I'm going

Individual Juror Qualification

1 to be asking you about will be basically your positions,
2 your views concerning matters that might be of importance to
3 the jury selection process.

4 For that reason, there are no right answers to my
5 questions. There's no wrong answers to my questions.
6 There's simply your answers. Whatever, however you feel and
7 what your opinions are and your positions are is what I want
8 to know about.

9 Do you understand that, ma'am?

10 A Yes, I do.

11 Q I understand, sitting in that chair in this setting, is
12 somewhat different for you and I understand that you might
13 have some apprehension about this situation and I hope you
14 don't. But if you have any problems or you think that there
15 is any, any problem in responding to any of the questions,
16 just let me know and we'll try to resolve that situation for
17 you.

18 Again, there's no right or wrong answers. We just need
19 to know your position on certain things.

20 Do you understand what we're doing to do, ma'am?

21 A Yes, I do.

22 Q Okay. Now, the first question, has anybody contacted
23 you about this case, have you read, or seen anything, or
24 been exposed to any information since we met on Monday that
25 would form, cause you to form an opinion of any kind about

Individual Juror Qualification

1 this case?

2 A No.

3 Q Have you ever participated in or responded to any blog
4 or Internet site that has as its subject the death penalty?

5 A No.

6 Q Have you ever participated in any political activities
7 such as rallies, meetings, demonstrations where the focus
8 was on the death penalty or that was one of the issues
9 involved in those meetings?

10 A No.

11 Q Now, ma'am, my next question has to do with a list of
12 people that you reviewed while you were sitting in the hall.
13 I suppose the bailiffs gave you that list.

14 Is that correct?

15 A Yes, they did.

16 Q And that's a list of potential witnesses. I'm going to
17 ask you not to identify anyone on that list by name in the
18 courtroom.

19 But I'm gonna ask you a couple of general questions
20 about the list.

21 Did you have a chance to review the list?

22 A Yes, I did.

23 Q And, ma'am, after reviewing the list, is it your belief
24 that you have any social, business, or personal
25 relationships with anybody listed on that list?

Individual Juror Qualification

1 A No.

2 Q And do you believe that you are related, either by
3 blood or marriage, now or formerly, to anyone listed on the
4 list?

5 A No.

6 Q So, I take it, ma'am, ma'am, you don't know of any
7 connection you have to the potential witnesses in this
8 trial?

9 A No.

10 Q Okay. Now, ma'am, I'm going to get into some questions
11 now that are a little more personal in nature that have to
12 do with your feelings. And after asking you those
13 preliminary questions, it's my belief that you have, you
14 have a strong enough personality that you won't feel
15 threatened by me asking you about opinions and that sort of
16 thing.

17 Is that correct?

18 A Correct.

19 Q Okay. Now, we're going to talk about, as I said,
20 certain things and positions and one of the things I will
21 eventually get to in my questioning will be your views
22 concerning the death penalty. I hope you understand, and I
23 want to go over with you, the fact that this case, as far as
24 the murder charge, there's several charges that are pending.
25 But on the murder charge, the State has sought the

Individual Juror Qualification

1 imposition of the death penalty.

2 And for that reason, if the jury in the future finds
3 the defendant guilty of that charge, we would hold a second
4 hearing or a second trial in which the jury would determine
5 the appropriate penalty from two choices. Either life
6 imprisonment without parole or death.

7 So, the situation would be the jury has found the
8 defendant guilty of murder. There's a second trial
9 concerning the imposition of the penalty.

10 Do you understand what I'm saying?

11 A Yes, I do.

12 Q Now, we're gonna be talking about that penalty phase
13 some today, and I hope you appreciate that's kind of like
14 putting the cart in front of the horse because there's not
15 been a trial and there's been no finding of guilt on that
16 charge at this point in time.

17 Do you understand that situation?

18 A Yes, I do.

19 Q It's simply that the same jury that hears the penalty,
20 the guilt or innocence phase of this, of this trial will
21 also be the jury that hears the penalty phase of the trial,
22 and there won't be an opportunity or we can't stop in the
23 middle and talk to you about your views at that time. We
24 have to do it now.

25 I'm telling you all that so I am asking you not to hold

Individual Juror Qualification

1 our discussions about penalties against the defendant in any
2 fashion or against any defense that he may raise to the
3 charges that are before the Court. It's simply this is our
4 chance to talk about all the issues in the case. We've got
5 to talk about that some time before the jury's selected.
6 This is our opportunity.

7 Do you understand what I'm saying?

8 A Yes, I do.

9 Q Okay. Good. Now, first thing I want to ask you about
10 is how you might take or apply the law in this case.

11 During the trial sometime, the judge, that being me,
12 will instruct the jury that sitting concerning the law to be
13 applied to the facts as the jury finds it to, finds those
14 facts to be.

15 Now, would you be willing to listen to a charge from
16 the Court concerning the law?

17 A Yes.

18 Q Would you be willing to take that charge and apply it
19 to the facts as the jury finds those facts to be?

20 A Yes.

21 Q Now, is that true, even if when you're listening to the
22 judge charge you concerning the law, you either disagree
23 with the law or you don't like what you hear about the law,
24 would you still be willing to set aside those feelings and
25 take the law as the judge charges it and apply it to the

Individual Juror Qualification

1 facts as you find them to be?

2 A Yes.

3 Q All right. Now, I'm going to move on to some questions
4 about pretrial publicity. There has been some in our media
5 here. I want to be sure that, that, about your feelings on
6 that.

7 My first question to you would be have you been exposed
8 to any of the publicity that may have occurred prior to this
9 time?

10 A No.

11 Q So, you don't recall reading about it in the newspaper
12 or hearing about this event in, on TV or on the radio?

13 A Initially, but not, not since.

14 Q Not now.

15 So, back when it occurred about a year and a half
16 ago---

17 A Yes, sir.

18 Q ---you remember that it did occur?

19 A Yes, I do.

20 Q Okay. Now, ma'am, from what you heard back then, I
21 want to know have you formed or made any opinions about the
22 case that could not be changed by the trial?

23 A No.

24 Q So, I assume, ma'am, that you, if you were selected as
25 a juror, would be willing to set aside any information or

Individual Juror Qualification

1 knowledge that you might have gathered about the case from
2 any other source at all, that means what you read, heard, or
3 seen outside the courtroom, and set that aside and decide
4 the case purely and solely upon the evidence presented
5 during the trial and the law as charged by the judge during
6 the trial.

7 Is that true?

8 A Yes.

9 Q Now, ma'am, two concepts we talked about on Monday. I
10 want to be sure that you and I have an understanding on
11 these and how they would be applied in this case.

12 First of all, under the Constitution and the laws of
13 this state and the United States, a defendant is always
14 presumed to be innocent of the crime charged no matter what
15 the seriousness of the crime is. Therefore, a defendant
16 never has a duty or a burden to prove himself innocent in
17 any criminal case.

18 Do you understand that concept?

19 A Yes, I do.

20 Q Also, the same law that provides for those provisions
21 states that the State always has the burden of proving the
22 defendant guilty of any crime that's been charged beyond a
23 reasonable doubt. So, the burden of proof always is upon
24 the State in a criminal case.

25 Do you understand that concept as well?

Individual Juror Qualification

1 A Yes, I do.

2 Q Now, ma'am, understanding those concepts, would you and
3 could you apply them in any criminal case in which you are
4 sitting as a juror?

5 A Yes.

6 Q Now, ma'am, also I want to ask you, is it your belief,
7 that, because someone has been accused of a crime or
8 arrested or even indicted, is it your belief that because of
9 those things that they're automatically guilty of a crime?

10 A No.

11 Q All right. So, then, ma'am, I take it that you would
12 be able to listen to the facts presented during a trial, the
13 evidence that's presented in the law, and based upon that
14 evidence and law that you hear during the, the trial, you
15 could find someone not guilty of a crime that they've been
16 charged with.

17 Is that true?

18 A Yes.

19 Q And by the same token, if you believe that the State
20 has met its burden of proof beyond a reasonable doubt of a
21 person of committing, charged with a crime, that you could
22 render a verdict of guilty against another person.

23 Is that also true?

24 A Yes.

25 Q So, I take it then, ma'am, what you're telling me is

Individual Juror Qualification

1 that you could weigh the facts, weigh the evidence, weigh
2 the law, weigh the strength of all those things, and you
3 could possibly find someone guilty of a crime or not guilty
4 depending on the evidence and the law.

5 Is that true?

6 A Yes.

7 Q Okay. Now we're gonna talk about this penalty issue
8 that I talked about earlier.

9 I explained to you they're two different trials. But
10 it's the same jury.

11 The first trial determines guilt or innocence of the
12 crimes charged. The second one, the penalty if the
13 defendant is found guilty of murder and the State seeks the
14 death penalty.

15 Now, the second trial, the one if the defendant is
16 found guilty of the murder, is for the question of penalty.
17 There's two choices a jury has to make. One is the sentence
18 of death is possible. The other possible sentence is life
19 imprisonment without parole, but those are the two choices
20 that a jury would have in the sentencing phase.

21 You understand that, ma'am?

22 A Yes.

23 Q All right. And there would be new evidence presented
24 in the second phase. Perhaps even new witnesses testify
25 because the issues in that trial are different than the

Individual Juror Qualification

1 issues in the first trial. The first trial has to do with
2 guilt or innocence. That's already been decided at this
3 stage. The defendant has been found guilty. The question
4 now is the penalty. So, they'll be separate issues to be
5 tried in that separate trial and they'll be other testimony.

6 Do you understand that?

7 A Yes, I do.

8 Q Okay. Now, ma'am, I want you to put yourself in the
9 position theoretically of, of an individual whose been
10 selected on a jury in a murder trial, and the State has
11 sought the death penalty. You and your fellow jurors heard
12 all the evidence. You've considered the law. You've
13 deliberated. And during those deliberations you found the
14 defendant guilty of the crime of murder. So, the question
15 of guilt or innocence of the crime has been completed and
16 decided. The defendant has been found guilty.

17 Because the State sought the death penalty, you and
18 your fellow jurors are back in the jury room. You're
19 getting ready to do, walk back into the courtroom.

20 Do you understand, understand the position I've asked
21 you, asked you to place yourself in?

22 A Yes, sir.

23 Q Okay. Now, ma'am, I gave you a sheet of paper before
24 you came into the courtroom, and we described on that sheet
25 of paper three different jurors.

Individual Juror Qualification

1 Do you remember that sheet of paper?

2 A Yes, I do.

3 Q I'm going to go over those possible jurors with you
4 again so that I'm sure you and I have an understanding.

5 The first juror on that piece of paper would be a
6 juror, who when coming down the hall to the courtroom, would
7 of already made up his, his or her mind. That juror
8 believes that once someone is found guilty of a murder, that
9 there's only one possible punishment and that punishment is
10 death. So, regardless of what is going to be said in the
11 sentencing phase of the trial, that particular juror has
12 already made up his or her mind that they're gonna vote for
13 death and they'll do that every time in the same situation.

14 The other possible juror is, number two, and that juror
15 has also made up his or her mind. That juror has a belief
16 that the State never has the right to take a life in
17 punishment for a crime. And so, that juror has already made
18 up his or her mind, coming down the hall, to vote for life
19 regardless of the facts or circumstances presented during
20 the sentencing phase because it is never appropriate to
21 place a defendant to death for the commission of a crime.
22 So, that juror's made up his or her mind also.

23 The third juror I described would be a juror, coming
24 down the hall, who would not have made up his or her mind at
25 that point in time. That juror does not have any

Individual Juror Qualification

1 preconceived notions as to the appropriate penalty. That
2 juror is going to have to wait and listen to the evidence
3 presented and what's presented during that trial. And once
4 that trial, portion of the trial has, has been completed,
5 would then make a decision as to what the appropriate
6 punishment would be. That being, on the one hand, death, or
7 the other possibility, life imprisonment without parole.

8 Now, of the three jurors I've described, which one of
9 those jurors would most closely resemble your position if
10 you were walking down that hall?

11 A The third juror.

12 Q So, that's someone, I take it then, who would be, even
13 though they had found the defendant guilty of murder, even
14 though that had been decided, would be willing to listen to
15 the evidence, to listen to the facts presented in the, the
16 second trial and make a decision based on that evidence.

17 Is that correct?

18 A That's correct, yes.

19 Q And after listening to that evidence, and after
20 considering that evidence, if you found that you, that a
21 sentence of death was the appropriate punishment, could you
22 issue that sentence?

23 A Yes.

24 Q And if, after listening to the evidence, you find that
25 the death sentence is not the appropriate sentence or for

Individual Juror Qualification

1 any other reason that you decide, you could issue a sentence
2 in, during the sentencing phase of life imprisonment without
3 parole.

4 Is that true?

5 A Yes, sir, it's true.

6 Q And all that depends upon the facts and circumstances
7 and evidence you hear at the second trial.

8 Is that also correct?

9 A Yes.

10 Q Now, ma'am, the last thing I have, have to ask you, I
11 have to ask you about has to do with you personally. This
12 is -- I've explained that if you're selected to serve on a
13 jury in this type of case, the jurors are sequester. That
14 means that you will be in the courtroom during the daytime
15 handling the business here in the court. In the evenings
16 you will taken together, as a group, back to a hotel here in
17 town, and you will be spending the night there.

18 Your access to the outside world will be somewhat
19 limited. There will be people there monitoring what you're,
20 who you're communicating with and how you're communicating
21 with them and also what you see on television and what you
22 might see in the print media.

23 And so, you'll be there for the duration of the trial.
24 We expect the trial to last anywhere from five to seven
25 days. We're not sure for, cause we never can predict those

Individual Juror Qualification

1 things exactly. But during that period of time, you would
2 be sequestered. I understand that's an convenience to
3 anybody, inconvenience to anybody in that situation.

4 But what my question is, if you were placed in that
5 situation, would that situation pose a serious risk to
6 either your health or your well being?

7 A No.

8 Q Would it pose a serious risk to the health or the well
9 being of anyone who is dependent upon you?

10 A No.

11 Q Ma'am, that completes my questions concerning the case.
12 I told you we'd let the attorneys follow-up, and we let the
13 defense go first. I see Mr. Reckenbeil is standing and
14 he -- you will be allowed to proceed.

15 MR. RECKENBEIL: Thank you, Your Honor.

16 THE COURT: Yes, sir.

17 MR. RECKENBEIL: May it please the Court.

18 EXAMINATION

19 BY MR RECKENBEIL:

20 Q Mrs. Glugover?

21 A Correct.

22 Q Okay. That's not as bad as Reckenbeil. But it's, it's
23 pretty much there.

24 Thank you very much, ma'am, for being here and for
25 answering our questions as well as answering that jury

Individual Juror Qualification

1 questionnaire. I know it's been a long process. But it's a
2 very serious process and I appreciate you being here.

3 Ma'am, I've had an opportunity to review your jury
4 questionnaire. I just want to go -- do you remember what
5 you filled out back in September, that questionnaire?

6 A I, I probably -- I do remember filling it out. I
7 remember it took a long time to fill it out. But yeah.

8 MR. RECKENBEIL: Okay. Judge, can we approach a
9 second?

10 THE COURT: Yes, sir.

11 (Whereupon, a bench conference was held out of the
12 hearing of the juror at this time.)

13 THE COURT: Ma'am, we'll let you look at a copy of that
14 questionnaire---

15 WITNESS: Okay.

16 THE COURT: ---if there's any questions about it.

17 Q Just take a second, ma'am, to look at the bottom third
18 of that jury questionnaire.

19 A Okay.

20 (Pause.)

21 Q Okay. Now, I want to say this, is that there is no
22 right or wrong answer. There is no me telling you what you
23 should think or what you shouldn't think. This is entirely
24 about what you think, and that is absolutely acceptable.

25 But what we just want to know is, is that you were

Individual Juror Qualification

1 pretty descriptive in what you've talked about in answers to
2 the question of 31 and then 31, the subsection to that.

3 You remember that looking down at your jury
4 questionnaire?

5 Section -- I'm sorry. It's 32.

6 A Thirty-two. Okay.

7 Q Thirty-two, yes, ma'am.

8 A Right, I remember at the time.

9 Q Yeah.

10 And you're talking about the fact that back in May of
11 2007 that there was local, according to what you said, there
12 was local, at the time, that there was local and exclusive
13 television and newspaper coverage.

14 Do you remember that?

15 A Yes.

16 Q Okay. And that a couple had been murdered in their
17 home, according to what you said here, and then also it said
18 due to the brutality of the crime I would find it very
19 difficult to keep an open mind.

20 A Based on that information alone, what was in the paper.

21 Q Yes, ma'am.

22 Reading that, again, I'm just taking from you, what you
23 have said here, would you find it would be difficult for you
24 to be a fair and impartial juror knowing that information
25 that you saw back in May of 2007, writing down what you

Individual Juror Qualification

1 wrote down in September of last month?

2 Would it be difficult for you to be a fair and
3 impartial juror in this case?

4 A No.

5 Q You think you could be fair and impartial?

6 A Yes.

7 Q Okay. Even though you said it would be very difficult
8 for you to keep an open mind due, due to the brutality,
9 brutality of the murder?

10 A Based on -- well, based on that alone. But I mean I'm
11 there sure -- I'm sure there are other information that has
12 not been presented, and that's just, you know, the media's
13 play of a situation.

14 Q Okay. Yes, ma'am, and I don't mean to belabor a, a
15 point because it, it, it's a cornerstone of our, of our
16 legal system that we just want to, don't have people to have
17 preconceived notions when they come into a jury trial, and,
18 and you've kind of, with your words, you've kind of
19 triggered something where it says that you have difficulty
20 keeping an open mind.

21 A Okay.

22 Q And, and that's where I just want to understand is, is
23 that with what you have said in your jury questionnaire,
24 would you have difficulties, due to the fact of what you saw
25 on the news media, and what you read?

Individual Juror Qualification

1 A No.

2 Q Okay. All right. And since this questionnaire was
3 filled out back in September and now you have not even a
4 month elapsed, has there been a change in your mind and what
5 has changed your mind?

6 A I think coming to Court and having it, you know,
7 explained the way the judge explained---

8 Q And can you---

9 A ---information.

10 Q ---get a little bit more specific about that?

11 A About listening to what's been presented and the actual
12 facts and the information versus what's has been, you know,
13 played up in the newspaper back then.

14 Q Well, ma'am, I submit to you is, is that there has been
15 no facts or evidence that has been presented to you as a
16 juror. We're simply just talking about the qualifications
17 of a jury.

18 Do you understand that?

19 A Right.

20 Q So, taking into consideration what you have already
21 been presented from the news media, and what, and what
22 you've already said, not having any facts in evidence cause
23 just we haven't presented any---

24 A Well, yes, I'm aware of that.

25 Q Okay. Taking into consideration of what you have,

Individual Juror Qualification

1 would you find yourself being an impartial juror?

2 A Yes.

3 Q Okay. And what I mean by that is impartial -- I should
4 of said that. A partial juror.

5 In other words, you couldn't be fair?

6 SOLICITOR GOWDY: Your, Your Honor, I hate to
7 interrupt. It's the third time I can count that the same
8 question's been asked.

9 THE COURT: I would agree. Let's move on to something
10 else. The question's have been answered.

11 MR. RECKENBEIL: Okay.

12 Q Ma'am, taking into consideration of the fact that if a
13 defendant is found guilty, and we're, we're talking about
14 future tense of what the judge is talked about the three
15 types of jurors, a person's been convicted of murder.
16 willful, unlawful killing, intentional, with malice and
17 aforethought. Coming back out of that jury room and now
18 it's your turn where it's a second part of the case, and now
19 it's time for the jury to make a decision as to death or
20 life in prison.

21 Knowing that you've heard all that facts and evidence,
22 the person's already been found guilty of a willful killing,
23 unlawful, malice and aforethought, would death be the only
24 option that you would give that defendant?

25 A No.

Individual Juror Qualification

1 Q That's the only punishment?

2 A No.

3 Q Okay. You would consider life in prison?

4 A Yes.

5 Q Okay. Is there a fact scenario in your mind that you
6 could think of that the death penalty would be the only
7 punishment after a conviction of murder that you could see
8 implementing?

9 A No.

10 Q In the sentencing phase we're gonna have an opportunity
11 to present mitigation. And what I mean by mitigation is, is
12 that if, in fact, the defendant is found guilty, to try to
13 lessen the murders, would you have an ability to sit there
14 and give a fair and impartial hearing to that defendant?

15 A Yes.

16 Q Hearing all the mitigation factors?

17 A Yes.

18 Q And then consider whether or not the appropriate
19 penalty would be death or would be life in prison?

20 A Yes.

21 Q All right. One second, Your Honor.

22 THE COURT: Yes, sir.

23 (Pause.)

24 Q Ma'am, do you have a general view on the death penalty?

25 A No.

Individual Juror Qualification

1 Q Not one way or another?

2 A No.

3 Q Okay. Have you ever discussed it with family and
4 friends?

5 A No.

6 Q Never come up?

7 A No.

8 Q Okay. Would you vote for a political figure based upon
9 their stance on the death penalty?

10 A No.

11 Q All right. Have you ever had a view on the death
12 penalty?

13 A No.

14 Q All right. Do you have a view about life in prison
15 without the possibility of parole?

16 When you hear that term, do have any views or---

17 A No.

18 Q ---opinions on that?

19 Okay. Thank you, ma'am.

20 THE COURT: State.

21 SOLICITOR GOWDY: Your Honor, may it please the Court,
22 Your Honor?

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

24 SOLICITOR GOWDY: Briefly, Your Honor.

25 EXAMINATION

Individual Juror Qualification

1 BY SOLICITOR GOWDY:

2 Q Good evening, ma'am. Thank you for your patience, your
3 candor, your forthrightness not only today, but also in
4 filling out the questionnaire.

5 This was way before your time, way before my time,
6 I'm -- might even of been before Mr. Humphries time. There
7 was a headline blared across the front of the New York Times
8 that says Dewy beats Truman.

9 Do you remember seeing that or reading about that?

10 A Only on TV.

11 Q Right.

12 A I mean in talking about historical situations.

13 Q Right.

14 A That was before my time.

15 Q My point being well intended and as diligent as
16 newspaper reporters can be, they still don't always get it
17 right.

18 Would you agree with me there?

19 A I would agree, yes.

20 Q The, the media, despite their, their diligence and well
21 intentions, are not held to the same standards that we are
22 held to in a courtroom.

23 Agreed?

24 A I agree.

25 Q So, what I understood you to say is you are able to

Individual Juror Qualification

1 disabuse your mind of what you may or may not have seen or
2 read and follow the instructions of this Court and only base
3 your decision based on what comes from that witness stand
4 right there.

5 Is that fair?

6 A Yes.

7 Q All right. And that would be true in the guilt phase,
8 that you would consider the evidence, and if the State met
9 its burden beyond a reasonable doubt, that you would find
10 the defendant guilty if we met our burden?

11 A Yes.

12 Q And if we did not meet our burden, you would find the
13 defendant not guilty?

14 A Yes.

15 Q And if we went to a sentencing phase, you would listen
16 to what we had to say and what, if anything, the defense has
17 to say before you would reach a conclusion on what
18 punishment would be proper?

19 A Yes.

20 Q Are you satisfied, in your well of souls, that if
21 thought death was the proper punishment that you would vote
22 to impose a death sentence?

23 A Yes.

24 Q And are you sure that if you thought life was proper
25 you would vote for that?

Individual Juror Qualification

1 A Yes.

2 Q And I know the Court made this abundantly clear. But
3 I'm gonna say it one more time. Nobody will ever tell you
4 you have to vote for death. You can always vote for life
5 for any reason, no reason, and nobody can ask you why.

6 Knowing that life without parole is always an option,
7 do you still think there are circumstances where you would
8 vote to impose a death sentence?

9 A Yes, it would be based on the information presented.

10 Q Okay. Thank you, ma'am.

11 THE COURT: Anything further?

12 MR. RECKENBEIL: Nothing further, Your Honor.

13 THE COURT: All right. Mrs. Glugover, thank you again
14 for your cooperation today. Let me tell you what happens
15 from this point forward.

16 We are still in the qualification process of the jury
17 as you can tell. We're getting closer to the end of it
18 though than the beginning. So, in the very near future
19 we'll be selecting a jury. What we're doing is we're
20 qualifying a pool of jurors from which a jury will be
21 selected.

22 Now, if you're called to come back to the courthouse
23 for the jury selection process, then you should come
24 prepared to stay for the full week because if you're
25 selected, you'll go immediately then into sequestration, and

Individual Juror Qualification

1 we'll begin the trial of the case, and, of course, you won't
2 be allowed to go back home and pick up what you need. So,
3 bring with you what you might need if you come back for jury
4 selection.

5 The contact information you've given us I assume is
6 correct, is that right?

7 WITNESS: That's correct.

8 THE COURT: And I will caution you that my order
9 ordering you not to talk about the case, not to gather
10 information about the case, not to watch or listen to,
11 excuse me, media reports continues until we tell you that's
12 ended.

13 Do you understand that as well?

14 WITNESS: Yes, I do.

15 THE COURT: Thank you. You're free to go.

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

18 THE COURT: State's position?

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

20 I think the capital juris prudence in our state is
21 crystal clear. Exposure to pretrial publicity alone does
22 not render someone unqualified. In fact, I can, I can think
23 of a case where a juror actually knew the defendant had
24 previously been sentenced to death and they still qualified
25 as a juror because they were able to answer the Court's

Individual Juror Qualification

1 question that they could put it out of their mind. I would
2 say she's qualified based on that.

3 THE COURT: Defense.

4 MR. RECKENBEIL: Well, with all due respect with what
5 Mr. Solicitor has to say, but you have a juror who actually
6 put down under the penalty of perjury says that due to the
7 brutality of the crime I would find it very difficult to
8 keep an open mind and now has flip flopped. I have a
9 difficult time that we would allow a person a fair trial by
10 being tried by a juror like that who says that they can't
11 keep an open mind due to the brutality of what they saw on
12 TV.

13 SOLICITOR GOWDY: Your Honor, it, it, it -- in the
14 interest of, of intellectual honesty, that same point was
15 not raised by the defense with the juror who said that they
16 could not impose the death penalty. I think the
17 difference -- that was two jurors ago. She wrote on her
18 questionnaire she couldn't impose a death penalty. I didn't
19 hear anything from the defense about that. They were --
20 they allowed her to change her mind. He asked every way you
21 can ask, are you still biased, and she answered no every
22 single time.

23 THE COURT: All right. I'm required to take the
24 totality of the colloquy and also consider the answers on
25 the juror questionnaire. She -- even her answers, when

Individual Juror Qualification

1 taken as its worst on the jury questionnaire, would indicate
2 though that she, while having a difficult time, would still
3 be open to going, to going there or doing that. She
4 doesn't, didn't preclude that possibility. And then she
5 said, after going through the jury qualification process and
6 hearing my instructions concerning juror's service and what
7 it meant, she now has a different opinion. I don't see why,
8 I don't see why that would disqualify her. It seems that
9 she has an open mind even on that subject. She answered the
10 questions three times when asked by you in the same, same
11 fashion and consistently.

12 I find her qualified and will put her on the list as
13 such.

14 All right. I will tell you, ladies and gentlemen, that
15 we're going to finish Panel Number Nine today. So, I'll
16 just make you aware of that. We're all aware of the time
17 and we'll do the best we can. They're here and they've been
18 waiting.

19 So, Number 9 now, Number 32 in Panel Number Nine is
20 Juror Number 32 is James Bohart.

21 JAMES BOHART, having been previously
22 sworn, testified as follows:

23 EXAMINATION

24 BY THE COURT:

25 Q Good afternoon.

Individual Juror Qualification

1 A Afternoon, sir.

2 Q Your name is James Bohart, is that right?

3 A Yes, sir, it is.

4 Q Did I say that correctly?

5 A Yes, you did.

6 Q They don't give us pronunciation of your names. I just
7 get the spelling. So, I want to be sure I got it right.

8 Sir, first of all, I want to thank you very much for
9 your cooperation. I realize it's late in the afternoon.
10 But rather than send you home and bring you back, we're
11 gonna try to get this done today.

12 A All right.

13 Q Okay, sir?

14 A Yes, sir.

15 Q Now, let me tell you what we are going to do. There
16 is -- we're here to gather some additional information about
17 you on an individual basis. I'm going to ask you some
18 questions. The attorneys will be allowed to follow-up on
19 those questions. We're gonna talk about some things about
20 your beliefs and your positions on certain things that are
21 important in this case, and will assist us in selecting a
22 jury. And that's gonna happen in the not too distant
23 future.

24 There aren't any right answers or wrong answers to the
25 questions I'm about to ask, and the, the attorneys are about

Individual Juror Qualification

1 to ask. They're simply your answers. We want to know how
2 you feel on this. So, I hope you don't feel threatened by
3 the situation. It's kind of unusual for you to sit in that
4 seat in this kind of setting.

5 A Yes, sir.

6 Q But if you have any problems as we go along, let me
7 know and we'll be glad to try to fix that for you.

8 A Okay.

9 Q Okay, sir?

10 A Yes, sir.

11 Q Now, I'll remind you that you took an oath on Monday to
12 be honest and truthful and complete in this process. That
13 still applies to these questions today.

14 Okay, sir?

15 A Yes, sir.

16 Q The first question, has anybody contacted you or have
17 you heard, read, or seen any information about this case
18 such, since our meeting on Monday that would have caused you
19 to form any opinions about this case?

20 A No, sir.

21 Q Now, sir, have you ever participated or responded to
22 any blog or other Internet site that have, would have as its
23 subject the death penalty?

24 A No, sir.

25 Q Have you ever participated in any political activities,

Individual Juror Qualification

1 demonstrations, rallies, or meetings that would have, as its
2 focus or one of the issues discussed, the death penalty?

3 A No, sir.

4 Q Now, sir, while you were out in the hall you looked
5 over a list of potential witnesses in this case.

6 Is that true?

7 A Yes, sir.

8 Q Now, do not name any of those individuals by name in
9 this courtroom, but I'm going to ask you, after having
10 looked at that list, do you believe that you have any
11 social, business, or personal connections with anyone who is
12 listed on that list?

13 A No, sir, I do not.

14 Q Do you believe that you are related by blood or
15 marriage or any, or formerly related by marriage to anyone
16 on that list?

17 A No, sir, I do not.

18 Q I take it from those answers you know of no connections
19 you have with anyone listed on that list?

20 A That's correct, sir.

21 Q Now, sir, I'm going to ask now some questions of a
22 little more personal nature. We're going to, again, try to
23 find out how you feel on some things.

24 Not trying to invade your privacy, but we are trying to
25 learn your thoughts. You appear, from your initial answers

Individual Juror Qualification

1 to my questions, someone who would not feel threatened by
2 someone asking them their opinions on a subject.

3 Is that true?

4 A That's true, sir.

5 Q Now, also I want to point out to you that part of what
6 I'm gonna ask you about eventually will be the death
7 penalty. I told you on Monday, and I'm gonna remind you
8 today, that this case involves one of the charges. They're
9 several charges against the defendant. One of them is for
10 murder.

11 The State has requested the imposition of the death
12 penalty for that charge. And as a result of that request,
13 there will be a two phase charge on that, two phase trial on
14 that charge should the defendant be found guilty of the
15 original charge in the first trial. And so, if the
16 defendant were found guilty of murder in the first trial, we
17 would move to a second hearing in which the jury determines
18 the appropriate penalty from a choice of life imprisonment
19 without parole or death. Those would be those two choices.

20 Now, I realize we haven't even gotten to the point
21 where the defendant has even started the trial much less
22 been found guilty on the charge, and here we are eventually
23 talking about the penalty. I'll point out to you though
24 that the same jury hears both cases. So, it would not be
25 possible for us to discuss this at a later time. We have to

Individual Juror Qualification

1 discuss this now before the jury's selected and the case
2 begins.

3 A I understand.

4 Q So, please don't take from the fact that we're
5 discussing penalties today as part of our discussion that,
6 to hold that against the defendant or any defense that he
7 may raise, raise in the first trial. It's simply the only
8 time that we can talk about it before the trial begins and
9 we're gonna talk about it now.

10 A Yes, sir.

11 Q Okay, sir?

12 A Yes, sir.

13 Q Now, the first thing I want to talk to you about is
14 your position in regards to the law that will be presented
15 during the trial. During the trial, at some point in time,
16 I, the judge, will instruct the jury on the law to be
17 applied in the case.

18 would be willing to listen to a charge from a judge on
19 the law?

20 A Yes, sir.

21 Q Would you be willing to accept the law as charged and
22 apply it to the facts as the jury finds those facts to be?

23 A Yes, sir.

24 Q And would that still be true if, when you listened to
25 the charge given by the judge, you realize that you disagree

Individual Juror Qualification

1 with some part of the law or you don't think that, you may
2 not like what you hear in the law, would you be willing to
3 set those feeling aside and apply the law exactly as the
4 judge gives it to you?

5 A I would.

6 Q Now, there's been some pretrial publicity, as you're
7 probably aware from my earlier questions, concerning this
8 case in our local media.

9 And my questions to you is, first of all, have you been
10 exposed to any of that pretrial publicity?

11 A I have not. I, I have not.

12 Q Okay, sir.

13 A I---

14 Q Very good. That's a good thing.

15 A Okay.

16 Q But I want to ask you if you were selected to try a
17 case, would you be the kind of juror who could set aside
18 what you might have read, seen, or heard, either before the
19 trial or during the trial outside of the courtroom, could
20 you set those matters aside and decide the case solely based
21 on the evidence presented during the trial and the law as
22 given by the judge during the trial?

23 A Yes, sir, I could.

24 Q Now, two concepts I want to go over with you to be sure
25 you and I have an understanding. The first one is, under

Individual Juror Qualification

1 the laws and Constitution of our state, a defendant is
2 always presumed to be innocent of any charge levied against
3 him. Therefore, a defendant has no burden of proof in a
4 criminal case. He's presumed to be innocent. So, he has
5 nothing that he has to prove.

6 Do you understand that?

7 A I do.

8 Q The second concept is that, under the same rules and
9 laws, the State has the burden of proof, in every criminal
10 case, to prove the defendant guilty of the crimes charged
11 beyond a reasonable doubt, and that burden of proof stays on
12 the State throughout the trial.

13 Do you understand that concept?

14 A Yes, sir.

15 Q Now, if you were selected as a juror in any criminal
16 case, could you apply those concepts to those trials?

17 A Yes, sir.

18 Q I want to ask you if it's your belief that because
19 someone has been arrested, someone's been charged, and
20 someone's even perhaps been indicted, would those facts mean
21 that that person is automatically guilty?

22 A No, it wouldn't.

23 Q All right, sir. I take it then that you are the kind
24 of person who would be willing to listen to the law and
25 evidence presented during a trial, and based upon how you

Individual Juror Qualification

1 find those things to be and the circumstances as you
2 determine them, you could possibly find somebody not guilty
3 of a crime that they're charged of.

4 Is that true?

5 A I could.

6 Q By the same token though, if you find that the State
7 has met its burden of proof beyond a reasonable doubt, would
8 you capable of rendering, rendering a verdict of guilty
9 against a fellow citizen?

10 A Yes, sir, I would.

11 Q I take it from your answers then that you are a person
12 who would listen to the law, the facts, the evidence, and
13 depending on the strength of the law and the facts and the
14 evidence, you would make a determination as to whether to
15 find someone guilty or not guilty.

16 Is that true?

17 A Correct.

18 Q All right, sir. We're now gonna get back to that
19 question of the death penalty. We're gonna talk about that
20 now. And I think I've made it clear to you that, in this
21 case, there is a charge of murder. The State is seeking the
22 death penalty. And if the jury finds the defendant guilty
23 of murder, there would be a second trial as to the penalty.
24 If the jury finds the defendant not guilty, that would be
25 the end of that matter. There would be no need for that

Individual Juror Qualification

1 second trial.

2 Do you understand that?

3 A Yes, sir.

4 Q Okay, sir. Or we call it the second phase of the same
5 trial. However you want to put it.

6 But at that second trial, the choices for the jury
7 would be life imprisonment or death. And there would be new
8 evidence presented at this trial. Additional people may
9 testify because the issue no longer is guilt or innocence.
10 That's been decided. The issue to be decided then is the
11 appropriateness of which penalty should be imposed.

12 So, there may be additional evidence and testimony
13 presented by both the State and the defendant on that
14 subject.

15 Do you understand that?

16 A I do.

17 Q Now, sir, I want you to imagine that you're in a
18 situation, and put yourself in this spot. You're on a jury
19 that's been selected in a murder trial in which the State
20 seeks the death penalty. You and your fellow jurors have
21 heard all the evidence. You've deliberated. You've taken
22 the law given to you by the judge. You've reached a verdict
23 that the defendant was guilty of the crime charged.

24 So, the issues of guilt or innocence have been
25 resolved. Those have been put aside. The defendant has

Individual Juror Qualification

1 been found guilty.

2 The State has sought the death penalty. So that means
3 you and your jurors are back in the jury room and you're
4 coming back to the courtroom now to begin what we would call
5 the second phase of the trial or the sentencing phase of the
6 trial. So, you're coming down the hall with your fellow
7 jurors.

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

9 A Yes, sir.

10 Q Now, before you came into the courtroom, there was a
11 sheet of paper that described three different kinds of
12 jurors.

13 Do you remember that?

14 A I do.

15 Q I'm gonna go over those with you again so that you
16 recall them and you and I have an understanding as to what
17 we're talking about.

18 First one on that list, number one, was somebody, when
19 walking down that hall, had already made up his mind. He
20 had a belief that if somebody is found guilty of murder that
21 the only appropriate penalty is death. And so, therefore,
22 the defendant, having been found guilty of murder, as that
23 juror walks down the hall, he already knows how he, how he's
24 gonna vote and he would vote that way in every case. He
25 would vote for the death penalty.

Individual Juror Qualification

1 The second juror I described in that scenario is
2 somebody walking down that hall who also has made up his or
3 her mind. That person believes that, under no
4 circumstances, does the State have the right to impose the
5 penalty of death for any crime that's committed, and,
6 therefore, that juror has decided that juror's gonna vote
7 for life imprisonment regardless of what he hears at the
8 hearing, at that stage because the State has no right to put
9 someone to death. So, that juror has made up his or her
10 mind as well.

11 The third juror is coming down that hall and that juror
12 has not yet made up his or her mind. That juror is going to
13 have to wait and listen to the evidence that's presented in
14 the sentencing phase, both from the State and from the
15 defense, as to appropriate penalty to be imposed, whether it
16 be life imprisonment without the possibility of parole or
17 death.

18 Now, do you understand those three different types of
19 jurors that I've described?

20 A Yes, sir.

21 Q Now, of those three different types of jurors, which
22 one would best describe you walking down that hall?

23 A The third.

24 Q All right, sir. I take it then from what you've told
25 me, that even though a defendant has been found guilty of a

Individual Juror Qualification

1 murder by a, by the jury, that you would be willing to
2 listen to the facts and the evidence in the sentencing part
3 of the trial.

4 Is that correct?

5 A Yes, sir.

6 Q And if, after listening to the evidence and facts
7 presented during that particular part of the trial, if you
8 found that the death penalty was warranted, that you could
9 issue a verdict of death?

10 A Yes, sir.

11 Q Or by the same token, if you find, from the evidence
12 and facts presented in that part of the trial, you could
13 sentence someone, and for any other reason, you could
14 sentence someone to life imprisonment without parole?

15 A I could.

16 Q That means, to me, that you would be willing to weigh
17 the facts and the evidence presented in that part of the
18 trial and make a determination between which of those two
19 verdicts is appropriate?

20 A Yes, sir.

21 Q Isn't that true?

22 A That's true.

23 Q Last thing I want to go over with you. The jury, in
24 this case, will be sequestered if you're selected for the
25 jury. That means you'll be staying in a hotel at night and

Individual Juror Qualification

1 here in the courthouse doing the business of the Court
2 during the day. Your access to the outside world will be
3 limited. They'll be people there who will be watching and
4 taking care of you being sure nobody contacts you.

5 And we expect the length of the trial to be between
6 five to seven days in length. That's an estimate. Don't
7 know that for sure. But that's what we think.

8 Now, my question is not whether that's an inconvenience
9 in your life. I understand it's an inconvenience in
10 anybody's life to be in that situation.

11 What my question is, if you were placed in that
12 situation, would it pose a serious risk to either your
13 health or your well being if you were in that situation?

14 A Not at all.

15 Q And would it pose a serious risk to the health or well
16 being of anyone who is dependent on you if you were in that
17 situation?

18 A No, sir.

19 Q Now, that completes all of my questions. I'm going to
20 allow the attorneys to follow-up on what I've asked you. We
21 allow the defense to go first. I see Mrs. Hodges standing.
22 She's going, she is going to, to proceed with the
23 questioning.

24 Yes, ma'am.

25 MRS. HODGES: Thank you.

Individual Juror Qualification

1 May it please the Court?

2 THE COURT: Yes, ma'am.

3 EXAMINATION

4 BY MRS. HODGES:

5 Q Good evening, Mr. Bohart.

6 A Good evening.

7 Q First of all, I just want to say thank you for your
8 service to our country, and your participation in this jury
9 qualification. I know it's been a long week for you
10 already. We'll try not to belabor it any, any longer than
11 we have to.

12 A Okay.

13 Q Do you have any, any general views on the death
14 penalty?

15 A I believe it's a form of punishment of, appropriate
16 form of punishment when the, when it's deemed necessary.

17 Q Okay. Similar with the, a sentence of life without
18 parole, do you have any, any general views on, on that?

19 A Just the same.

20 Q Okay.

21 A If that's, if that's what the, is necessary.

22 Q Okay. In this type of case we're talking about
23 obviously a murder. And when we talk murder -- I know you
24 lived in, in a couple different states. So, in South
25 Carolina, a murder is defined as the unlawful and, and

Individual Juror Qualification

1 willful killing of another human being by somebody with
2 malice aforethought. Malice essentially being either an
3 evil intent or a, or a mind fatally bent on mischief.
4 Essentially it's going to be a killing that, whether a, a
5 defense has been produced or not, that the jury has
6 basically heard all the evidence, heard the law charged, and
7 has decided that there is no justification or excuse for
8 this killing. Essentially it is a willful killing of
9 another human being, the defendant did it, and is being held
10 responsible for it.

11 A Yes, ma'am.

12 Q Okay. In that type of case, do you have an opinion as
13 to whether the death penalty is the only appropriate
14 penalty?

15 A No, I don't.

16 Q Okay.

17 A I don't. It's not the only -- I do not believe it's
18 the only---

19 Q Well, would you, would you disagree with that statement
20 that the death penalty is the only appropriate penalty?

21 A I would disagree with that.

22 Q Okay. In this type of case, the, the State would have
23 the opportunity to offer aggravating circumstances.

24 Something that would, essentially would say that this
25 killing is worse than any other killing or worse than, than,

Individual Juror Qualification

1 you know, other types of killing, and, therefore, because of
2 the worse killing, because the facts are worse, that the
3 sentence needs to be the ultimate penalty.

4 A Yes, ma'am.

5 Q Can you think of any situation, fact scenario or type
6 of killing, in your mind that, for which the death penalty
7 would be the only appropriate penalty?

8 A No, I don't, I don't -- you know, maybe mass, mass
9 murder would be the only -- you mean would it be the only?

10 Q Yeah. Right.

11 A I guess, you know multiple murders.

12 Q Okay. Well, when you say a multiple murders or mass
13 murders, I think those were the words you used, that could
14 mean a couple of different things depending on, on, you
15 know, the person's prospective.

16 When you say mass murder, are you talking something
17 like Oklahoma City, the bombing at the Murrow Building, you
18 know, 9-11---

19 A That---

20 Q ---that type of a mass murder?

21 A From that, you know, serial number.

22 Q Okay. So, kind of the Charles Manson, you know, kind
23 of Helter Skelter type killing?

24 A There's a lot of it on TV nowadays.

25 Q Okay.

Individual Juror Qualification

1 A Yeah, that kind of thing, yes.

2 Q Okay. Is there a cut off in terms of numbers that,
3 that you consider in terms of mass or multiple killings?

4 A I---

5 SOLICITOR BARNETTE: Your Honor, I'm gonna object at
6 this point. I think we're getting just, just general areas.
7 You know, we're getting into more specific areas now.

8 THE COURT: I'll let her ask that question. But I will
9 caution counsel that we're, you have some limitations on
10 that.

11 MRS. HODGES: Yes, sir.

12 A Could you have -- a number?

13 No, I don't have any set number. I haven't -- I guess
14 just whatever the circumstances are---

15 Q Okay.

16 A ---surrounding it.

17 Q Okay. Could you consider, in the, in the penalty
18 phase, again, you got the willful killing of another human
19 being, if there were mitigating factors, would you be able
20 to consider those, something that would lessen the severity
21 of the punishment, or something, that either in fairness or
22 mercy, would dictate that a life sentence should be given?

23 A I could. It depends on what the circumstances are.

24 Q Are there any cases that you can think of that would,
25 in your mind, you know, always dictate a life sentence?

Individual Juror Qualification

1 A No.

2 Q Okay. All right. Your opinions on the death penalty,
3 are, are those opinions that you formed over a period of
4 time?

5 A Yes, ma'am.

6 Q And are those opinions that, that, that are pretty
7 established in your, in your psyche and mindset?

8 A I think they are. I do believe.

9 Q Okay. Are you somebody who's able to hold fast to
10 those opinions if you get, find yourself in a situation in
11 the jury room where you are the only person, you know,
12 advocating for one position?

13 And I'm not advocating for one, either position
14 necessarily.

15 But you, you have your mind set on one particular, is
16 that something that you, that you could, would you be able
17 to hold fast to that decision?

18 A If, if I feel that I'm, I'm right.

19 Q Even if the 11 other jurors are harping at you---

20 A I guess---

21 Q ---haranguing you, and telling you, you know---

22 A I guess---

23 Q ---trying to change your mind?

24 A I've never been in that position. I, I know that I, I
25 do hold, you know, true to what I believe---

Individual Juror Qualification

1 Q Okay.

2 A ---in the facts. But I, I would -- I couldn't really
3 answer that till I was in that position.

4 Q All right. The only thing I think, just kind of
5 general reviewing on your questionnaire, you indicated that
6 your wife is a legal secretary for a firm in Greenville?

7 A Yes, ma'am.

8 Q What kind of law does, does that firm do?

9 A Insurance defense.

10 Q Okay. Anything from that experience that, that would
11 affect you in this type of a case?

12 A No, ma'am.

13 Q All right. Thank you, sir.

14 THE COURT: State may proceed.

15 SOLICITOR BARNETTE: May it please the Court, Your
16 Honor?

17 THE COURT: Mr. Barnette, you may proceed.

18 SOLICITOR BARNETTE: Yes, sir.

19 EXAMINATION

20 BY SOLICITOR BARNETTE:

21 Q Mr. Bohart, good evening by the way.

22 A Good evening, sir.

23 Q My name is Barry Barnette. Myself and Trey Gowdy are
24 part of the prosecution team. We'll be, be representing the
25 state in this situation.

Individual Juror Qualification

1 A Yes, sir.

2 Q One thing I want to do is thank you for your service
3 too, your military service. I mean I notice that you've
4 been in the Army and Marines.

5 A Yeah.

6 Q You---

7 A Couldn't make up my mind.

8 Q I understand. Again, we appreciate that, and, of
9 course, we appreciate, like Judge Couch said, this is the
10 second highest level of service for your country, and you're
11 doing both of them now.

12 A Thank you.

13 Q And more important, you're doing this one here. Just a
14 couple of questions I just wanted to follow-up with in this
15 situation.

16 I notice your son is serving time.

17 A Yes, sir.

18 Q And I hate to ask you these questions. Just, just
19 checking.

20 who was the agency that dealt with that?

21 A He was -- he originally -- the original charge he went
22 to jail for was from Spartanburg. He got out of, out of
23 Manning Correctional Facility. Probation in Greenville. He
24 lived in Greenville. That's what he's back in. He's --
25 Greenville sent him back to, to prison for violating his

Individual Juror Qualification

1 probation.

2 Q Yes, sir.

3 Did -- do you think the, everybody that represented the
4 State, law enforcement, prosecutors, were they fair in
5 dealing with your son?

6 A They were, yeah. He, he did it. You know, I hate to
7 say it, but yeah.

8 Q I understand. I hate to ask you that question. I just
9 needed to ask that.

10 A It was all -- you know, no, nobody railroaded him. He
11 did the crime.

12 Q I understand that.

13 And I notice you listed Catholic on that.

14 Are you a Catholic, sir?

15 A I was raised Catholic, yes. I, I don't frequent church
16 at all.

17 Q Okay. So, you don't know what the view of the Catholic
18 Church or it wouldn't have any affect on you in this case?

19 A No, sir.

20 Q Sir, thank you for answering my questions. Thank you.

21 A Yes, sir.

22 THE COURT: Any follow-up questions from the defense?

23 MRS. HODGES: No, sir. Thank you.

24 THE COURT: All right. Mr. Bohart, just a couple of
25 things I want to make you aware of before you leave. We're

Individual Juror Qualification

1 in the process of qualifying jurors. That process, it looks
2 like will go into tomorrow. But fairly soon we're going to
3 be in a position to select a jury. When that happens, you
4 will receive a call from the courthouse, and if you're asked
5 to come back to the courthouse for a jury selection, come
6 prepared to stay with us.

7 WITNESS: Yes, sir.

8 THE COURT: Some of the people in that group won't be
9 selected, but some will.

10 WITNESS: Yes, sir.

11 THE COURT: And if you're selected, you'll go directly
12 into sequestration. You need to be prepared to stay if you
13 are selected.

14 WITNESS: I understand.

15 THE COURT: The contact information you've given us, is
16 it correct?

17 WITNESS: Yes, sir.

18 THE COURT: So, that's how we get in touch with you?

19 WITNESS: Yes, sir.

20 THE COURT: Also, the last thing I want to tell you is
21 I've given an order requiring that you not have any contact
22 with anyone about the case, discuss it with anyone, or
23 gather any information from the media or otherwise. That
24 continues until we tell you that it no longer does.

25 WITNESS: Yes, sir.

Individual Juror Qualification

1 THE COURT: Thank you. You can go.

2 WITNESS: Thank you.

3 THE COURT: Appreciate it.

4 (The following takes place outside the presence of the
5 juror.)

6 THE COURT: State's position?

7 SOLICITOR GOWDY: State would submit to the Court that
8 he is qualified.

9 THE COURT: Defense position?

10 MRS. HODGES: Your Honor, subject to our previous
11 motions, we have no additional objections to Mr. Bohart.

12 THE COURT: I find him to be qualified.

13 Our next juror is Evonia or Evonia Anderson, Number 8.

14 EVONIA ANDERSON, having been previously
15 sworn, testified as follows:

16 EXAMINATION

17 BY THE COURT:

18 Q Good afternoon or good evening. I'm not sure what to
19 say at this point in time.

20 A Good night.

21 Q It's getting close.

22 A I'm sorry.

23 Q I hope we appreciate we took care of you rather than,
24 rather than making you come back.

25 A I'm fine.

Individual Juror Qualification

1 Q Okay. Your name is Mrs. Anderson, is that right?

2 A Yes.

3 Q And ma'am, a couple of things I want to go over with
4 you before we start just to be sure you understand. We've
5 asked you to come back so we can ask you some questions on
6 an individual basis about your opinions or feelings or your
7 views on certain things.

8 And for that reason, I'm going to ask the questions
9 first. We'll allow the attorneys to follow-up and there are
10 no right or wrong answers to my questions. They're simply
11 your answers because we're just trying to find out something
12 about you, a little bit about how you, your position on
13 certain things.

14 I know you're not use to sitting in a seat like this
15 surrounded by lawyers and judges and don't feel intimidated
16 or nervous about that. If you have any problems, let me
17 know as we go along.

18 I'll remind you that on Monday you were sworn to tell
19 us the truth about the jury qualification process. That
20 oath continues now.

21 Do you understand that, ma'am?

22 A Yes, I do.

23 Q All right. Having said that, let's start off with my
24 first question, and that is has anybody talked to you about
25 this case or have you read, heard, or seen anything, or have

Individual Juror Qualification

1 you been exposed to any information that would cause you to
2 form an opinion about this case since we last talked on
3 Monday?

4 A No.

5 Q Have you ever participated in or responded to any
6 Internet site or blog concerning the death penalty?

7 A No.

8 Q Have you ever participated in any political activities,
9 demonstrations, rallies, or meetings on which the focus or
10 one of the issues discussed might have been the death
11 penalty?

12 A No.

13 Q Now, ma'am, my next question has to do with a list of
14 people that you looked at just before you came into the
15 courtroom, and that was a list of potential witnesses in
16 this case.

17 Have you seen that list?

18 A Yes.

19 Q And---

20 A The one that I had to the, read sitting back there?

21 Q Yes, ma'am, the one out there that had several pages of
22 people's names.

23 A Yes.

24 Q Did you go over that list?

25 A Yes, I did.

Individual Juror Qualification

1 Q Don't name anyone off of that list by name. I don't
2 want to know their names.

3 But what I do want to know is after you reviewed the
4 list, do you have any contact, socially, business wise or
5 otherwise, with any of those individuals listed on that
6 list?

7 A No.

8 Q Do you believe that you are related, in any way, by
9 blood or marriage, now or formerly, to anyone on the list?

10 A No.

11 Q So far as you know, you have no connections with those
12 people?

13 A No.

14 Q Okay. Now, ma'am, I'm going to ask you some questions
15 now that might be personal in nature. We're going to get
16 into your feelings and beliefs and that sort of thing. You
17 seem to be someone who's confident enough in your opinions
18 and your beliefs that you won't feel threatened by me asking
19 you about those things. I will go over one matter with you
20 to be sure we understand it and, and explain something to
21 you.

22 This case is a case -- and we're talking about now the
23 charge of murder against this defendant. For that charge,
24 the defendant, the State has asked for the imposition of the
25 death penalty. And for that reason, should the defendant be

Individual Juror Qualification

1 found guilty, and we've not even started the trial yet, that
2 hasn't happened, but should he be found guilty of that
3 charge of murder, because of the request by the State, we
4 would have to hold a separate second hearing concerning what
5 penalty to impose. So, the same jury that would be deciding
6 whether or not the defendant is guilty of those charges, if
7 he's found guilty of murder, would also handle the
8 sentencing phase of that trial where the choices would be
9 life imprisonment without parole, if he's found guilty of
10 murder, or the death penalty. That's the situation that we
11 have now.

12 Now, it's a little strange for us to be talking about
13 possible penalties before we've ever had a trial or there's
14 ever been a finding of guilt. But I hope you realize that
15 because the same jury will be handling both hearings, this
16 is the only chance we'll get to talk to the jury about those
17 things. Because once you're impaneled, we don't discuss
18 those things with you anymore.

19 Do you understand that?

20 A Yes, I do.

21 Q Please don't hold against the defendant or any defense
22 that he might raise at a later trial the fact that we've
23 talked about penalties because this is the only chance that
24 we have to do that.

25 Do you understand that as well?

Individual Juror Qualification

1 A Yes, I do.

2 Q Okay. Now, ma'am, the first thing I want to know is,
3 is some questions about how you might apply the law in any
4 case.

5 If you're selected on a jury, on a jury in a criminal
6 case, the judge will instruct the jury, at some point in
7 time, on the law.

8 Would you be willing to listen to that instruction?

9 A Yes.

10 Q Would you also be willing to accept the law as the
11 judge gives you and apply it to the facts as you find them
12 to be?

13 A Yes.

14 Q Now, is that still true if, when you're listening to
15 the judge charge the law, you realize that you either
16 disagree with the law or you don't like the law, would you
17 still be willing to set aside those feelings and take the
18 law as the judge gives, gives it to you and apply it to the
19 facts as you find them to be?

20 A Yes.

21 Q Okay. Now, ma'am, I understand there may have been a
22 little bit or some, I'm not gonna characterize it as a
23 little bit, there's been some pretrial publicity, publicity
24 about this case, and we talked about that some on Monday.

25 My question to you, have you been exposed to any of

Individual Juror Qualification

1 that publicity?

2 A No.

3 Q Have you read, seen anything on TV, or listened to
4 anything about this particular case?

5 A I had -- I didn't see anything. I just happened to --
6 well, I was in the bed and my granddaughter---

7 Q Uh-huh. (Affirmative).

8 A ---when she heard it, she blurted it out. But I didn't
9 listen to it.

10 Q You weren't listening to the report yourself?

11 A No.

12 Q Okay.

13 A I didn't. She was just telling me.

14 Q I understand.

15 well, let me ask you, if you're a juror on a case,
16 would you be willing to set aside anything that you might
17 hear about the case, read about the case, or see about the
18 case outside of the courtroom either before or during the
19 trial and decide the case solely upon the evidence presented
20 in the trial and the law given to you by the judge?

21 A Yes.

22 Q Now, two concepts I want to be sure we're clear about.
23 I want to be sure you understand them.

24 The first one is, under the law of this state and any
25 other state in this union, as far as I know, criminal

Individual Juror Qualification

1 defendants are always presumed to be innocent, and,
2 therefore, do not have a burden to prove themselves innocent
3 because they're already considered to be innocent. So, the
4 defendant has no burden of proof in a criminal case.

5 Do you understand that?

6 A Yes.

7 Q The same laws also state that the State always has the
8 burden of proving the defendant guilty beyond a reasonable
9 doubt. So, the burden of proof in every criminal case is
10 always with the State.

11 Do you understand that concept?

12 A Yes, I do.

13 Q Are you willing to accept that concepts and apply it to
14 any case that you participate in where someone's charged
15 with a crime?

16 A Yes, I will.

17 Q Now, ma'am, is it your belief that because someone has
18 been arrested, charged, and perhaps even indicted that they
19 must automatically be guilty of the crime?

20 A No.

21 Q So, I take it, ma'am, that you would be able to listen
22 to the facts and evidence presented during a trial, and
23 weigh those things, and you, after weighing the evidence,
24 could possibly find someone not guilty of a crime that
25 they're charged of?

Individual Juror Qualification

1 A Yes.

2 Q Is it also true that you could weigh and listen to the
3 evidence, and if you believe or find that the State has met
4 its burden of proof beyond a reasonable doubt, that you
5 could render a verdict of guilty against someone whose been
6 charged with the commission of a crime?

7 A Yes.

8 Q So, again, you would weigh the evidence, determine the
9 facts, listen to the law, and you could find someone either
10 guilty or not guilty depending on how you view those things?

11 A Yes.

12 Q Okay. Now, we're gonna talk again about this penalty,
13 death penalty situation. I want to be sure we're clear
14 about it.

15 Again, there's two possible phases to the murder part
16 of the trial. And that is the first one will determine
17 guilt or innocence. The same jury, if they find the
18 defendant guilty, would come back to determine the
19 appropriate penalty. And in that phase, there's two choices
20 of penalties, life in prison without parole or the death
21 penalty, for someone found guilty of murder in that
22 situation.

23 Do you understand that, ma'am?

24 A Yes, sir.

25 Q That second trial would involve additional evidence.

Individual Juror Qualification

1 There would be other witnesses who would testify. Some for
2 the State, some for the defense. Maybe, maybe different
3 witnesses that testified in the first case because the
4 issues are now different. It's not a question of guilt or
5 innocence. It's a question of what's the appropriate
6 penalty.

7 You understand what I'm saying?

8 A Yes.

9 Q Do you understand that situation?

10 A Yes.

11 Q Now, in your mind I want you to put yourself in a
12 position. Let's assume that you've been selected on a jury
13 in a murder case in which the State seeks the death penalty,
14 and you and your fellow jurors heard all the evidence,
15 deliberated on that evidence, heard the law from the judge,
16 and you all reached a unanimous decision that the defendant
17 is guilty of the murder. So, the question of guilt or
18 innocence has now been resolved. The defendant, in that
19 case, has been found guilty.

20 Do you understand that situation?

21 A Yes.

22 Q Since the State's seeking the death penalty, that means
23 your fellow jurors and you have to come back to the
24 courtroom and then decide the question of the appropriate
25 penalty. So, you're getting ready to enter the second phase

Individual Juror Qualification

1 of the trial where the penalty will be determined.

2 Now, do you remember I gave you another sheet to look
3 at, before you came into the courtroom, that had three
4 different jurors described?

5 A Yes.

6 Q You remember reading that?

7 A Yes.

8 Q All right. Now, I'm gonna go over those with you so
9 I'm sure we're on the same page.

10 The first juror described on that piece of paper
11 walking down the hall with that group with your jury would
12 of already made up his mind before he walked into the
13 courtroom because that juror believes that when, anytime
14 someone's found guilty of a murder, the only appropriate
15 punishment is death. So, that juror, walking down the hall,
16 is already made up his mind, coming into that second trial,
17 that the only appropriate punishment for the person found
18 guilty of murder is the death penalty and that's how he'll
19 vote every time.

20 The second juror on my piece of paper was somebody
21 whose also already made up their mind in that situation.
22 It's their belief that the State never has the right to take
23 a life in punishment of a crime, and, therefore, that person
24 is already made up his or her mind to vote for life
25 imprisonment without parole, and they'll do that every time

Individual Juror Qualification

1 because of the belief that the State does not have the right
2 to impose the death penalty.

3 The third juror who's walking down that hall is someone
4 who's not made up their mind one way or the other yet. They
5 will have to listen to the evidence, have to listen to the
6 witnesses who will testify during that part of the trial.
7 And after listening to all of that evidence, will have to
8 weigh that evidence and then make a decision as to what is
9 appropriate, either life in prison or the death sentence.

10 Do you understand the three---

11 A Yes.

12 Q ---possible jurors I just explained to you?

13 A Yes.

14 Q Now, of those three possible jurors, which one would
15 best describe you as you were walking down that hall?

16 A The third.

17 Q That means somebody who would have to listen to the
18 evidence, even though they found the person guilty of
19 murder, would have to consider the testimony in the second
20 phase of the trial, and then make a decision as to what's
21 appropriate.

22 Is that true?

23 A Yes.

24 Q And I would assume that if you found that the evidence
25 was appropriate, and that the, that the situation warranted

Individual Juror Qualification

1 that you could then sign a verdict imposing the death
2 penalty?

3 A Yes.

4 Q And you could also, by the same token, if you find that
5 the evidence was not sufficient to impose the death penalty
6 or for any other reason you could sign a verdict imposing
7 life in prison without parole.

8 Is that also true?

9 A Yes.

10 Q And again, it depends on the facts and circumstances as
11 shown in that second hearing?

12 A Yes.

13 Q Is that the case?

14 A Yes.

15 Q One other thing I want to ask you, ma'am. This is
16 personal in nature.

17 If you're selected on a jury, I've told everyone that
18 you will be sequestered during the trial. What that means
19 is that you will be staying in a local hotel and you will
20 have your meals with your fellow jurors. Your contact with
21 the outside world will be limited, and during that -- that
22 will last throughout the trial and we expect the trial to
23 last about five to seven days. About a week in length we're
24 looking at.

25 So, do you understand that situation?

Individual Juror Qualification

1 A Yes.

2 Q My question -- and it's not whether or not you'd be
3 inconvenienced. I know you'd be inconvenienced if you were
4 in that situation.

5 My question to you is though, if you were in that
6 situation and you were sequestered, would that pose a
7 substantial or a real risk to either your health or your
8 well being?

9 A No.

10 Q And would that situation pose a substantial or real
11 risk to the well being of anyone who is dependent upon you?

12 A I don't think so, no.

13 Q Well, is -- the answers no?

14 A No.

15 Q Okay. Now, ma'am, I told you I'd give the attorneys a
16 chance to follow-up on my questions. I've completed my
17 questions. The defense will go first. And I believe Mrs.
18 Hodges is getting ready to stand up. She'll be asking you
19 questions, the questions.

20 A All right.

21 EXAMINATION

22 BY MRS. HODGES:

23 Q Mrs. Anderson, good afternoon.

24 A Good afternoon. Good night.

25 Q I appreciate you being here and, and, and sticking it

Individual Juror Qualification

1 out with us this afternoon.

2 You had indicated that your granddaughter blurted
3 something out.

4 When, when was that?

5 Was that over the weekend or---

6 A I think it was Monday morning.

7 Q Monday morning.

8 Okay. And what did your granddaughter blurt out?

9 A She was just saying someone killed, killed his wife
10 with a hammer.

11 Q Okay.

12 A That was all I heard.

13 Q Okay. Anything from what your granddaughter said that,
14 that would affect your ability to be a fair and impartial
15 juror in this case?

16 A No.

17 Q Okay. Also you had mentioned to us that you have a
18 couple of members of your family who are in law enforcement.

19 Anything from that background that would affect your
20 ability to be fair and impartial in this case?

21 A No. No.

22 Q Okay. Do you have any general views or have an opinion
23 about the death penalty as a punishment in this, in this
24 case or in any case?

25 A No.

Individual Juror Qualification

1 Q Ever talked with friends, family, members of your
2 church about the death penalty?

3 A Well, maybe down through the years. But not, you know,
4 not lately. No way. No time.

5 Q So, you don't have any kind of preconceived notions
6 about, about whether it's an appropriate penalty or not, not
7 the appropriate penalty?

8 A If it's -- if the evidence shows that it's warranted.

9 Q Okay.

10 A That's all. And if it's not, if it doesn't, then no.

11 Q Okay. And when we talk about the death penalty, we're
12 gonna be talking about a case where somebody's actually been
13 convicted of murder. And murder, in South Carolina, is the
14 willful killing of another human being with malice
15 aforethought. Basically with an evil intent, you know, kind
16 of a real ill will. And, and when you're convicted of
17 murder, there's basically, if any evidence was presented to
18 the jury in terms of it might be considered a defense like
19 to excuse it or justify the killing, the jury basically is
20 heard all of that evidence, has listened to the charge from
21 the judge on the law, and has decided that basically this is
22 a killing that can not be justified, can not be excused.
23 But the person essentially is, is guilty of murder. They
24 did it. They're being held responsible for it.

25 Do you understand where I'm coming from?

Individual Juror Qualification

1 A Yes.

2 Q In that type of case, do you have an opinion as to
3 whether the death penalty is the only appropriate penalty
4 for somebody that's been found guilty of murder?

5 A Well, not really without hearing the evidence. Not a
6 prejudgment, no.

7 Q Okay. In a death penalty case, the State will have the
8 opportunity to present aggravating circumstances.
9 Aggravating circumstances are something either, you know,
10 evidence or circumstances surrounding the case that
11 basically say it's a, a worse case, you know, than, than
12 other types of murders.

13 Do you have in your mind or, or a fact scenario or a
14 type of case for which you would think that the death
15 penalty would always only be the only appropriate penalty?

16 A No.

17 Q Okay. And conversely, there's also a chance for the
18 defense to bring mitigating evidence to the jury. Explain
19 reasons, either circumstances or that, background or
20 whatever circumstances that basically say, in fairness or in
21 mercy, the sentence should not have the death penalty
22 imposed. It should be given a life without parole sentence.

23 Would you be willing to listen to that mitigating
24 evidence?

25 A Yes.

Individual Juror Qualification

1 Q And would you be willing to consider that mitigating
2 evidence in making a decision in your own mind as to
3 whether, what the appropriate sentence is?

4 A Yes.

5 Q Okay. And, and some of the questions we're gonna ask
6 I, I, I know are personal.

7 I notice that, that you indicate that you're, I guess,
8 currently on disability?

9 A Uh-huh. (Affirmative).

10 Q Is that right?

11 A Yes.

12 Q Okay. And a physical disability from, from work or---

13 A My eyes.

14 Q Your eyes?

15 A Legally blind.

16 Q Okay. You, you -- I'm sorry?

17 A Considered legally blind.

18 Q You're considered legally blind?

19 A Uh-huh. (Affirmative).

20 Q Okay. Is that going to cause you a problem in terms of
21 viewing exhibits like pictures and documents and things like
22 that?

23 A Not that I know of.

24 Q Okay. So, I mean you're able to watch TV and---

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q ---that sort of thing?

2 A Uh-huh. (Affirmative).

3 Yes.

4 Q The, the -- I think the only other question I have is
5 once you've made the decision in a case, and you've had,
6 you've had, basically have your opinion of what the
7 appropriate penalty would be, do you feel -- and say, for
8 example, you've decided that -- and, and whatever verdict
9 you decided on is, you know, is your verdict. So, you
10 basically decided that one particular verdict is the
11 appropriate verdict.

12 Even if there are 11 other people in the jury room with
13 you that are not willing or have a different opinion, what
14 would you do in that, in that type of case?

15 A I would vote the way I feel.

16 Q Okay. And any, any possibility of just beginning to
17 feel intimidated or coerced or somebody just, being just
18 kind of pull you along to giving a unanimous decision?

19 A No.

20 Q Okay. So, you feel pretty comfortable with being able
21 to say my opinion is my opinion and---

22 A Right.

23 Q ---and holding to that?

24 A Uh-huh. (Affirmative).

25 Q Right.

Individual Juror Qualification

1 If you'd bear with me just one moment, Mrs. Anderson.

2 A Okay.

3 (Pause.)

4 Q The only -- in terms of you basically being legally
5 blind, is it, is it that you're nearsighted, farsighted, or
6 what?

7 A I had surgery.

8 Q Okay.

9 A And it's, it's basically in my right eye.

10 Q Okay.

11 A And---

12 Q So -- but, but your left eye, you're able to basically,
13 to, to---

14 A Yeah.

15 Q ---see photographs?

16 A Uh-huh. (Affirmative).

17 Q See pictures and be able to read documents and that
18 sort of thing?

19 A Uh-huh. (Affirmative).

20 Q Okay. All right. Thank you, ma'am.

21 THE COURT: The State, Mr. Gowdy.

22 SOLICITOR GOWDY: May it please the Court, Your Honor?

23 THE COURT: Yes, sir.

24 EXAMINATION

25 BY SOLICITOR GOWDY:

Individual Juror Qualification

1 Q Good evening, Mrs. Anderson.

2 A Good evening.

3 Q Thank you for your patience and, and your long
4 suffering for being here this long. I will be very brief.

5 The family members that you have in law enforcement,
6 how often do you have a chance to see them?

7 A My brother was a previous officer.

8 Q who was that?

9 A L.C. Dodd.

10 Q Okay.

11 A He's out like me.

12 Q Sure.

13 A Disability. But---

14 Q I know who you're talking about.

15 A But I see him a lot.

16 Q Okay.

17 A Alton Dodd, he's the other one.

18 Q Right.

19 A I see him very seldom.

20 Q Okay.

21 A Ben Dodd was a probation officer.

22 Q Right.

23 A I very seldom see him.

24 Q Okay. You were very thorough in answering the Court's
25 questions. I want to ask you one more time generally. I

Individual Juror Qualification

1 notice that you're a woman of faith and that you attend
2 church.

3 what -- generally, how would you characterize your
4 views on capital punishment and where do your views come
5 from?

6 From the way you were raised, or from church, what are
7 they, and where do they come from?

8 A Well, I just feel, you know, if, if you've done
9 something that, you know, if it warrants, you know, capital
10 punishment or whatever, you know, between guilty and not
11 guilty or the death penalty or whatever, it, hearing the
12 evidence, just, you know, from my heart.

13 Q Yes.

14 A Just hearing the evidence and making a judgment of what
15 should or shouldn't be done. Just -- but it just, you know,
16 I was -- my -- what my background -- my religion, I was
17 raised a Baptist.

18 Q Right.

19 A I am Baptist.

20 Q Yes, ma'am.

21 A And it just -- I don't know whether it just basically
22 come from my parents or you know---

23 Q Yes, ma'am.

24 A Basically I guess myself.

25 Q Yes, ma'am.

Individual Juror Qualification

1 A That's how I feel.

2 Q I know the Court explained this, and, and, and it's
3 late. So, I'm gonna ask just a few more questions.

4 A That's all right.

5 Q Okay. South Carolina law would never ever ever require
6 you to vote for the death penalty. You always have the
7 right to vote for life in prison and life means life. It
8 means you don't ever get out.

9 knowing that you always have life without parole, do
10 you still think there's certain crimes, that if you looked
11 at them and you sat in judgment on it, you would still
12 believe that the death sentence was the right sentence?

13 A Yes.

14 Q Okay. Thank you.

15 THE COURT: Any follow-up questions from the defense?

16 MRS. HODGES: Thank you. No, sir.

17 THE COURT: All right. Mrs. Anderson, just a couple of
18 things before we leave this evening. First of all, we're
19 getting close to the position where we're going to be
20 selecting a jury. If you are selected to be in the jury
21 pool, you will receive a call or otherwise you will receive
22 a call. You'd be asked to come back to the courthouse for
23 jury selection.

24 Now, if you're asked to come back again, bring with you
25 whatever you need to stay for that week because from that

Individual Juror Qualification

1 pool we'll be selecting a jury and whoever's selected will
2 be staying and you'll immediately go into sequestration.
3 So, bring with you whatever you need to accomplish, to be
4 able to stay for that week.

5 Do you understand that, ma'am?

6 WITNESS: Yes.

7 THE COURT: The contact information that you've given
8 us, is it correct?

9 WITNESS: Yes, sir.

10 THE COURT: That's how we get in touch with you?

11 WITNESS: Uh-huh. (Affirmative).

12 THE COURT: The last thing I want to mention to you is
13 that the order that I gave you on Monday not to have any
14 contact or discuss the case with anyone or get any
15 information from any other source continues until we tell
16 you it's over.

17 Okay?

18 WITNESS: All right.

19 THE COURT: Thank you for coming. You're free to go.

20 WITNESS: Good night.

21 THE COURT: Yes, ma'am, good night.

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

24 THE COURT: State's position on Mrs. Anderson?

25 SOLICITOR GOWDY: The State would submit that she's

Individual Juror Qualification

1 qualified.

2 THE COURT: Defense's position on Mrs. Anderson?

3 MRS. HODGES: Your Honor, subject to our other motions,
4 I think she's qualified.

5 THE COURT: The Court finds that she is qualified.
6 she'll be placed on that list.

7 All right. We'll resume the jury selection process or
8 qualification process at nine o'clock in the morning.

9 I'm gonna ask the attorneys to approach briefly.

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

11

12 (Whereupon, Court was in recess for the evening.)

13

14

15

16

17

18

19

20

21

22

23

24

25

Individual Juror Qualification

1 Thursday, October 16th, 2008

2

3 THE COURT: All right. Ladies and gentlemen, is the
4 State ready?

5 SOLICITOR GOWDY: Yes, sir, Your Honor.

6 THE COURT: Is the defense ready?

7 MR. ALLEN: Yes, Your Honor.

8 THE COURT: All right. We're starting with Panel
9 Number Ten this morning, Number 211, Gregory Pappas.

10 GREGORY PAPPAS, having been previously
11 sworn, testified as follows:

12 EXAMINATION

13 BY THE COURT:

14 Q Good morning.

15 A Good morning.

16 Q I believe your name is Gregory Pappas, is that correct?

17 A Yes, sir.

18 Q Mr. Pappas, first of all, I want to thank you for your
19 cooperation with our jury qualification process. As you're
20 aware, we are still involved in that process this morning,
21 and I appreciate your patience and your willingness to
22 serve.

23 We're going to go over some things this morning with
24 you on an individual basis. The first thing I want to do is
25 remind you that on Monday you took an oath to tell us the

Individual Juror Qualification

1 truth during this process. That oath continues for our
2 discussions at this time.

3 Do you understand that?

4 A Yes.

5 Q I also want you to understand that I realize that
6 seat's not the most comfortable seat in the house because
7 you have a microphone and there's lawyers and judges and
8 court reporters sitting around you. And I know that's not
9 where you're use, are use to being seated.

10 But I'll, I'll -- I want to let you know that the
11 questions we're going to be asking you today have to do with
12 your beliefs, your opinions---

13 A All right.

14 Q ---how you would handle certain situations. And there
15 are no right or wrong answers to those questions. It's
16 simply your answers, whatever you have to tell us, and
17 that's what we're interested in.

18 If, at any time during our questioning, you feel
19 threatened in any way or anything of that nature, let me
20 know and we'll try to alleviate that situation.

21 A Okay.

22 Q I'm going to ask the questions first. I'll allow the
23 attorneys to follow-up on the questions I've asked once I've
24 finished.

25 You understand that, sir, that's how we're gonna

Individual Juror Qualification

1 proceed?

2 A Yes, sir.

3 Q All right. The first question I have, since we talked
4 on Monday, has anybody contacted you about this case?

5 Have you heard or read anything about the case, or
6 have, have you gathered any information that would cause you
7 to form any opinions about this case?

8 A No, sir.

9 Q Have you participated in ever or responded to any
10 Internet sites or blogs or other similar locations that
11 would have, as its subject, matters concerning the death
12 penalty?

13 A No, sir.

14 Q Have you ever participated in any political activities
15 concerning the imposition or the non-imposition of the death
16 penalty such as rallies, meetings, or demonstrations, things
17 of that nature?

18 A No, sir.

19 Q Now, my next question will have to do about a list that
20 you were shown outside in the hall.

21 Do you recall seeing that list of potential witnesses?

22 A Yes, sir.

23 Q Did you have a chance to look over it?

24 A I did.

25 Q I don't want you to introduce, to introduce anybody's

Individual Juror Qualification

1 name off of that list into the courtroom. Okay. So---

2 A Right.

3 Q But I will generally ask you, since you've had a chance
4 to review the list, is there anyone on that list that you
5 believe that you might have any social, business, or
6 personal connection with?

7 A Well, I am, I am a business owner in Spartanburg.

8 Q Yes, sir.

9 A So, there could be names on that list that are my
10 customers, but I don't know them.

11 Q Well, I'm just asking if you could identify anybody
12 from that list---

13 A No.

14 Q ---that, that you might have some relationship---

15 A No.

16 Q ---with in some fashion, either, and, in fact, are
17 related to in any fashion?

18 A No, sir.

19 Q Okay. So, as far as you know, you have no connection
20 with anyone who is listed on that list?

21 A No, sir.

22 Q Is that a true statement?

23 A Yes, sir.

24 Q Okay. Now, we're going to go over some more personal
25 questions having to do with your opinions and beliefs and

Individual Juror Qualification

1 that sort of thing, and I wanted to caution you that we're
2 not trying to invade your privacy. What we're doing is
3 trying to find out how you feel about some things.

4 So far you appear to be someone who could discuss your
5 opinions without feeling threatened, and I certainly don't
6 want you to be threatened by any questions that we're going
7 to ask. Ultimately we will get to some questions concerning
8 the death penalty, which is an issue in this case, and
9 something that we have to discuss.

10 And I want to explain to you at this time, as I did on
11 Monday, but I want to be sure you understand it, this trial,
12 if it goes forward, will be divided, on the question of
13 murder, not on the other questions, will be, would be
14 potentially divided into two different phases. In this
15 case, for the charge of murder, the State has sought the
16 death penalty, and because of that, should the defendant be
17 found guilty of murder during the penalty, the, the guilt or
18 innocence phase, we would then, of the trial, we would then
19 move on to the penalty phase to determine the appropriate
20 penalty.

21 The same jury will be sitting on both hearings if they
22 become necessary. You might consider, and I consider it,
23 kind of putting the cart before the horse that we're talking
24 about penalties before we've ever decided guilt or
25 innocence. But I hope you realize that since the same jury

Individual Juror Qualification

1 handles both phases of the trial, this is our only
2 opportunity to discuss that potential phase---

3 A Uh-huh. (Affirmative).

4 Q ---of the trial with you before the case begins.

5 So, we, in, in effect, are putting the cart before the
6 horse, but this is the only time that we can discuss that
7 matter.

8 A I understand.

9 Q I'm telling you that so I would, and am instructing you
10 that you should not hold the fact that we're discussing
11 penalties against any defenses that the defendant might
12 raise to the original charges or, or anything that might
13 occur in the first part of that trial because, again, this
14 is the only time we could talk about penalties, and you
15 should, you should insinuate anything from that---

16 A Right.

17 Q ---that shouldn't reflect adversely on his position in
18 the case.

19 Do you understand that?

20 A Yes, sir, I understand.

21 Q Okay. Now, the first thing I'm going to ask you about
22 is your, your opinions concerning the application of the
23 law. At some time during the trial, the judge, myself, will
24 be charging the jury concerning the law to be applied to the
25 case.

Individual Juror Qualification

1 Would you be willing to listen to the law as instructed
2 by the Court?

3 A Yes, sir.

4 Q Would you be willing to accept the law as the Court
5 gives it to you and apply it to the facts as you find them
6 to be?

7 A Yes, sir.

8 Q Now, is that true even though, when the judge is
9 instructing the law to you, you might realize that you might
10 disagree with the law, you may not like the law that you
11 hear, would you still be willing to set those feelings aside
12 and take the law as charged and apply it to the facts as you
13 find them?

14 A Yes, sir.

15 Q All right.

16 A The law is the law.

17 Q Okay. Thank you very much.

18 Now, there has been some, some mention of this case in
19 the local media, and we talked about that some on Monday.
20 But again, I'm going to go over some things with you.

21 First of all, are you aware of anything that you have
22 seen in the media about this particular case?

23 A No.

24 Q All right. Then I, then my question then will be in
25 general to you.

Individual Juror Qualification

1 Are you the kind of juror who would be able and willing
2 to set aside any information or knowledge that you might
3 have about the case from any source at all?

4 Anything you've heard, read, or seen about the case, or
5 any information that has been gathered outside the courtroom
6 or prior to the trial, could you set that aside and decide
7 the case purely upon what you hear in the courtroom, the
8 evidence and the law that's presented to you during the
9 trial?

10 A Yes, sir.

11 Q There's two concepts I want to talk to you about that
12 we talked about briefly on Monday, and I want to be sure we
13 have an understanding on these concepts.

14 The first one is, that in our state and in our nation,
15 a criminal defendant, under the Constitution and laws, is
16 always presumed to be innocent. For that reason a defendant
17 never has an obligation to prove himself innocent of any
18 crime that he may be charged of. So, the defendant never
19 has a burden of proof in a criminal trial.

20 Do you understand that concept?

21 A Yes, sir.

22 Q The other one is that the same laws that make that
23 provision also provide that the State always has the burden
24 of proving the charges against the defendant by proof beyond
25 a reasonable doubt, by proof of guilt beyond a reasonable

Individual Juror Qualification

1 doubt, and that burden of proof is always upon the State in
2 a criminal trial.

3 Do you understand those concepts?

4 A Yes, sir.

5 Q Now, sir, would -- if you were sitting as a juror in
6 any criminal case, would you be willing to listen to the law
7 presented to you, and based on how you find those things,
8 and, and those circumstances, would you be able to render a
9 verdict in a case such as that?

10 A Yes, sir.

11 Q And that means that, in weighing the evidence, you may
12 determine that the State has failed to meet its burden of
13 proof.

14 And in that case, would you be willing to find someone
15 not guilty of a crime charged?

16 A Yes, sir.

17 Q I take it from your answer then, sir, that you are not
18 the kind of person or, or you don't believe that just
19 because someone's been arrested, and indicted, and charged
20 in a case that they're automatically guilty of that, that
21 case---

22 A No, sir.

23 Q ---that, that charge?

24 By the same token, if you've determined that the State
25 has met its burden of proof, and has proved the defendant

Individual Juror Qualification

1 guilty of whatever the charge is beyond a reasonable doubt,
2 are you and would you be willing to render a verdict of
3 guilty against a fellow citizen?

4 A Yes, sir.

5 Q Now, sir, I take it then, and tell me if this does
6 describe you, you would be the kind of juror, juror who
7 would make up your mind depending upon the strength of the
8 evidence, what the testimony and evidence showed, and what
9 the law was as charged to you, and that you could either
10 find someone guilty or not guilty depending on what that
11 evidence and the law showed you?

12 A Yes, sir.

13 Q Now we're gonna get back to talking about the penalty.
14 I told you we would get to this point the, the, that, in a
15 few minutes. I do want you to understand that if the
16 defendant were found guilty of murder, and we haven't
17 started the trial yet, and he's certainly not been found
18 guilty of murder at this point in time, but if that did
19 occur, we would hold that then second trial.

20 A Uh-huh. (Affirmative).

21 Q The same jurors would be involved in it, but there
22 would be additional evidence received on the question of the
23 appropriate penalty.

24 The State would have the right to, to introduce, in
25 that trial, what it calls aggravating factors, factors that

Individual Juror Qualification

1 they believe might make it worse, the, the, the offense
2 worse. And the defense would have the right to introduce
3 what are called mitigating factors---

4 A Uh-huh. (Affirmative).

5 Q ---factors that might tend to make the crime less,
6 lessen the penalty that might be imposed for the crime.

7 So, that's the kind of evidence you'll hear at that
8 second trial. But the same jury would hear that evidence in
9 the second trial.

10 Do you understand how that works?

11 A Yes, sir.

12 Q Okay, sir. Now, the only two choices in the sentencing
13 phase for the jury to make would be either life imprisonment
14 without parole or the death penalty. That is if the
15 defendant has been found guilty of the murder. So, that's
16 the two choices that a jury would have in that circumstance.

17 A Uh-huh. (Affirmative).

18 Q Do you understand that as well?

19 A Yes.

20 Q Now, I want you to, in your mind, put yourself in a
21 position theoretically. Let's assume that you were selected
22 on a jury in a murder trial in which the State is seeking
23 the death penalty. You've heard all the evidence. You have
24 heard the law. You and your fellow jurors have deliberated
25 through the, the deliberation process, and have come to the

Individual Juror Qualification

1 conclusion and reached a verdict unanimously that the
2 defendant is guilty of the offense of murder.

3 A Uh-huh. (Affirmative).

4 Q Now, since the State is seeking the death penalty, you
5 and your fellow jurors then would be coming back to the
6 courtroom to begin the sentencing phase of the trial where
7 the new evidence will be received concerning the appropriate
8 sentence.

9 Do you understand where I've put you?

10 A Yes.

11 Q Okay, sir. Now, there was another piece of paper I had
12 you read before you came into the courtroom that described
13 three potential jurors.

14 Do you remember that piece of paper?

15 A Yes, sir.

16 Q I'm gonna go over those with you to be sure we have a,
17 a clear understanding of what that paper said.

18 The first type of juror that I described on that piece
19 of paper would be a juror who was walking back to that
20 courtroom to begin the sentencing phase, but would have
21 already made up his or her mind because that juror believes,
22 that when someone is found guilty of murder, that the only
23 appropriate penalty is the death penalty. And for that
24 reason, that juror already knows, before they enter the
25 courtroom and before they've heard any evidence on the

Individual Juror Qualification

1 appropriate penalty, that they're going to vote for the
2 death penalty.

3 A Uh-huh. (Affirmative).

4 Q The second type of juror I described on that piece of
5 paper was one who, walking down that hall, has also made up
6 his or her mind. That juror has a belief that the State
7 should never take a life of a person in punishment of a
8 crime. And for that reason, that person was, is and would
9 always vote for the, for the life sentence and would never
10 vote for the death penalty under any circumstances.

11 The third juror who's walking down that hallway really
12 doesn't know what he or she is going to do. He doesn't have
13 his mind made up one way or the other as to whether he's
14 going to vote for life imprisonment or for the death
15 penalty. That juror is going to have to wait and listen to
16 the evidence and testimony and then make a decision based on
17 that evidence and testimony presented at the separate trial
18 as to what the appropriate penalty might be.

19 Now, sir, do you understand the situation?

20 A Yes, sir.

21 Q Do you understand the three different types of jurors
22 I've described?

23 A Yes, sir.

24 Q Of those three jurors, which one would best describe
25 you?

Individual Juror Qualification

1 A I feel number three.

2 Q Okay, sir. Now, I take it then that that means that,
3 under those circumstances I've described, where someone has
4 been found guilty of the crime of murder---

5 A Uh-huh. (Affirmative).

6 Q ---and guilt or innocence is no longer an issue or
7 concern, that you, as a juror, would be willing to listen to
8 the facts and evidence presented in the second part of the
9 trial, and then, if the evidence justified it, you would be
10 willing to sign a sentence of death.

11 Is that correct?

12 A Yes, sir.

13 Q And by the same token, if the facts and circumstances
14 did not justify such a sentence, for any reason, you would
15 be willing to sentence someone to life imprisonment without
16 parole.

17 Is that also true?

18 A Yes, sir.

19 Q So, that means you could sentence someone to life or
20 you could sentence someone to death depending on the facts
21 and circumstances shown during the sentencing phase of the
22 trial.

23 Is that a true statement?

24 A Yes, sir.

25 Q Now, sir, the last thing I want to go over with you is

Individual Juror Qualification

1 a personal situation. If you're selected to serve on the
2 jury, you will, the jury will be sequestered. That means
3 that you would be staying in a motel during the evenings.
4 You'd be here in the courthouse working on the case during
5 the day. You would take your meals, meals with your fellow
6 jurors. You would have limited access to the outside world,
7 either by telephone or any other means of communication, and
8 the print media and other media outlets you'd be allowed to
9 watch would be limited somewhat.

10 Do you understand what that situation would be?

11 A Yes, sir.

12 Q Now, I understand fully that that's an inconvenience to
13 anybody in their life.

14 A Right.

15 Q Because this is a form of service and service is
16 inconvenient.

17 However, my real question to you is if you were in that
18 situation, you were sequestered with your fellow jurors --
19 and we think the trial portion of this case will take
20 anywhere from five to seven days, about a week to complete,
21 so, if you were in that situation, would that situation pose
22 a serious risk of danger to your health or your well being?

23 A No.

24 Q Would it pose a serious risk to the health or well
25 being of anyone who is dependent upon you?

Individual Juror Qualification

1 A No.

2 Q All right, sir. That completes all the questions that
3 I have this morning. I told you we'd let the attorneys ask
4 some follow-up questions. We allow the defense to go first.

5 Mr. Allen, is that gonna be you?

6 MR. ALLEN: That will be.

7 THE COURT: All right. Mr. Allen's gonna proceed for
8 the defense.

9 WITNESS: Okay.

10 THE COURT: You may proceed, sir.

11 MR. ALLEN: Thank you, Your Honor.

12 THE COURT: Yes, sir.

13 EXAMINATION

14 BY MR. ALLEN:

15 Q Good morning, Mr. Pappas.

16 A Good morning.

17 Q My name is Clay Allen. And as I've said on Monday, I,
18 along with John Reckenbeil and Kathy Hodges, are
19 representing Tony Torres in this matter.

20 Now, we appreciate your service this week, and your
21 willingness, of course, to, to serve in the event you are
22 selected. Also appreciate, excuse me, your filling out the
23 questionnaire, which we, of course, have been provided a
24 copy and have gone over.

25 As I understand it from your questionnaire, you have

Individual Juror Qualification

1 served as a correctional officer---

2 A Yes, sir.

3 Q ---in prison in Tennessee, is that right?

4 A Yes, sir.

5 Q Can you tell me -- I don't know if I made a note of it,
6 but how, how long did you serve in that capacity?

7 A It was about two years. Maximum security prison. My
8 duty was to the prisoners that were getting out of prison.
9 I would take them and get them acquainted to the world
10 again, you know, because some of them have been in there for
11 so long. You know, I would take them to a movie,
12 McDonald's, you know, just to get them acquainted how the
13 world is changed since, while they were in there and that,
14 pretty much, was my duty.

15 Q Okay. So, your involvement then as a correctional
16 officer -- is, is that what they call it in Tennessee---

17 A Yes.

18 Q ---a correctional officer?

19 A Yes.

20 Q So, your involvement, as a correctional officer, was, I
21 don't want to say limited, I don't want to say that word,
22 limited to those who were actually serving a sentence where
23 they were getting out, is that right?

24 A No, we still did work behind the wall.

25 Q Oh, you still---

Individual Juror Qualification

1 A Yes.

2 Q I mean escort those who were serving a life sentence?

3 A Yes, sir, everybody still did that. So --.

4 Q Oh, okay. Well, let me ask you this.

5 Is there anything, in, in that experience, that you
6 think might affect you, in, in any, any way as a juror, if
7 you were considering a potential sentence for murder?

8 A No.

9 Q Okay.

10 A No.

11 Q You can be open minded about---

12 A Yes, sir.

13 Q ---either form, in other words?

14 A Yes, sir.

15 Q Nothing negative in that experience?

16 A No.

17 Q That's good. Thank you.

18 Of course, I also have to talk about the penalty phase
19 as well, and as the judge explained that this is our only
20 opportunity to do that. That's why we take this opportunity
21 at this time.

22 Let me just ask you, what are your feelings in general,
23 if you have any, about the death penalty?

24 A Well, I'm a factual person. So, every, all the facts
25 have got to line up because, you know, I'm taking a

Individual Juror Qualification

1 responsibility of taking someone's life, you know, and
2 that's not something that you should take lightly.

3 Q Yes, sir.

4 A So, I, I just feel that there have, there -- all the
5 facts have got to be there.

6 And am I for the death penalty?

7 Yes, sir, I am, if the facts are there---

8 Q Okay.

9 A ---you know.

10 Q When you say if the facts are there, can you give me an
11 idea of what it is that you're talking about?

12 A Well, I, I guess if the prosecution, you know,
13 presented their case and, and it was, it was, there was
14 overwhelming evidence that, that the person was guilty, yes.

15 Q Okay. Well, let me ask it to you this way. Of, of
16 course, as His Honor explained, in the event you and 11
17 jurors have come to a decision that an individual is guilty
18 of murder --

19 A Uh-huh. (Affirmative).

20 Q -- and by that, of course, we're talking about the
21 willful killing of another person---

22 A Right.

23 Q ---with malice aforethought. wickedness, depravity of
24 the heart essentially.

25 A Uh-huh. (Affirmative).

Individual Juror Qualification

1 Q And you and the other 11 jurors have decided that there
2 is no defense to it, no legal justification.

3 A Uh-huh. (Affirmative).

4 Q There's no question that the individual committed the
5 offense of murder and is responsible for it.

6 A Uh-huh. (Affirmative).

7 Q You see where I'm at?

8 A Yes, sir.

9 Q Under those circumstances where such an individual has
10 been convicted, do you feel as if the death penalty is the
11 only appropriate punishment for such a guilty murder?

12 A Now, is this in the second trial?

13 Q Well, I'm asking---

14 A I mean, I mean are you asking me if I've made up my
15 mind before we go back for the---

16 Q Upon -- I'm asking -- yes, sir. I'm asking you if,
17 upon a conviction---

18 A Uh-huh. (Affirmative).

19 Q ---for the willful killing of another with malice
20 aforethought, where there is no question in the jury's mind
21 that they're convinced beyond a reasonable doubt the
22 individual's guilty---

23 A Uh-huh. (Affirmative).

24 Q ---is responsible, for that murder, at that point I'm
25 asking you do you feel as if the death penalty is the only

Individual Juror Qualification

1 appropriate punishment?

2 A Overwhelming evidence is what you're saying?

3 Q Beyond a reasonable doubt.

4 A Beyond a reasonable doubt, yes, sir, death penalty is
5 appropriate.

6 Q Okay. Okay. Well, appropriate.

7 Do you think it's the only appropriate penalty?

8 A Without a reasonable doubt of the evidence?

9 Q (Nods affirmatively.)

10 A Yes, sir.

11 Q Now -- and the reason I'm -- so, I take it then that
12 you would not consider life imprisonment for someone who has
13 been convicted of murder under the circumstances as I've
14 mentioned?

15 A Well, the, the way you've mentioned it though was
16 horrific murder, you know, with malice. So, under that
17 situation, you know, I feel the death penalty is
18 appropriate, you know. There's -- different things happen.
19 So --

20 Q Yes, sir.

21 A -- you know, I would, I would really -- we would have
22 to come up, up with a scenario, a different type of scenario
23 for me to say life in prison versus, you know, just a
24 terrible murder.

25 Q And, of, of course, we are talking in generalities and

Individual Juror Qualification

1 I acknowledge that.

2 A Yes, sir.

3 Q And, and -- because you haven't heard any evidence at
4 this point.

5 A Right.

6 Q And no evidence's been presented in Court at this
7 point.

8 A Right.

9 Q So, that's what I'm -- so, so, yes, we are talking in
10 generalities, and I appreciate your ability to think in
11 generalities for me to answer these, these questions.

12 A Uh-huh. (Affirmative).

13 Q But -- okay. But just so that I understand, because we
14 are talking about, again, a, a -- if you're convinced that
15 there's been commission of a murder, that there's willful
16 killing of another with the malice aforethought---

17 A Uh-huh. (Affirmative).

18 Q ---you believe the death penalty is the only
19 appropriate penalty?

20 A Yes, sir.

21 Q Okay. And of course, you've come to your opinion over
22 a period of time.

23 Would that be correct?

24 A Yes, sir.

25 Q You've thought about this for a while?

Individual Juror Qualification

1 A Yes.

2 Q I mean off and on.

3 A Yeah, exactly.

4 Q I mean I don't think you do it everyday and---

5 A Just life experience, you know.

6 Q Sure. Sure. Every -- I mean just -- right. I
7 understand I think.

8 A Uh-huh. (Affirmative).

9 Q But not that anybody is gonna try to change your mind,
10 again, there is no right or wrong answer. It's solely your
11 answer.

12 A Right.

13 Q And what I want to know is no one could talk you out of
14 this opinion that you have, is that correct?

15 A Well, I, I kind of feel like I'm stuck here between two
16 things here because, you know, if it's, if it's a, just a
17 terrible murder---

18 Q Yes, sir.

19 A ---you know, yeah, I feel the death penalty is
20 appropriate. There's different types, you know, and yeah,
21 I, I, I just feel that, you know, everything should be on
22 the table you know.

23 Q I understand.

24 A I do feel that. If, if it's just a terrible murder and
25 every, all the evidence is against this person that they did

Individual Juror Qualification

1 it, yeah, the death penalty I feel is appropriate.

2 Q And is it the only, in your mind, the only appropriate
3 penalty?

4 A Yes, for a terrible---

5 Q Thank you.

6 A ---murder, yes.

7 Q Yes, sir.

8 I appreciate your answers, sir. Thank you very much.

9 THE COURT: State. Mrs. Crick.

10 SOLICITOR CRICK: Thank you, Your Honor.

11 EXAMINATION

12 BY SOLICITOR CRICK:

13 Q Good morning, Mr. Pappas.

14 A Good morning.

15 Q Thank you for hanging with us this morning.

16 A No problem.

17 Q I'm Cindy Crick and I'm part of the prosecution team
18 with Trey Gowdy and Barry Barnette and I'm just gonna
19 follow-up on a couple of questions if I could and---

20 A Okay.

21 Q ---about what Mr. Allen asked you.

22 You mentioned -- and I know every murder is terrible in
23 some sense---

24 A Right.

25 Q ---of the word.

Individual Juror Qualification

1 You initially said you were kind of that type three
2 kind of juror who would---

3 A Uh-huh. (Affirmative).

4 Q ---listen to the facts and listen to the evidence and
5 then come to a conclusion about whether to impose a life
6 sentence or the death penalty.

7 A Right.

8 Q Let me ask you this.

9 Do you feel like -- I think you mentioned that there
10 are different kinds of murder?

11 A Right.

12 Q Can you tell us what you meant by that, just a little
13 bit?

14 A Well, you know, I, through life, you know, I've heard
15 and seen a lot of different murders. I mean there's some
16 that are just beyond mentioning after you, you find out
17 everything about the situation and say how could another
18 human being do this to someone --

19 Q Right.

20 A -- versus like breaking in somewhere and, you know, you
21 broke in with a gun and you shot someone and you're, you
22 really didn't mean to shoot them, but you did break in their
23 house, you know --

24 Q Right.

25 A -- or somewhere where you just slaughter someone. I,

Individual Juror Qualification

1 I -- to me, that's different.

2 Q Do you think that the penalty for those two different
3 kinds of murder should be the same?

4 A No, I don't.

5 Q So, you might say that there's situations where you
6 might have a murder where maybe it's, and I'm gonna use your
7 words a little bit---

8 A Uh-huh. (Affirmative).

9 Q ---maybe not as terrible or as aggravated as another
10 kind of murder and that might warrant two different
11 punishments?

12 A Yes, ma'am.

13 Q Well, let me ask you this.

14 If we, if we were to get to the penalty phase, the
15 sentencing phase---

16 A Uh-huh. (Affirmative).

17 Q ---do you think that you would be able to listen, if
18 the State did provide evidence of some kind of aggravating
19 factor or something that made the murder worse than the, and
20 I hate to say normal or average murder---

21 A Yes.

22 Q ---would you be able to consider that?

23 Would that factor enter into your decision whether to
24 impose life or death?

25 A The evidence?

Individual Juror Qualification

1 Q Yes, sir.

2 A Oh, it would have to, you know.

3 Q And by the same token, if, and they don't have to, but
4 if the defense came to you---

5 A Uh-huh. (Affirmative).

6 Q ---and brought you some evidence of what's called
7 mitigating evidence---

8 A Uh-huh. (Affirmative).

9 Q ---something either about the defendant or the
10 circumstances of the murder that would make it maybe less
11 severe---

12 A Uh-huh. (Affirmative).

13 Q ---do you think you could take that into consideration
14 in making your decision?

15 A I just think, as a citizen, I have to keep an open
16 mind, you know.

17 Q Okay.

18 A I would have to listen to it.

19 Q So, if I'm hearing you right, your feelings would be
20 different depending on what the circumstances were that you
21 heard from both the state and the defense in that penalty
22 phase?

23 A Yes, ma'am.

24 Q So, not necessarily would you have to give the death
25 penalty for every murder?

Individual Juror Qualification

1 A No.

2 Q Just in some cases, if you heard such evidence that
3 made it more terrible in your mind?

4 A Yes, ma'am.

5 Q But you do feel like you could keep an open mind and
6 listen to both sides before you made that decision?

7 A Yes, ma'am.

8 Q Okay. Just one second.

9 (Pause.)

10 Q Just one last quick thing.

11 Even if we had a case where it's death penalty
12 eligible, so by law, that is an option---

13 A Uh-huh. (Affirmative).

14 Q ---you could impose the death penalty or you could
15 impose a life sentence. You would have an option. You
16 would always have an option.

17 A Right.

18 Q Do you think in a case, depending on the evidence, that
19 you could or would be able to, in some cases, actually
20 impose a life sentence as opposed to the death penalty?

21 A Yes, I mean -- cause that's the option, right?

22 Q Right. You would have an option.

23 A Yes, I mean it, it -- the options are, I just don't
24 think you could make a decision until you've heard
25 everything, you know.

Individual Juror Qualification

1 Q okay.

2 A It's all about the facts though.

3 Q okay.

4 A I don't see how anybody could make that decision unless
5 they heard the facts, you know.

6 Q And you would be open minded to listen to all of that?

7 A Yes.

8 SOLICITOR CRICK: Okay. I think that's it, Your Honor.

9 THE COURT: Follow-up questions from the defense?

10 MR. ALLEN: No, thank you, Your Honor.

11 THE COURT: All right. Mr. Pappas, I want to thank you
12 very much for your cooperation with our process. Let me
13 explain some things to you.

14 We're getting very close to selecting a jury in the
15 case. I expect that perhaps even we will be seating a jury
16 tomorrow depending on what happens. But that's possible.
17 And if that occurs, and you got a call to come back to the
18 courthouse, I want you to come back prepared to stay for the
19 week. So, bring whatever you need with you to come back,
20 and be prepared to stay for the week.

21 I assume the contact information you've given us is
22 correct?

23 WITNESS: Yes, sir.

24 THE COURT: Is that correct?

25 WITNESS: Yes, sir.

Individual Juror Qualification

1 THE COURT: Also, sir, I will caution you that my order
2 on Monday to not listen to, watch, read any information
3 about the case or try to gather any information outside of
4 the courtroom continues until you've heard otherwise.

5 Do you understand that, sir?

6 WITNESS: Yes, sir.

7 THE COURT: Mr. Pappas, thank you very much.

8 WITNESS: All right.

9 THE COURT: You're free to go this morning.

10 WITNESS: Thank you.

11 THE COURT: Yes, sir.

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

14 THE COURT: State's position in regard to Mr. Pappas?

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

16 The State believes he is qualified and if I may take 30
17 seconds to, to---

18 THE COURT: Yes, sir.

19 SOLICITOR GOWDY: ---say why.

20 Your Honor, this is a classic example of why the voir
21 dire process does not allow words like horrific and terrible
22 to be used as modifiers in questions. Everyone I think who
23 is capable of giving the death penalty would do so if you
24 described the murder as being horrific. Mrs. Crick, I
25 respectfully submit to the Court, asked the question

Individual Juror Qualification

1 appropriately.

2 In a death penalty eligible case, would you still give
3 life and he was adamant that he could. The only time he
4 said he couldn't is if the crime's especially horrific which
5 is why we shouldn't use those words. He's qualified.

6 THE COURT: Defense.

7 MR. ALLEN: Your Honor, I believe that the juror is not
8 qualified. I did not use the word horrific. Those terrible
9 murders, horrific murders were words that he brought up. I
10 was trying to be very careful to keep to the elements of
11 murder.

12 But the one thing I did notice, Your Honor, is that he
13 did say that if malice was present, which must be present in
14 every murder case, we all, as we know, then he believed the
15 death penalty was the only appropriate penalty. So, I am --
16 I believe, and, of course, I, I believe they'll be evidence
17 that this is a horrific or terrible or horrific murder.

18 And it appears to me that, in a situation like this
19 individual's gonna hear, and more specifically, even
20 though -- and I believe Mr. Pappas is telling us the truth,
21 and I believe that Mr. Pappas believes that he can be
22 impartial. But I believe he that, like many other lay
23 people, do not understand what murder is.

24 And he did say that if malice was present that he
25 would, that he thought the only appropriate sentence was

Individual Juror Qualification

1 death. He also kept using phrases such as if it was proven
2 with overwhelming evidence. Of course, I'll try and keep it
3 to beyond a reasonable doubt too. So, I wasn't trying to
4 put improper modifiers in his mouth.

5 But it, but it appears to me that this juror would not
6 be qualified, that he would not, that, you know, consider,
7 truly consider mitigating circumstances or mitigating
8 evidence, if he finds or if he believes there's a terrible
9 murder, horrific murder, or if malice is present, and, of
10 course, if malice is not present, there's no conviction.
11 But I believe that he should be disqualified for those
12 reasons. I don't think -- and, of course, pursuant to
13 Morgan versus Illinois, we've been talking about, also the
14 United States Constitution, and the Sixth, Eighth, and
15 Fourteenth Amendments as well as Section 102 of the, of the
16 South Carolina Constitution with the, with the similar
17 provisions, we don't believe he's a qualified juror and ask
18 the Court to excuse him.

19 THE COURT: Solicitor, do you wish -- you, you appeared
20 like you wish to speak one more time. I'll be happy to hear
21 from you.

22 SOLICITOR GOWDY: I don't want to belabor the point,
23 Your Honor. I don't remember the colloquy exactly the way
24 that my esteemed counsel does, and I will defer to the
25 Court's recollection.

Individual Juror Qualification

1 I would just add this. The fact that the juror says
2 that they would impose the death penalty in every horrific
3 murder does not mean they're disqualified no more than if
4 they said I would impose life any time it was just one
5 aggravator or two. That's why we don't ask these questions.

6 He's not entitled to a jury of 14 or 12 people who can
7 give life in his precise fact pattern. He's entitled to
8 people who can give life or death in capital eligible murder
9 cases and that's what he said he could do.

10 THE COURT: Last word, Mr. Allen.

11 MR. ALLEN: I believe that we're entitled to a juror
12 who could consider all the evidence in a capital case in
13 every capital case. And for that reason, and, again, I
14 think he's disqualified.

15 THE COURT: Well, in listening -- and I'm required to
16 listen to the colloquy as a whole. Not just pick out one
17 particular question or one particular response. And in --
18 but in, in the issue that's been raised by the defense where
19 he said that he would give the death penalty in, and I'm not
20 gonna try to quote him, in all horrific or all murders that
21 he characterized in a similar fashion such as that, and the
22 question leading up to it, it did not, the question did not
23 give him the option or give him the possibility of
24 considering mitigators, which he will have the opportunity
25 to do so.

Individual Juror Qualification

1 And when asked if he could consider both aggravating
2 and mitigating circumstances and make a decision, which is
3 what he will be faced with if he's seated, he indicated that
4 he could make a decision and he could give either penalty.
5 So, I, I -- again, the question that raised the question,
6 the issue concerning him seemed to give him only the fact
7 that he's faced with someone convicted and it was a bad
8 murder. I think he used the word malice, the proper words,
9 malice aforethought, but didn't indicate that there were any
10 mitigating circumstances whatsoever.

11 When faced with that option where mitigating
12 circumstances might be presented, he said he could evaluate
13 the evidence and could render a verdict either way. I'll
14 find him to be qualified based on the totality of his
15 responses.

16 All right. Next is Mr. Lee Hembree, Number 139.

17 LEE HEMBREE, having been previously
18 sworn, testified as follows:

19 EXAMINATION

20 BY THE COURT:

21 Q Good morning, sir.

22 A Morning, Your Honor.

23 Q Your name I believe is Lee Hembree, is that right?

24 A Yes, sir, it is.

25 Q Mr. Hembree, I want to thank you for your cooperation

Individual Juror Qualification

1 thus far. I understand jury service is an inconvenience and
2 we'll try, as usual, to try to lessen that, but there are
3 some things we do have to cover here because any, anytime
4 someone's charged with any crime it's a serious situation.
5 Should be taken as such. But at any rate, thank you very
6 much.

7 what we're going to do this morning is to go over some
8 matters with you on an individual basis. I want to explain
9 to you that I'll be doing the initial questioning. Once I
10 complete the things I want to go over with you, I'll give
11 the attorneys an opportunity to follow-up on the questions
12 I've asked.

13 We -- there are no right or wrong answers to the
14 questions that we're asking. We're here to learn a little
15 bit about you and your positions and beliefs on the matters
16 and issues that will be important in the trial of this case
17 and important in the selection of the jury once the jury
18 selection actually starts.

19 So, do you understand what we're doing?

20 A Yes, sir, I do.

21 Q I hope -- if anytime, you feel threatened by anything
22 that we're doing, let me know and I'll be glad to try to
23 lessen that situation.

24 Okay, sir?

25 A Yes, sir.

Individual Juror Qualification

1 Q And I will tell you, again, there are no right answers
2 and no wrong answers to our questions. We simply want to
3 get your positions concerning, concerning some matters.

4 First things though I want to go over some preliminary
5 matters with you. First of all -- and I didn't remind you
6 of one thing.

7 You were placed under oath Monday to tell the truth in
8 this process and that oath continues today. So, I need to
9 put you on notice of that.

10 A Yes, sir.

11 Q Now, since we talked on Monday, has anyone contacted
12 you about the case?

13 Have you heard or seen anything about the case or been
14 exposed to any information that would cause you to form an
15 opinion concerning this matter?

16 A No, I have not.

17 Q Have you ever participated in any website or blog or
18 any such location of gathering information concerning the
19 death penalty?

20 A No, sir.

21 Q Have you ever participated in any political activities
22 which might include such things as demonstrations, rallies,
23 or meetings which would have as its focus or one of its
24 focuses the issue of the death penalty?

25 A No, sir.

Individual Juror Qualification

1 Q Now, before you walked into the courtroom, there was a
2 sheet of paper handed to you that had a list of names on it
3 that were identified as potential witnesses in the case.

4 Do you recall seeing that sheet of paper?

5 A Yes, sir, I do.

6 Q I'm -- I do not want you and I'll instruct you do not
7 mention anyone's name in particular off of that list.

8 But after reviewing the list, do you believe that you
9 have any social, business, or personal connection with
10 anyone listed on that sheet of paper?

11 A No, Your Honor.

12 Q Do you believe that you are related by blood or
13 marriage to anyone or ever been related by blood or marriage
14 to anyone on that piece of paper?

15 A No, sir.

16 Q So, as far as you know, you have no connection with any
17 of the people who would be witnesses in this case?

18 A That is correct.

19 Q All right. Now, let me go over some things with you.
20 I'm getting into some questions now that will be a little
21 more personal in nature that we're gonna delve into some of
22 your opinions on certain topics.

23 I'll tell you now we're not trying to invade your, your
24 privacy. But we're going to try to find out how you feel
25 about some things because that's important in deciding who

Individual Juror Qualification

1 would be seated on the jury and in jury selection.

2 You appear to be someone who's secure enough in your
3 opinions that you won't be, feel threatened by us asking
4 those questions and is that true?

5 A Yes, it is.

6 Q All right. Now, one other thing I want to mention to
7 you. I'll eventually get to, in my questions about your
8 opinions, to -- I will ask you questions about your opinions
9 concerning the death penalty.

10 I will explain to you, as I did earlier, but I'll
11 remind you there's several charges pending against the
12 defendant in this case. One of those charges is a charge
13 for the offense of murder. For that particular murder, the
14 state has sought the death penalty.

15 What that means is that we will hold a trial initially
16 concerning the guilt or innocence of the defendant on all
17 the charges that are pending in this case. If the jury were
18 to determine that the defendant were guilty on the charge of
19 murder, the same jury that makes that determination then
20 would make a determination concerning the appropriate
21 penalty to be enforced. They'll be a second phase of the
22 trial.

23 Now, I hope you understand that because we're asking
24 you about that penalty phase of the trial that that should,
25 in no way, should be held against the defendant or any

Individual Juror Qualification

1 defense that he might have to the initial charges. It's
2 simply this is the only opportunity that we have to ask you
3 about that because once a jury is selected and the trial
4 begins, the same jury handles both cases. We won't get a
5 chance to stop and talk about that penalty phase at that
6 time.

7 So, don't hold against the defendant the fact that
8 we're talking about penalties or hold against any defense he
9 might raise to any of the charges the fact that we've talked
10 about penalties. This is just the only time that we can do
11 that.

12 Do you understand that, sir?

13 A Yes, I do.

14 Q Okay. Now, the first questions I'm going to ask you
15 have to do with your application of the law.

16 During the trial, the trial judge, myself, will
17 instruct the jury at some point in time concerning the law
18 to be applied in the case.

19 Would you be willing, willing to listen to the judge's
20 instruction concerning the law?

21 A Yes, sir, absolutely.

22 Q And would you be willing to accept the law as
23 instructed by the judge and apply it to the facts as the
24 jury finds them to be?

25 A Yes, sir.

Individual Juror Qualification

1 Q Now, is that true even if, when the judge's charging
2 you concerning the law, as you listen to it, you may hear
3 something that you don't like or you may hear something that
4 you disagree with, could you set those feelings aside and
5 still apply the law as instructed by the judge to the facts
6 in the case?

7 A Absolutely.

8 Q All right. My next question has to do with pretrial
9 publicity in the case. There has been some mention of this
10 case in the local press.

11 Have you been exposed to any of that coverage?

12 A No. No, I haven't.

13 Q All right, sir. Then I'll just ask you this question
14 in general and not get specific about anything that's come
15 out in the paper or on TV.

16 would, would you be the type of juror who would be
17 willing to set aside any knowledge or information you may
18 have gotten about the case from any source at all, anything
19 you've heard, read, or seen about the case, set that aside
20 and decide the case purely upon the evidence presented
21 during the trial and the instructions of the judge on the
22 law?

23 A Yes, sir.

24 Q Two concepts I want to be sure we have a clear
25 understanding on and that you would be willing to apply

Individual Juror Qualification

1 should you be selected as a juror.

2 The first concept under our law is that, under the
3 Constitution and the laws of this state and the United
4 States, a criminal defendant is always presumed to be
5 innocent. That means that the, the defendant never has a
6 burden of proving himself innocent of any charge. In fact,
7 the defendant has no burden of proof in a criminal case at
8 all.

9 Do you understand that concept?

10 A Yes, sir, I do.

11 Q The other concept is the same laws that set, that
12 provide for that situation also provide that the State
13 always has the burden of proof in a criminal trial. That
14 burden of proof is proof beyond a reasonable doubt.

15 And so, do you understand that the State then always
16 has the burden of proving the defendant's guilt beyond a
17 reasonable doubt?

18 A Yes, Your Honor, I do.

19 Q Would you be willing to apply those two concepts if you
20 were selected in this case?

21 A Yes, I would.

22 Q Now, I take it -- well, you can tell me, do you believe
23 that because someone has been accused of a crime or arrested
24 or even indicted that they must automatically be guilty of
25 that crime?

Individual Juror Qualification

1 A No, sir.

2 Q So, I take it then that you would be willing to, if you
3 were selected in any criminal case, to listen to the law and
4 evidence presented to you and listen to the, to the facts,
5 and based on how those things are determined by you to be,
6 you have the right to determine the, the facts in the case,
7 that you could possibly find someone not guilty of a crime
8 that they were charged of.

9 Is that true?

10 A Yes, it is.

11 Q By the same token, should the State meet its burden of
12 proof and prove someone's guilt of a crime beyond a
13 reasonable doubt and you were sitting on that jury, could
14 you also render a verdict of guilty against a fellow
15 citizen?

16 A Yes, Your Honor, I could.

17 Q So, I think I could describe you as a juror who would
18 be able to listen to the evidence, and depending on the
19 strength of the evidence, and what the testimony or evidence
20 showed, and what the law was that you would, could either
21 find a person, person guilty or not guilty of any crime
22 regardless of the severity.

23 Is that true?

24 A Yes.

25 Q Now, sir, we're gonna talk now, I told you we'd get to

Individual Juror Qualification

1 this point about the penalty phase of the trial, and in most
2 cases the judge has the responsibility of setting the
3 penalty when someone is found guilty of a crime. That
4 situation is different, however, when the State is, has
5 charged someone with the offense of murder and the State
6 also has requested the imposition of the death penalty.

7 In that situation, there is, as I indicated, a, what we
8 call a guilt phase of the trial where a jury will determine
9 whether or not the defendant is guilty of the offense of
10 murder. Should that verdict be returned, that the defendant
11 is guilty, then that same jury will conduct what we call the
12 penalty phase of the trial.

13 Now, at the penalty phase, there's two choices or two
14 possible results. The defendant is already been found
15 guilty of murder. So, the question for the jury is whether
16 or not to impose a life sentence without parole or to impose
17 the death sentence. Those are the two choices that a jury
18 would have.

19 Now, at that penalty phase, there would be new evidence
20 presented. There would be testimony both from the State and
21 from the defense. The State would be allowed to present
22 factors that we call aggravating circumstances concerning
23 the crime. That's circumstances that make the crime appear
24 to be worse. And the defense is also allowed to introduce
25 evidence which would be what we would call mitigators or

Individual Juror Qualification

1 things that would tend to lessen the severity of the crime,
2 of the punishment that should be imposed.

3 So, they'll be a whole new trial. Perhaps new
4 witnesses because there's a whole different issue involved
5 than in the first case. No longer determining guilt or
6 innocence. Simply determining appropriate punishment.

7 So, do you understand how that process works?

8 A Yes.

9 Q All right, sir. I want you to put yourself in a
10 situation for me. Let's theoretically put you in a
11 situation where you've been selected to serve on a jury in a
12 murder case. The State's requested the death penalty. You
13 and your fellow jurors have listened to all the evidence,
14 heard the law, gone into deliberations, and have determined
15 that the defendant in this case is guilty of the offense of
16 murder.

17 Because of that verdict, then the jury needs to go into
18 the second phase of the case, which is the sentencing phase
19 of the case. And again, the choices there would be life
20 imprisonment without parole or the death sentence.

21 Now, envision that you've reached that verdict. The
22 defendant has been found guilty. Those issues are put aside
23 and we're just determining penalty. You and your fellow
24 jurors back in the jury room are walking back out to come to
25 the courtroom to begin the penalty phase of the trial.

Individual Juror Qualification

1 Do you understand the situation you're in?

2 A Yes.

3 Q Now, I gave you a sheet of paper to read to describe
4 three jurors.

5 Do you remember that sheet of paper?

6 A Yes, sir, I do.

7 Q All right. The first person described or first juror
8 described on that sheet of paper was a juror who, walking
9 down that hallway, would of already made up his or her mind.
10 That juror believes that once someone is convicted of a
11 murder that there's only one possible penalty that can be
12 awarded or handed down in that case, and that would be the
13 death penalty because that juror believes that, for every
14 murder, the appropriate penalty is death.

15 The second juror also has already made up his or her
16 mind. That juror, walking down the hall, has a belief that
17 the State should never take someone's life in punishment of
18 a crime regardless of the severity. So, that juror has
19 already decided that that juror's gonna vote for the life
20 imprisonment without parole since it's never appropriate to
21 impose a death sentence.

22 The third juror, walking down that hall, really hasn't
23 made his or her mind up at that point in time. That juror
24 doesn't know how he or she is going to vote. That juror is
25 willing to listen to the evidence, both the aggravating

Individual Juror Qualification

1 evidence and the mitigating evidence, from the, both sides
2 and then make a decision as to the appropriate penalty to be
3 assessed in the case.

4 Do you understand the three different jurors?

5 A Yes, I do.

6 Q Do you understand the differences between them?

7 A Yes, I do.

8 Q Now, sir, of the three different jurors that I have
9 described, which one would most closely resemble your
10 feelings if you were walking down that hall?

11 A The third juror.

12 Q So, you're telling me that, that, even though a
13 defendant has been convicted of the crime of murder, that
14 you would be willing to listen to the evidence during the
15 sentencing phase and weigh the evidence, both aggravating
16 evidence and mitigating evidence, and reach a decision as to
17 the appropriate crime, appropriate punishment for the crime
18 involved.

19 Is that correct?

20 A Yes, sir, it is.

21 Q And also what that means is that if you weighed that
22 evidence and considered the evidence, that you could
23 possibly return a verdict against a, a defendant for the
24 death penalty?

25 A Yes.

Individual Juror Qualification

1 Q And does that also mean, that after weighing the
2 evidence, if you believed that the death penalty is not
3 appropriate or for any other reason you decide that it's not
4 appropriate, that you could sentence someone to life
5 imprisonment without parole even though they'd been found
6 guilty of a murder?

7 A Yes, sir.

8 Q Now, the last thing I want to ask you about is kind of
9 a personal situation. If you're selected to serve on this
10 jury, the jury will be sequestered. We expect the jury,
11 excuse me, the, the trial of the case to take about five to
12 seven days, about a week, weeks length in time.

13 During that period of time the jury will be here in the
14 courtroom during the day working on the case. In the
15 evenings, they, the jury will retire to a local hotel. You
16 will be accompanied by SLED agents. Your access to the
17 outside world would be limited. You can make some phone
18 calls and you could watch some television and watch, watch,
19 have some print media available to you. But that would all
20 be filtered by the people who were controlling the jury.

21 Do you understand that?

22 A Yes, I do.

23 Q Now, I realize that, in anybody's life, that's an
24 inconvenience. I understand that fully. And this is jury
25 service. And as I indicated, service is sometimes an

Individual Juror Qualification

1 inconvenience.

2 However, my real question to you about that situation
3 is that if you were selected to serve on the jury, would
4 that service, in any way, pose a real danger of, of any kind
5 to either your health or your well being?

6 A No, sir.

7 Q And would that service pose a danger to the health or
8 well being of anyone who is dependent upon you?

9 A No, sir.

10 Q Now, that completes my questions, sir. I'm going to
11 allow the attorneys to follow-up. The defense goes first.

12 Mr. Allen.

13 MR. ALLEN: Thank you, Your Honor.

14 EXAMINATION

15 BY MR. ALLEN:

16 Q Good morning, Mr. Hembree.

17 A Good morning.

18 Q Again, my name is Clay Allen and I, along with John
19 Reckenbeil and Kathy Hodges, are representing Tony Torres in
20 this matter. We appreciate your service both as a juror,
21 and as I noticed in your questionnaire, as a member of the
22 United States Navy.

23 A Yes, sir.

24 Q You served and we appreciate that service as well.

25 And as I understand it, sir, from the question, both

Individual Juror Qualification

1 from the questionnaire and the questions that you previously
2 responded to that you have not heard anything at all about
3 this case?

4 A No.

5 Q Is that correct?

6 A Yes, it is.

7 Q Not from any news sources or anything, or anything like
8 that?

9 A No, sir, not at all.

10 Q And of course, you're able, there, therefore, to keep
11 an open mind about this case as it proceeds, is that
12 correct?

13 A Yes sir.

14 Q We certainly appreciate that, both I'm sure from the
15 state as well as the, the defense appreciates that.

16 I'm gonna talk to you a little bit about your, your
17 feelings on the penalties. And, again, I don't want you to
18 take from this discussion, as the judge has already advised
19 you, anything about how we think this case might or should
20 turn out.

21 You follow what I'm saying?

22 A Yes, I do.

23 Q Because after all, this is our only chance to talk, and
24 so, I'm just gonna start off by just simply asking you what,
25 if anything, do you or do you have any feelings at all about

Individual Juror Qualification

1 the death penalty as an appropriate punishment for murder?

2 A You know, I've, I've actually had a couple of days to
3 think about this.

4 Q Yes, sir.

5 A About the best way I can even liken the experience that
6 I'm facing right now is so wanting to see a tornado for the
7 first time. You know the excitement of seeing something
8 that or being a part of a trial in this nature, and then
9 when I saw a tornado for the first time I wasn't so sure
10 that that was where I wanted to be.

11 You know, I -- the first thing I'd say is I really
12 appreciate seeing the judicial system moving in, in the
13 direction it is and the time that it's taken and it may be a
14 bit of an inconvenience, but being a civic responsibility,
15 I'd like to see that the Court is taking their time and
16 doing the right thing. There are people's lives in balance
17 in this.

18 The death penalty, it, it, it really is a State's
19 burden to prove that that is necessary. If, if the crime
20 warrants the punishment, you know, it's a, it's a tough
21 line.

22 How do I feel personally about the death penalty?

23 In, in some instances I believe that it, it is
24 warranted. But that is governed by law. That's not
25 governed by my opinion. That's, that's governed by the

Individual Juror Qualification

1 people. So --.

2 Q When you say it's governed by law, can you elaborate a
3 little bit more on that?

4 A Well, I -- you know, my, my belief is that, is that the
5 death penalty has been set in place by the Supreme Court.
6 They're, you know, the Supreme Court is said that that is
7 warranted in some cases.

8 How is that determination made?

9 I'm sure that that's made by the people, the people of
10 this country. So, you know, I have, I have to abide by the
11 law.

12 Q Okay. Well, before I follow-up on, on that a little
13 bit, I want to ask you a similar question as my first.

14 What feelings, if any, do you have about life
15 imprisonment without the possibility of parole as an
16 appropriate sentence for the death penalty for, for murder?

17 Excuse me.

18 A How do I feel about life in prison?

19 Q Yes, sir, I mean not for yourself obviously. I mean as
20 in -- just considering, you know, life imprisonment and
21 again we're talking about life without the possibility of
22 parole.

23 A Uh-huh. (Affirmative).

24 Q How do you, how do you feel about that as a potential
25 sentence for murder?

Individual Juror Qualification

1 A I, I don't know that I've necessarily thought about it
2 per se any more than, than death. You know, I have to, I
3 have to base my opinions and my decisions based on evidence.
4 I can't base it on personal feelings.

5 Q Okay.

6 A That's, that's just -- that's not fair to the people
7 that are being involved in this whole process. If I come in
8 with a, with my own idea, ideologies or my own, my own
9 thought process, I've just undermined the, the defense and
10 the prosecution, and I don't know really how to answer that.

11 Q Okay. I appreciate your thoughtfulness and I appreciate
12 your insight quite frankly I mean.

13 I guess the, the question I was asking about life
14 imprisonment is that do you, do you think that it is or
15 could be an appropriate punishment for murder?

16 A Absolutely.

17 Q Okay. Now, let's get back to, as I recall, some of the
18 things that we were talking about concerning the death
19 penalty. As the judge indicated, in a case involving
20 murder, and, again, a murder is the unlawful killing of
21 another person with malice aforethought with a wickedness or
22 depravity of heart type thing.

23 Do you follow what I'm saying?

24 A (Witness nods affirmatively.)

25 Q Do you believe the death penalty is the only

Individual Juror Qualification

1 appropriate punishment for such a guilty murder?

2 A No, I don't.

3 Q Okay. It would all depend on the facts?

4 A Yes, sir.

5 Q Okay. When -- and the, and the facts, of course, as
6 the judge indicated, would include factors in what we call
7 aggravation.

8 would that be right?

9 A Yes.

10 Q In -- that, that would be evidence that would tend to
11 make that offense of murder worse.

12 okay?

13 A Uh-huh. (Affirmative).

14 Q You follow what I'm saying?

15 A Yes, sir.

16 Q Not to say that, not to admit -- not to diminish any
17 other person's life. But you know, there are certain
18 factors that the state would have to show to show that that
19 case is worse in order to ask for the death penalty.

20 Do you follow what I'm saying?

21 A Yes, I do.

22 Q Would you also be willing to consider what we call
23 mitigating evidence?

24 I think the judge explained it as matters that -- well,
25 I forgot what the judge's words were. I'll just use my

Individual Juror Qualification

1 word. Mitigating evidence is words that anything, in
2 fairness or in mercy, would justify some sentence other than
3 death.

4 I mean you could, you could consider that?

5 A Yes, absolutely.

6 Q Do you understand that the death penalty is never
7 required?

8 A Now I'm not sure what you're saying to me.

9 Q I guess what I'm saying is that do you understand that
10 in making a decision, if you were to be selected to be on
11 the jury and you were, and we, and we got to that phase, you
12 know, that penalty phase, person's been convicted of murder,
13 and you're hearing the evidence in aggravation, and you're
14 hearing the evidence in mitigation, do you understand that
15 no juror is required, even if they find circumstances of
16 aggravation, they're never required to vote for the death
17 penalty?

18 A I do now.

19 Q Okay. Okay. Now, do you understand -- and in other
20 words, life imprisonment without the possible of parole is
21 always an option?

22 A Yes, sir, I understand that.

23 Q Do you feel or do you feel as if you, under these,
24 under these circumstances, do you feel as if you could
25 consider the death penalty as an appropriate punishment

Individual Juror Qualification

1 depending upon all the facts and circumstances?

2 A Yes, I do.

3 Q All right. Do you also feel as if you could impose
4 life without the possibility of parole?

5 A Yes, sir.

6 Q Depending upon all the facts and circumstances?

7 A Yes, sir, I do.

8 Q Well, I guess what -- and I don't want to put words in
9 your mouth, but I'm gonna ask you this question that is
10 that -- I mean I think you've already answered this.

11 But you feel it just depends on what the case is?

12 In other words, what all the facts and circumstances
13 are?

14 A Yes, sir.

15 Q And you're willing to keep an open mind and listen to
16 everything before making a final decision?

17 A Yes, sir, absolutely.

18 Q Okay. Sir, would it be fair to say that you're pretty
19 secure in your opinions on these subjects of penalty, you
20 know, your feelings about the death penalty, your feelings
21 about life without the possibility of parole?

22 A Yes, I am.

23 Q In the event, sir -- and, and, of course, I want you to
24 know that I'm not, that I don't think anyone in this
25 courtroom is gonna question your opinion cause we're just

Individual Juror Qualification

1 simply trying to find out what your opinion is. Okay. I
2 know you might feel a little intimidated by being in the
3 jury box. But we're just trying to find out how you feel.
4 okay?

5 A Uh-huh. (Affirmative).

6 Q And, of course, you, you understand that there may be
7 some people who do not agree with other people's position on
8 these types of subjects, death penalty and life in prison,
9 correct?

10 A Correct.

11 Q Do you believe that every person's opinion is entitled
12 to respect?

13 A Absolutely.

14 Q Just as your opinion is entitled to respect, correct?

15 A Yes, sir.

16 Q In the event you're selected for a jury and you're, and
17 we get to that phase, and the jury gets to deliberate on the
18 sentence, in the event that you believe that a certain
19 penalty is the appropriate penalty, after you've considered
20 everything, after you've considered all the evidence, and
21 after you've considered what the other jurors said in your
22 deliberation, but you're the only one who feels that way and
23 all the other jurors disagree, what do you think you might
24 do in that, such a situation?

25 A Reevaluate what everyone else is claiming. And if I

Individual Juror Qualification

1 feel necessary to stick to my guns, you know, I believe in
2 integrity of who I am. So, I would stick to my guns, guns
3 if I felt like I believed in what I was seeing and what,
4 what was being presented.

5 Q Thank you, sir. I believe that's -- any questions?

6 (Pause.)

7 Q That's all my questions. Thank you for your insight.

8 A Yes, sir, thank you.

9 THE COURT: Mr. Gowdy, are you gonna question for the
10 State?

11 SOLICITOR GOWDY: Yes, sir, Your Honor.

12 THE COURT: You may proceed.

13 SOLICITOR GOWDY: May it please the Court?

14 THE COURT: Yes, sir.

15 EXAMINATION

16 BY SOLICITOR GOWDY:

17 Q Good morning, Mr. Hembree.

18 A Morning, sir.

19 Q My name is Trey Gowdy. I'm part of the prosecution
20 team. I will not keep you here long.

21 A Yes, sir.

22 Q Thank you for your candor and forthrightness as we
23 discuss issues that ordinarily would be none of my business
24 and I would never ask you.

25 I notice, because of the thoroughness for which you

Individual Juror Qualification

1 prepared your questionnaire, that you had witnessed a
2 domestic crime in the past?

3 A Yes, sir.

4 Q Were you called to testify?

5 Did you have interaction with law enforcement as a
6 result of being a witness to that?

7 A I, I, I don't know if this is yes or no. I can tell
8 you a little bit. Basically what happened, it was a
9 domestic case. A neighbor that was beating up on his, his
10 live in girlfriend. I intervened. There were, there was a
11 scuffle involved. The individual and his family pressed
12 charges against me. I was subpoenaed to Court. I showed up
13 in front of the judge, and the individual that had pressed
14 charges didn't show up to Court, and it was dismissed at
15 that point.

16 Q Did that process impact or affect the way you viewed
17 law enforcement, the quality of law enforcement --?

18 A No, sir.

19 Q -- or the fact that a warrant could be issued for
20 something as specious as intervening in a domestic
21 disturbance?

22 Did that -- you were complimentary in the justice
23 system earlier.

24 Did that do anything to impact negatively your view of
25 the justice system?

Individual Juror Qualification

1 A No, sir, not at all.

2 Q You never actually had to testify in a trial with
3 respect to the domestic disturbance?

4 A Correct.

5 Q Okay. All right. Thank you.

6 Also notice that you have been involved in the past
7 with world vision.

8 Is that the food distribution agency World Vision or is
9 that another World Vision?

10 A Food distribution, yes, sir.

11 Q Okay. All right. Lastly, my son was trying to explain
12 his math homework to me a couple nights ago and then he gave
13 up because he's studying that if A is true and B is true,
14 that C necessarily has to be true. I don't know what you
15 call that.

16 South Carolina never -- there's no formula where the
17 end result is you have to vote for death. If the State
18 proved every aggravating circumstance that it could possibly
19 prove in South Carolina, however many number there are, if
20 they proved all of them, you would never necessarily have to
21 vote for death.

22 Accepting that, that life without parole is always an
23 option and life means life, do you still think there are
24 circumstances where you would, on your own volition and your
25 own judgment, conclude that death is the appropriate

Individual Juror Qualification

1 sentence?

2 A In some circumstances, yes.

3 Q You paused for just a second, and the, and, and what
4 we're talking about gives rise to pause. It is the most
5 important matters you can discuss.

6 In your well of souls, do you believe, with life always
7 as an option and nobody will ever, you'll never have to
8 explain why you voted that way, do you still believe
9 earnestly that you could vote for death if you thought the
10 crime warranted it?

11 A Yes, I do.

12 Q All right. Thank you.

13 THE COURT: Anything further from the defense?

14 MR. ALLEN: No, Your Honor.

15 THE COURT: Mr. Hembree, I want to thank you for your
16 cooperation this morning. A couple of things I need to go
17 over with you before you leave today.

18 We are getting relatively close to being able to select
19 a jury. And if you receive a call to come back to the
20 courthouse or to return, you should become, you should come
21 prepared to stay for the week. Bring with you whatever
22 you'll need for that period of time. The, the Clerk's
23 office will inform you where and how to report if that's
24 necessary. But to do that, we have to get in touch with
25 you.

Individual Juror Qualification

1 The contact information we have I assume is correct.
2 We've been getting in touch with you.

3 Is that, that true?

4 WITNESS: Yes, sir, it is.

5 THE COURT: And I will also caution you that I issued
6 an order not to watch, read, listen to, or gather any
7 information outside the courtroom. That order, in all its
8 particulars, still applies.

9 Do you understand that, sir?

10 WITNESS: Yes, I do.

11 THE COURT: Thank you for coming today. You're free to
12 go.

13 WITNESS: Thank you, Your Honor.

14 (The following takes place outside the presence of the
15 juror.)

16 THE COURT: State's position?

17 SOLICITOR GOWDY: Your Honor, the State would submit
18 that he's qualified.

19 THE COURT: Defense.

20 MR. ALLEN: Subject to the other objections, no other
21 objections.

22 THE COURT: The Court finds that Mr. Hembree is
23 qualified. He'll be placed on that list.

24 The next is Juror Number 149, Dora Jackson.

25 DORA JACKSON, having been previously

Individual Juror Qualification

1 sworn, testified as follows:

2 EXAMINATION

3 BY THE COURT:

4 Q Good morning.

5 A Morning.

6 Q All right, ma'am. I believe your name is Dora Jackson,
7 is that right?

8 A Yes, sir.

9 Q And Mrs. Jackson, first of all, I want to thank you
10 very much for your cooperation with our process so far. I
11 understand it can be a little bit of an inconvenience or
12 maybe a great inconvenience to you, and we'll try to lessen
13 that as much as we can.

14 Excuse me.

15 Our purpose this morning is to ask you some questions
16 about your beliefs and your feelings on certain things. For
17 that reason, the questions that I'm gonna begin to ask you,
18 and I'll allow the attorneys to follow-up, for those
19 questions, there are no right answers or wrong answers.
20 There's only your answers. We just want to know your
21 position on certain things and how you would handle certain
22 situations.

23 So, I hope you -- I know that's a very uncomfortable
24 place to be sitting over there by yourself surrounded by all
25 these people. But I hope you understand that we just want

Individual Juror Qualification

1 to know a little more about you so that we can make some
2 intelligent decisions on selecting a jury.

3 Do you understand that, ma'am?

4 A Yes, sir.

5 Q All right. My first question, and I do need to remind
6 you, you were placed under oath to respond truthfully in
7 this process on Monday and that oath continues for our
8 discussion now.

9 A Okay.

10 Q Since I, we talked on Monday, has anybody contacted you
11 about the case?

12 Have you heard, read, or seen anything about the case
13 or have you been exposed to any information about the case
14 that would cause you to form any opinions about this matter?

15 A No, sir.

16 Q Have you ever participated in any Internet discussions,
17 blogs, or sites concerning the death penalty?

18 A No, sir.

19 Q Have you ever participated in any political activities,
20 demonstrations, rallies, or meetings, or anything of that
21 nature where one of the main issues or the focus was the
22 death penalty?

23 A No, sir.

24 Q Now, ma'am, just before you walked into the courtroom,
25 the bailiff should of given you a list of names of potential

Individual Juror Qualification

1 witnesses.

2 Is that true?

3 A Yes, sir.

4 Q Did you have a chance to look over that list?

5 A I did.

6 Q Now, ma'am, I don't want you to name anyone off of that
7 list in particular. I don't want to hear their names in the
8 courtroom.

9 What I do want to ask you though, after reviewing that
10 list, do you believe that you have any social, business, or
11 personal connections with any persons named on that list?

12 A No, sir.

13 Q Are you related by blood or marriage or have you ever
14 been with anyone on that list?

15 A No, sir.

16 Q So, as far as you know, you have no connection with the
17 potential witnesses in this case.

18 Is that true?

19 A That's true.

20 Q Now, I'm going to be asking you some questions in just
21 a minute about your personal views on things. Obviously
22 we're not trying to invade your privacy by doing that. But
23 it's important that we know how you feel about certain
24 issues and things in this case. You seem so far to be
25 someone who can answer my questions without feeling

Individual Juror Qualification

1 threatened.

2 Is that true?

3 A Yes, sir.

4 Q All right. And if, at anytime, you do feel threatened,
5 you let me know and we'll be glad to try to alleviate that
6 situation.

7 okay?

8 A Thank you.

9 Q We're going to be talking about eventually, not right
10 now, but eventually your views concerning the death penalty.
11 Now, I want you to understand the procedure that we're
12 following in this case, and, and why that's a little unusual
13 that we're doing that now. But I want to explain to you why
14 we're doing it.

15 In this case, the defendant has been charged with
16 several different offenses. One of which is the crime of
17 murder. For that particular charge the State is seeking the
18 death penalty.

19 So, in that situation where the State seeks the death
20 penalty, should the defendant be found guilty of the murder,
21 that's not happened yet, we haven't even started the trial,
22 we would end, enter into a phase of the trial, a separate
23 phase of the trial to determine the appropriate sentence for
24 the murder.

25 Now, that's a separate trial, but we use the same jury.

Individual Juror Qualification

1 And so, for that reason, if we're going to discuss anything
2 about that penalty phase of the trial, we have to do it now.
3 We can't wait till then because the jury would already be
4 selected.

5 So, it's kind of like we're putting the cart in front
6 of the horse to be talking about penalties before there's
7 ever been a conviction. But this is the only opportunity we
8 have to do that.

9 I'm telling you that so that you don't hold anything
10 against the defendant from our discussions about the penalty
11 concerning his defenses or whatever issues he may raise as
12 to the original crimes. It's simply the only time we have
13 the chance to do this. So, don't think because we're
14 talking about penalties that we're saying there's, that any
15 defenses he raises are somehow improper or anything of that
16 nature.

17 Do you understand what I'm saying, ma'am?

18 A I do.

19 Q Okay. Now, first thing I want to talk to you about is
20 your application of the law in this case. And at some point
21 in time during the trial, the judge, that would be me, would
22 instruct the jury concerning the law to be applied in the
23 case.

24 My question to you is would you be willing to listen to
25 the law as you were instructed by a judge if you were in a

Individual Juror Qualification

1 case---

2 A Yes, sir.

3 Q ---as a juror?

4 And would you be willing to accept the law as the judge
5 gives it to you and apply it to the facts of the case?

6 A Yes, sir.

7 Q Now, my next question would be is that true even if,
8 when you're listening to the judge tell you the law to be
9 applied in the case, that you realize that you don't like
10 something about the law or you disagree with the law, could
11 you set those feelings aside and still apply the law as the
12 judge charges to the facts in the case?

13 A Yes, sir.

14 Q There's been some pretrial publicity about this case,
15 and I want to be sure -- first of all, I'm gonna ask you and
16 we don't need to give a lot of detail.

17 But have you been exposed to any publicity about this
18 case that you're aware of?

19 A The only thing, after I received the letter to come to
20 Court---

21 Q Uh-huh. (Affirmative).

22 A ---it's like it was on the front page of the newspaper.

23 Q All right.

24 A And I just kind of---

25 Q Did, did you read that article or did you---

Individual Juror Qualification

1 A No.

2 Q ---close it up?

3 A I just --.

4 Q So, you saw the headline maybe?

5 A I did.

6 Q And that was it?

7 A I did.

8 Q Okay. All right. Well, my question to you is would
9 you be willing to set aside any information or knowledge
10 that you might have about this case that you received from
11 any source at all and decide the case solely based on the
12 information that you hear in the courtroom during the trial?

13 A Yes, sir.

14 Q Two concepts I talked about with you on Monday. I want
15 to be sure that you understand it and would be willing to
16 apply in the case.

17 The first concept under our law and under the
18 Constitution, a criminal defendant is always presumed to be
19 innocent. The criminal defendant never has to prove himself
20 innocent of a crime that he's been charged with. So, the
21 criminal, a criminal defendant in this state and country
22 never has the burden of proof.

23 Do you understand that concept under the law?

24 A I do.

25 Q The -- by the same token, the State does have the

Individual Juror Qualification

1 burden of proof, and that burden of proof is proving guilt
2 of the crime charged beyond a reasonable doubt. So, the
3 State always has the burden, in a criminal trial, to prove
4 the charges beyond a reasonable doubt.

5 Do you understand that also?

6 A I do.

7 Q Would you be willing to apply those two concepts to
8 this trial if you were selected as a jury---

9 A I would.

10 Q ---juror? Excuse me.

11 Okay. Now, ma'am, I take it, ma'am, that, and you tell
12 me if I'm wrong, is it your belief that because someone has
13 been accused of a crime, charged with a crime, arrested and
14 indicted, that they must automatically be guilty of that
15 crime?

16 You want me to repeat the question?

17 You're looking a little puzzled.

18 A Yeah.

19 Q All right.

20 A Please.

21 Q All right. Is it your belief that when someone has
22 been charged, arrested, and perhaps even indicted of a crime
23 that they're automatically guilty of the crime?

24 A No.

25 Q All right. So, is it your belief then that and would

Individual Juror Qualification

1 you be willing, if you heard the evidence in the case and
2 heard the law in a case, if you decided the State didn't
3 meet its burden of proof that you could find someone not
4 guilty if they've been charged with a crime?

5 A Yes, sir.

6 Q And by the same token, if you think that the State did
7 meet its burden of proof, could you also pass a guilty
8 verdict against a fellow citizen?

9 A Yes, sir.

10 Q So, I take it, ma'am, that you would listen to the
11 evidence, and depending upon the strength of the evidence,
12 and what that evidence showed to you, as well as the law as
13 given by the Court, you could find someone either guilty or
14 not guilty of any crime that they've been charged of.

15 Is that true?

16 A Yes, sir.

17 Q Now, we're gonna talk about the penalty phase of the
18 trial. I told you we would get here and now we're gonna
19 talk about that.

20 In this case, as I indicated, for the crime of murder,
21 the State has sought the death penalty. Should the
22 defendant be found guilty of that, the same jury that hears
23 the guilt part of the case concerning that would also then
24 hold a separate trial or a separate hearing or a different
25 phase of the case, however you want to put it, another

Individual Juror Qualification

1 hearing, at which time you would hear from additional
2 witnesses. Perhaps some of the same witnesses you heard
3 before. But at that time the issue would be the appropriate
4 penalty to be assessed.

5 You would hear from witnesses from the State as to
6 aggravating circumstances, things that tend to make the
7 crime appear to be worse. You would hear from the defense
8 as to mitigating circumstances. Those would be factors that
9 would tend to make the crime appear to be less of a, a
10 serious matter, and would tend to lessen the potential
11 punishment or it go toward mercy in the case.

12 Do you understand the difference in that type of
13 evidence?

14 A I do.

15 Q Okay. So that there would be a whole new trial held on
16 that particular subject.

17 So, do you understand how that works?

18 A Yes, sir.

19 Q Okay. Now, I want you to imagine that you're in a
20 situation. Let's pretend that or imagine that you've been
21 selected as a juror in a murder trial. The State is seeking
22 the death penalty. You and your fellow jurors who are
23 sitting on the case have heard all the evidence, heard all
24 the testimony on the guilt side, and heard the law. You've
25 completed your deliberations and you have found or

Individual Juror Qualification

1 determined the defendant to be guilty and issued a verdict
2 of guilt for the murder.

3 Because the State is seeking the death penalty, then
4 there has to be a second trial to determine the appropriate
5 punishment. And generally, in South Carolina, the judge
6 decides the punishment when someone's found guilty. The
7 exception of that is this situation where the State is
8 seeking the death penalty for a murder.

9 So, you and your fellow jurors have found the defendant
10 guilty of murder. That has been determined. That issue's
11 been placed aside. You and your fellow jurors are about to
12 walk back into the courtroom to start the penalty phase of
13 the trial where you'll hear the additional evidence, both
14 aggravating and mitigating.

15 Do you understand where we are?

16 A Yes, sir.

17 Q I gave you a sheet of paper back there to read about
18 three different types of jurors.

19 Do you remember that sheet of paper?

20 A I do.

21 Q I'm gonna go over those three different types of jurors
22 with you to be sure that we have an understanding as to
23 where, what they are and what they mean.

24 The first juror is someone, when walking down the hall
25 toward the courtroom, would already have their mind made up

Individual Juror Qualification

1 because that juror believes that when someone has been found
2 guilty of a murder, there's only one possible appropriate
3 punishment. That is the death penalty. So, that juror's
4 already decided how they're gonna vote before they walk into
5 the sentencing phase of the trial.

6 The second juror also has made up his or her mind
7 because that juror believes that the State never has the
8 right to take someone's life in punishment for a crime no
9 matter how serious the crime might be. So, that juror is
10 always gonna vote for the life in prison without parole, and
11 those are the two choices. The only two choices the jury
12 has at that time, death penalty or life in prison without
13 parole. So, those two jurors have already made up their
14 mind.

15 The third juror I described is someone who, when
16 walking down that hall, would not have made up their mind at
17 that point in time as to what was the appropriate
18 punishment. That juror is, is, is, is, is gonna wait and
19 listen to the evidence presented during the sentencing
20 phase. And based on that evidence, will make a decision as
21 to whether to impose life in prison without parole or the
22 death penalty.

23 Now, do you understand the difference between the three
24 jurors I just described?

25 A Yes, sir.

Individual Juror Qualification

1 Q which one of those jurors would best describe you if
2 you were walking into the courtroom in that situation?

3 A The third.

4 Q Number three?

5 A Yes, sir.

6 Q Now, ma'am, that answer tells me that even though
7 someone's been found guilty of the offense of murder, that
8 you would be willing to listen to the evidence presented,
9 both aggravating and mitigating, and make a decision, based
10 on that evidence, as to what the appropriate penalty would
11 be.

12 Is that true?

13 A Yes, sir.

14 Q And that, under some circumstances, you could determine
15 that the death sentence is the appropriate penalty and issue
16 that decision?

17 A Yes, sir.

18 Q And under some circumstances, you could also determine
19 that life in prison without parole, or for any other reason
20 you might decide, that life in prison without parole is the
21 appropriate sentence as well and could issue a sentence for
22 that as well.

23 Is that true?

24 A Yes, sir.

25 Q So, you'd be willing to listen to the facts and

Individual Juror Qualification

1 circumstances in that second trial?

2 A I would.

3 Q Now, ma'am, the last thing I want to mention to you is
4 if you were selected as a juror in this case, you will be
5 what we call sequestered. What that means is that once the
6 trial begins, you would be staying here or in a hotel
7 overnight. You would take your meals with your fellow
8 jurors. You would come and go from the courthouse together,
9 and you'd remain for the duration of the trial. And right
10 now we anticipate that to be anywhere from five to seven
11 days in length. We're not sure exactly how long that's
12 gonna be.

13 Now, my question is a little more personal at this
14 point in time, and I understand that's an inconvenience in
15 anybody's life. I, I, I'm not lessening the inconvenience
16 of this.

17 But my question is if you were required to be
18 sequestered in a case, would that pose a serious risk to
19 either your health or your well being?

20 A No, sir.

21 Q Would it pose a serious risk to your health or well
22 being, to the health or well being of anyone who is
23 dependent upon you?

24 A No, sir.

25 Q Now, that completes my questions. I'm gonna allow the

Individual Juror Qualification

1 attorneys to follow-up on my questions. The defense goes
2 first, and I see Mr. Reckenbeil is standing.

3 Sir, you may proceed.

4 MR. RECKENBEIL: Thank you, judge.

5 EXAMINATION

6 BY MR. RECKENBEIL:

7 Q Mrs. Jackson, good morning.

8 A Good morning.

9 Q My name is John Reckenbeil. I'm, I'm one of the
10 defense lawyers for Mr. Torres. A couple of things I want
11 to follow-up with on your jury questionnaire.

12 First, I appreciate you filling that out. I know it's
13 not a great thing you want to do is turn over personal
14 information to a bunch of strangers. But it gives an
15 opportunity to, what we need to do here.

16 I see here that you've had some health problems that
17 you've listed. Not really health problems. But you say
18 you're under doctor's care---

19 A I am.

20 Q ---for anxiety.

21 A I am.

22 Q How long have you been under doctor's care for anxiety?

23 A Probably five years.

24 Q Okay. And you're still being treated by that doctor?

25 A I am.

Individual Juror Qualification

1 Q Has there been an official diagnosis of anxiety?

2 A Yes, he's treating me for that.

3 Q Okay.

4 A At the, at the time -- if you'd like more detail, which
5 I don't mind, is when it started I was having my house
6 remodeled, and having my kitchen totally gutted for six
7 months---

8 Q Sure.

9 A ---and not being able to take care of my family, and
10 work, and stuff, yeah, it was a bit much.

11 Q Yes, ma'am, I can understand. I had the housing
12 situation as well. I can, I can definitely empathize.

13 Do you take any medication for that or are you still on
14 medication for that?

15 A I haven't and -- but I do not take it as prescribed
16 because I don't, I don't feel like I need it.

17 Q Sure.

18 A And he's aware of that.

19 Q Okay.

20 A But I have it in case.

21 Q In case like on a PRN, like as needed basis?

22 A As needed exactly.

23 Q Do you mind if I ask what medication that is?

24 A Sure. It's Ativan.

25 Q Ativan?

Individual Juror Qualification

1 A which is a very mild --.

2 Q Sure. Absolutely, yes, ma'am. That's on the lower end
3 range.

4 Okay. Do you feel -- well, obviously you haven't got
5 yourself entrenched into this case yet.

6 But if, in fact, you had to take it, and just think
7 back to the time frame of when you took it, would that
8 impair your judgment to---

9 A No.

10 Q ---listen and make decisions or you wouldn't like stay
11 home from work if you had to take your Ativan?

12 A Oh, gosh, no, no.

13 Q Okay. Good. I just want to make sure that it wouldn't
14 impair your---

15 A No.

16 Q ---your ability to listen to us and make, and make a
17 competent decision?

18 A Oh, no.

19 Q Okay.

20 A Not at all.

21 Q Thank you. I appreciate you answering that.

22 Also I see that you have had prior jury duty service in
23 a civil case?

24 A Yeah, it was just like Magistrate, Family Court kind of
25 thing.

Individual Juror Qualification

1 Q Okay. Can you tell me what happened in that, what the
2 verdict was?

3 A There was several different cases that day, and I, I --
4 honestly, it's been a few years ago. But it was something
5 like a traffic---

6 Q Sure.

7 A ---argument and all.

8 Q Did you get, actually get to deliberate where you six
9 jurors go back?

10 A Yeah, we went -- yeah.

11 Q And you made decisions as to what happened?

12 A Uh-huh. (Affirmative).

13 Q Okay. I'll come back to that. I just wanted to make
14 sure you got to the verdict stage.

15 A Yeah, we did.

16 Q Okay. Go ahead. I'm sorry. I didn't mean to cut you
17 off.

18 A No, I'm sorry. I -- it's just been a few years ago,
19 but we did, and it was, it wasn't anything that just stands
20 out. It was like in the traffic.

21 Q Sure.

22 Down there in the Magistrate Court division?

23 A Yes.

24 Q Here in Spartanburg County?

25 A Yes.

Individual Juror Qualification

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

2 A Well, I do believe in it whenever, you know, everything
3 is presented. I, I do.

4 Q Okay. What do you mean by everything presented?

5 A You know, when you have concrete evidence and there's
6 not a lot of reasons why it should of happened. I don't
7 know if that makes any sense.

8 Q Well, it, it kind of does.

9 A But I mean there's, there's -- sometimes people get in
10 situations where they make really bad choices whether
11 it's -- it could be something as simple as, as people at a
12 family reunion and there's drinking and someone says
13 something they don't like and all of a sudden, you know, it
14 gets really ugly. But under normal, normal circumstances
15 that wouldn't have happened. It wouldn't have---

16 Q Sure.

17 A ---that they did.

18 Q Okay. Well, when I was sitting over there and I was
19 listening to the judge ask questions and I was watching your
20 kind of non-verbal communication, and when he asked you the
21 question about the, the three types of jurors coming back
22 into the room, there was a hesitation when you said three,
23 and I was just kind of curious as to -- it seemed like you
24 didn't have -- you wanted to give a number in-between three
25 or there was something that -- there was a little bit of

Individual Juror Qualification

1 hesitation, and I'm just curious as to your thought process
2 when the judge was asking that question as well as you
3 reading that brochure in the back.

4 A Well, I would really want to hear everything.

5 Q Right.

6 A I like it when things fit and I was trying to think
7 okay, I need to come in here and tell you an honest thing
8 and I hesitate because I'm going over in my head okay, you
9 know, would I really want to hear everything and---

10 Q Sure.

11 A ---and I would have to hear everything to be able to
12 give an honest answer.

13 Q Okay. And I want to ask a question kind of off of that
14 a little bit.

15 A Sure.

16 Q You understand what the judge was saying is, is that
17 if, in fact, this thing goes the whole way, there's two
18 steps to this case.

19 A Uh-huh. (Affirmative).

20 Q First you're gonna be dealing with the guilt or
21 innocence of Andres Torres to make a determination of
22 whether or not he is guilty.

23 And by that, do you understand that you're gonna make a
24 determination of whether or not the State can meet its
25 burden of proof of beyond a reasonable doubt of proving

Individual Juror Qualification

1 every element of murder, and 12 people are gonna have to
2 make a decision as to whether or not he committed murder,
3 which is the unlawful killing of another individual with
4 malice, evil intent.

5 A (Witness nods affirmatively.)

6 Q Understanding that first part of the phase is gonna
7 make a determination of guilt or innocence, going back into
8 that jury room once all 12 people make that decision because
9 like you were probably told down in Magistrate Court it's
10 got to be a unanimous decision.

11 A Uh-huh. (Affirmative).

12 Q Everyone's got to come to that conclusion.

13 Once you make that decision, that, in fact, that
14 defendant is guilty of murder, could you put that aside?

15 Could you come back into that second phase with an open
16 mind or would your mind already be made up to the fact that
17 the death penalty is the only option?

18 We found him guilty of murder, the death penalty is the
19 only option?

20 A No, I would still need to hear everything.

21 Q Okay. Because that second phase and that sentencing
22 phase, if we get there, the State's gonna have an
23 opportunity to present evidence. Just like they're gonna do
24 in the regular part of the trial. And the defense is gonna
25 have an opportunity.

Individual Juror Qualification

1 Will you have an opportunity to, with an open mind, to
2 listen to both sides cause the State's gonna present
3 aggravating factors, which is gonna make it out to be much
4 worse, the defense is gonna have an opportunity to present
5 mitigating factors, to try to lessen the crime.

6 Do you feel that you could take all that evidence into
7 consideration before you make that decision?

8 A Yes, sir.

9 Q And you would have no preconceived notions going in
10 there as to whether or not you're just gonna definitely vote
11 for death or definitely vote for life?

12 A No, I mean that's one reason, you know, like when I got
13 the newspaper, it's like okay, I don't want to read it. You
14 know, I don't---

15 Q Yes, ma'am.

16 A I don't want, I don't want it in my head that yeah, he
17 did it, he's guilty to that.

18 Q Right.

19 Because, just because it's in the newspaper doesn't
20 mean it's true?

21 A Exactly.

22 Q Right.

23 And you know just because somebody says something
24 doesn't mean it's true too, right?

25 A Right. I would want to hear everything.

Individual Juror Qualification

1 Q Correct. Correct. And I appreciate that.

2 So, just so that I'm absolutely clear and I want to
3 understand is that you would take the whole process, take
4 everything before you made up your mind and made your
5 decision?

6 A I would do my very best, yes, ma'am.

7 Q Yes, ma'am.

8 And understanding that when you go back in that jury
9 room, just like you did in Magistrate Court, not everyone's
10 gonna agree right away?

11 Would you agree with that?

12 A Yeah.

13 Q It's gonna be bickering back and forth, and I, I see by
14 your mannerism that you understand what I'm saying to you.

15 A I do.

16 Q People are probably gonna be doing that.

17 A Yeah.

18 Q So, you understand is, is that when you come to a, a
19 decision, are you the individual that has the ability to be
20 steadfast with your opinion?

21 Just because the fact that maybe 11 other people say
22 well, we want it this way, and you are the one person that's
23 the other way, would you just go along with the group just
24 because the fact that 11 people were thinking one way and
25 you were thinking another?

Individual Juror Qualification

1 A No.

2 Q Okay. You would feel that, you know, I got 11 people
3 that want to vote say for death and you were the one that
4 was holding on for life---

5 A Yeah.

6 Q ---you could hold on to your conviction and your
7 opinion because you made up your mind based upon the facts
8 and the evidence?

9 A Yes, sir.

10 Q Okay. Ma'am, I appreciate the time this morning to
11 talk to us. Thank you very much.

12 A Thank you.

13 THE COURT: Mr. Solicitor, you may proceed.

14 SOLICITOR GOWDY: May it please the Court, Your Honor?

15 THE COURT: Yes, sir.

16 EXAMINATION

17 BY SOLICITOR GOWDY:

18 Q Good morning, Mrs. Jackson.

19 A Hey.

20 Q My name is Trey Gowdy. I'm part of the prosecution
21 team. We also want to thank you for your candor and your
22 forthrightness. In everyday life, if we ran into each other
23 at the grocery store or Wal-Mart, I wouldn't ask you any of
24 these questions cause frankly they're none of my business.
25 But the nature of this is different. So, thank you for

Individual Juror Qualification

1 putting up with that.

2 Let me go back briefly. I think you had said Family
3 Court in your questionnaire, but you really feel like it was
4 Magistrate Court?

5 A It was, it was, all I -- there were several different
6 things we were hearing. You know, it was just a jumble,
7 and, again, it was the first time I'd done anything like
8 that. So --.

9 Q Yes, ma'am.

10 Could it have been domestic in nature?

11 Is that maybe what made you think Family Court?

12 Was, was it a domestic violence case?

13 Do you even remember if it was a criminal case?

14 A No. No, it wasn't anything that severe. It was not.

15 Q Okay. Was law enforcement involved?

16 Did they testify?

17 A No, no, no, no. We just -- like a couple people stood
18 in front of the judge and we listened to each side.

19 Q Okay.

20 A And then we went back and said yeah, well, he's telling
21 the truth or she's telling the truth that -- you know, it
22 wasn't horrific.

23 Q Yes, ma'am.

24 A You know, it wasn't anything like that.

25 Q Okay. Also noticed -- and, again, I, I -- last thing I

Individual Juror Qualification

1 want to do is pry into anybody's personal life.

2 A Oh, no. It's fine.

3 Q But I notice that you had a friend I want to say whose
4 son was convicted of, of lynching.

5 A My cousin.

6 Q Cousin?

7 A Yes.

8 Q Do you know which law enforcement agency would of
9 investigated that case?

10 A I do not. I could of---

11 Q Did it happen in Spartanburg?

12 A It did.

13 Q Do you recall about what year it happened?

14 A I honestly don't know. I mean he's a kid. He's in his
15 early twenties now.

16 Q Did it go to trial?

17 A Yes.

18 Q So, there was an actual trial and, and a conviction?

19 A Yes.

20 Q Did you go to any part---

21 A No.

22 Q ---of the court proceeding?

23 A I did not.

24 Q Do, do you believe that, understanding it wasn't your
25 child and, and you may not have been directly impacted, do

Individual Juror Qualification

1 you believe that, that your cousin's family was treated
2 fairly through the process?

3 A Yes, sir.

4 Q Okay. Lastly, with respect to capital punishment, His
5 Honor did a very good job of explaining it to you. So, I
6 don't want to dwell on that again.

7 If I understand you correctly, you, at the guilt phase,
8 would listen to both sides and you would make your mind
9 up -- I kept hearing you say the evidence. You want to hear
10 the evidence. You're gonna base it, your determination of
11 guilt or innocence on the evidence.

12 A I would have to hear both side, yes, sir.

13 Q Right.

14 And, and you would base it on whatever comes from that
15 witness stand?

16 A Yes, sir.

17 Q Okay.

18 A I would try to get everything to fit. I like---

19 Q You like it to fit?

20 A Yeah, I know that sounds childish. But---

21 Q No, it doesn't. I understand.

22 In South Carolina, the judge is never gonna say if A
23 and B are true, that, that you have to give the death
24 sentence. You always have the option of voting for life
25 without parole, and life means life. It means that you will

Individual Juror Qualification

1 be in prison for the rest of your natural life.

2 Understanding that life without parole is always an
3 option, you don't ever have to explain yourself to anybody,
4 will you still, honestly, in your well of souls believe that
5 there is a circumstance under which you could vote to put
6 someone to death?

7 A Say that again, that last part?

8 Q Do you believe in your well of souls, knowing that life
9 without parole is always an option---

10 A Uh-huh. (Affirmative).

11 Q ---and you don't ever have to explain to anybody what
12 you voted for life. You don't have to give a reason.

13 The -- Judge Couch is not gonna make you give a reason.

14 With life always as an option, do you still think there
15 are fact patters or scenarios in which you would vote to put
16 someone to death?

17 A Yes.

18 Q Thank you.

19 THE COURT: Anything further from the defense?

20 MR. RECKENBEIL: Nothing, Your Honor.

21 THE COURT: Mrs. Jackson, let me go over, over just a
22 couple of matters with you at this point in time.

23 We're getting closer to selecting a jury in this case.
24 In fact, it may happen today or tomorrow it appears. And
25 when that occurs, if you are asked to come back by the

Individual Juror Qualification

1 clerk, you'll get a call from the Clerk's Office, and
2 they'll indicate where and how you're to report, you should
3 come prepare to stay for a week. Because if you were
4 selected on the jury, you'll be staying for the week. We'll
5 start right into the case once the jury is selected.

6 The contact information we have for you is correct, is
7 that true?

8 WITNESS: Yes, sir.

9 THE COURT: And also, ma'am, I will remind you of the
10 fact that on Monday I issued an order that you're not to
11 listen to, watch, or read any information about this case
12 and not discuss it with anyone or allow them to discuss it
13 with you. That continues until you're told otherwise.

14 Okay, ma'am?

15 WITNESS: Yes, sir.

16 THE COURT: Thank you, ma'am. You're free to go.

17 WITNESS: Thank you.

18 (The following takes place outside the presence of the
19 juror.)

20 THE COURT: State's position in regard to Mrs. Jackson?

21 SOLICITOR GOWDY: State believes she is qualified.

22 THE COURT: Defense?

23 MR. RECKENBEIL: Defense feels she's qualified, Your
24 Honor.

25 THE COURT: All right. I will mark her as qualified on

Individual Juror Qualification

1 my list. I find her, make the same finding.

2 THE COURT: The next juror is Number 131, William
3 Hardin.

4 WILLIAM HARDIN, having been previously
5 sworn, testified as follows:

6 EXAMINATION

7 BY THE COURT:

8 Q Good morning.

9 A Morning.

10 Q It's my belief your name is William Hardin?

11 A Yes.

12 Q Is that correct?

13 A Yes, it is.

14 Q All right. Mr. Hardin, it's -- I want to thank you,
15 first of all, of all, for your cooperation in our process
16 and your appearance this morning. Let me tell you what
17 we're going to be doing so you'll maybe know a little more
18 about it. I realize that seat can be pretty uncomfortable
19 when you're sitting there among all these judges, and
20 lawyers, and things like that. And I want you to understand
21 that -- and I hope you don't feel that way after I, after
22 I've talked to you about it.

23 I'm gonna be going over some matters with you, and I'll
24 do the initial questioning. Once I'm finished, we'll allow
25 the attorneys to follow-up on my questions. We're going to

Individual Juror Qualification

1 ask you a, some questions about your beliefs, your opinions,
2 and how you would handle certain situations.

3 There are no right or wrong answers to these questions
4 because what we're gathering is information about you. So,
5 the only answers that exist are your answers, and we just
6 want to find out how you feel about things and, and that
7 nature.

8 I remind you that you were sworn to tell the truth on
9 Monday in this process, and you're still under oath for that
10 purpose. I've got to put on the record that you've been
11 reminded of that fact at this time.

12 Do you understand that, sir?

13 A I understand.

14 Q Now, if, at anytime during our questioning, you feel
15 uncomfortable about anything's that going on, you let me
16 know and we'll try to alleviate that situation.

17 Okay, sir?

18 A Okay.

19 Q Now, my first question to you is since we talked on
20 Monday, has anyone contacted you about this case?

21 Have you heard or seen anything or been exposed to any
22 information about the case which would have caused you to
23 form an opinion about this case?

24 A No.

25 Q Have you ever participated or responded to any blog or

Individual Juror Qualification

1 other Internet site concerning the death penalty?

2 A No.

3 Q Have you ever participated in any political activities,
4 demonstrations, rallies, or meetings where the primary issue
5 or one of the main issues would have been the death penalty?

6 A No.

7 Q My next question has to do with a list that you were
8 shown just outside the courtroom of individual's name who
9 were listed as potential witnesses in this case.

10 Do you recall seeing that list?

11 A Yes, I do.

12 Q All right. I'm gonna ask you some questions about it,
13 and I'm gonna instruct you to not name anyone off that list
14 by name in the courtroom.

15 But, in reading the list and reviewing the list, is it
16 your belief that you have any social, business, or personal
17 connections with any of those individuals?

18 A Yes.

19 Q All right, sir. More than one or just one?

20 A Just one.

21 Q All right, sir. In connection to that you, one, can
22 you tell me what connection you might have to that person?

23 A I went to high school with him.

24 Q Well, sir, I'm not gonna comment on your age, but I
25 think that was a few years ago?

Individual Juror Qualification

1 A Yeah.

2 Q Is that correct?

3 A Correct.

4 Q Okay, sir. Now, have you had any contact with him in
5 the past, I mean since that time?

6 A Yeah, through basketball league I taught, said hello to
7 him about a year, less than a year ago.

8 Q So, there's been a continuing acquaintance of yours, is
9 that right?

10 A Yeah, off and on. Maybe once or twice in the last five
11 to ten years.

12 Q Okay. So, you wouldn't classify him as one of your
13 good friends?

14 A No.

15 Q Is that also correct?

16 A No.

17 Q Now, sir, I'm gonna ask you, as far as that particular
18 individual is concerned, if that person was a witness in
19 this case and testified in this case, would that, in any
20 way, affect your ability to be fair and impartial to both
21 the State and the defense?

22 A No, it would not keep me from being fair.

23 Q And would you be willing to waive the evidence
24 presented by that evidence, witness just like you would any
25 other witness in the case?

Individual Juror Qualification

1 A Yes.

2 Q All right, sir. I'm going to move on to some matters I
3 need to cover with you to be sure you understand it. We're
4 going to be talking about some things that are a little more
5 personal that deal more with your personal beliefs and
6 feelings. We're not trying to invade your privacy, but we
7 are trying to determine these issues because they are
8 important issues in this case and in the trial, and it will
9 assist us in making intelligent decisions in selecting the
10 jury.

11 You appear, so far, to be someone who is secure enough
12 in your beliefs and opinions that you won't feel threatened
13 by us discussing this with you.

14 Is that a correct statement?

15 A That, that's a correct statement.

16 Q All right, sir. Now, one of the things we will get to,
17 and eventually will be issues concerning the death penalty
18 because you are aware that is an issue in this case. I want
19 you to understand, however, the trial has not yet begun.
20 So, it's kind of like putting the cart in front of the horse
21 to be talking about penalties before we've ever even started
22 the trial. However, let me explain how this process works
23 and maybe it will make a little more sense to you in, once
24 I've done that.

25 I indicated on Monday that this trial, this case will

Individual Juror Qualification

1 be divided, part of this case will be divided into two
2 stages. The defendant has been charged with several
3 offenses. One of which is the crime of murder. And for
4 that particular offense the State is seeking the death
5 penalty.

6 For that offense, should the defendant be found guilty
7 of that offense, the same jury that hears the, the guilt or
8 innocence part of the trial would be called back to Court to
9 hear a new hearing or a new trial concerning the appropriate
10 penalty to be assessed. So, there is a, what I would call a
11 guilt or innocence phase of the trial for murder. And if
12 the defendant were found guilty, then there would be a
13 penalty phase of the trial. However, if the defendant's
14 found not guilty, there would be no need for that second,
15 second trial. And so, we may be talking about something
16 that won't occur.

17 I'm going over this with you so you'll, hope you'll
18 understand that this is the only chance that we'll get to
19 talk to you about this because the same jury will hear both
20 cases.

21 A Okay.

22 Q Also, you should not hold against the defendant, in any
23 fashion or any defense that might raise, the fact that we've
24 discussed penalty. It's simply the only time that we can do
25 it. And if it becomes necessary to hold that trial, we need

Individual Juror Qualification

1 to have covered these things at that time.

2 So, do you understand where we are?

3 A I understand.

4 Q Okay. Now, a couple of things I want to ask you about
5 concerning your application of the law in a case.

6 In a case, in a criminal case, if any of them, if
7 you're selected as a juror, the judge, at some point in
8 time, will instruct you concerning the law to be used in the
9 case.

10 Now, would you be willing to listen to the law as
11 instructed by the judge?

12 A Yes.

13 Q And would you be willing to accept the law as
14 instructed by the judge and apply it to the facts as you
15 find them to be?

16 A Yes, I would.

17 Q Now, is that true even if, when the judge is charging
18 or going over the law with you, you realize that you might
19 disagree with some part of the law or you might not like the
20 law that you hear.

21 Nevertheless, could you put aside those feelings and
22 still apply the law as given by the judge to the facts?

23 A Yes.

24 Q Now, there has been some pretrial publicity about this
25 case in our local media and I want to go over those, that

Individual Juror Qualification

1 issue with you.

2 First of all, have you been exposed to any publicity
3 concerning this case?

4 A No.

5 Q So, you've not heard, read, or seen anything that you
6 can remember about the case?

7 A No, I haven't.

8 Q All right. Then my case, my question will be, in
9 general, are you the kind of juror who could put aside any
10 knowledge or information that you might have gathered
11 outside of the courtroom and decide the case purely upon the
12 evidence that you hear during the trial?

13 A Yes.

14 Q Could you do that?

15 A Yes, I could.

16 Q All right, sir. Now, two concepts I want to go over
17 with you to be sure you understand them, and be sure that
18 you can apply them in this case.

19 The first concept is, under the Constitution and the
20 laws of our state, criminal defendants, people who are
21 charged with a crime, are always presumed to be innocent,
22 and that means the defendant never has a duty of proving
23 himself innocent. In fact, the defendant has no burden of
24 proof at all in a criminal case.

25 Do you understand that, that concept?

Individual Juror Qualification

1 A Yes, I do.

2 Q The second one I'm going to go over is that the State
3 has the burden of proving a defendant guilty beyond a
4 reasonable doubt of any crime the defendant's been charged
5 with. So, the burden of proof in a criminal case always
6 rests on the State.

7 Do you understand that concept?

8 A I do understand it.

9 Q Would you be willing to accept and apply those concepts
10 to any case that you're selected as a juror in that involves
11 a criminal charge?

12 A Yes.

13 Q Now, I take it from your answers that you would be
14 willing to listen to the law and the evidence presented to
15 you, and based on your finding of what those things were and
16 based on the circumstances as you find them, that you could
17 possibly find someone not guilty of a crime that they're
18 charged with.

19 Is that true?

20 A True.

21 Q So, it's your belief that just because someone's been
22 arrested, they've been perhaps indicted, does not mean that
23 they're automatically guilty of a crime that they're charged
24 with.

25 Is that also true?

Individual Juror Qualification

1 A True.

2 Q So, you, as a juror, if you find the State has not
3 presented sufficient evidence to prove the defendant's guilt
4 beyond a reasonable doubt, you could issue a verdict of not
5 guilty for a defendant.

6 Is that true?

7 A Yes, true.

8 Q Is it also true if the State does convince you of the
9 defendant's guilt, beyond a reasonable doubt, that you could
10 render a verdict of guilty against a fellow citizen?

11 A True. Yes.

12 Q So, I think what you're telling me is that you would be
13 able to make up your mind, depending upon the strength of
14 the evidence that you hear and the law as presented by the
15 Court, and find a person either guilty or not guilty of a
16 crime that was charged.

17 Is that also correct?

18 A Yes.

19 Q Now, we're going to get to that stage that I told you
20 we'd get to, to talk about the penalty phase of the murder
21 trial, and I hope you understand that the same jury that
22 would hear the guilt or innocence portion of the murder
23 charge would also hear the penalty phase of that murder
24 trial. That penalty phase would only be entered into if the
25 defendant were found guilty of the original murder that, .

Individual Juror Qualification

1 that the charge, for which the State sought the death
2 penalty.

3 Now, that second trial will be one involving the
4 presentation of new evidence. It -- some of the same people
5 may testify that, that testified in the guilt or innocence
6 phase. But there will be new evidence presented because the
7 issue in that trial has to do with the penalty.

8 Now, there's two possible choices, either life
9 imprisonment without parole or death. Those are the two
10 choices that a jury would have in that phase of the trial.

11 Do you understand that, sir?

12 A I understand.

13 Q Now, that would, as I indicated, would be a new trial.
14 The State would present evidence of what is called
15 aggravating circumstances. That means things that would
16 tend to make the offense appear to be worse and for which a
17 more serious penalty should be handed down.

18 The defense also, would also be allowed to present
19 evidence of what is called mitigating factors. That means
20 factors that would tend to somehow lessen the severity of
21 the punishment that ought to be handed down or would call
22 for mercy in some situations.

23 Do you understand the difference between the evidence
24 that would be presented in the sentencing phase?

25 A Yes, I do.

Individual Juror Qualification

1 Q Now, sir, I want you to put yourself in a situation,
2 theoretically, and listen to me so you'll understand where
3 you're gonna be.

4 You've been selected as a juror in a murder trial, and
5 the, and for that murder the State is seeking the death
6 penalty. You've gone through the trial. You and your
7 fellow jurors have heard all of the evidence. You've been
8 charged with the law. You've deliberated on those things
9 and have come back and issued a verdict of guilty for the
10 murder against a defendant.

11 Now, sir, since the State is seeking the death penalty,
12 the same jury is going to come back to the courthouse,
13 courtroom and conduct a hearing concerning the appropriate
14 penalty being either life or life without parole or death.
15 And so, you and your fellow jurors are in the hallway
16 walking toward the courtroom to begin that second part of
17 the trial or that second phase the, sentencing phase.

18 Do you understand the position I've placed you in?

19 A Yes, I do.

20 Q Now, I gave you a sheet of paper to read outside that
21 described three different types of jurors.

22 Do you remember that sheet of paper that you read?

23 A Yes.

24 Q All right. The first one of those individuals I've
25 described, and I'm going to go over them with you to be sure

Individual Juror Qualification

1 we understand or are clear as to what we mean by one, two,
2 and three.

3 Number one is a juror, who before he ever walks back
4 into the courtroom for the sentencing phase, has already
5 made up his mind. That particular juror believes that once
6 someone has been convicted, convicted of the crime of murder
7 that the only appropriate penalty is death. And, therefore,
8 that juror is going to vote for death in this situation
9 every time.

10 The second type of juror, number two, has also already
11 made up his or her mind because that juror has a belief that
12 the State should never take a life in punishment for a
13 crime. That juror does not believe in the death penalty
14 and, therefore, will vote for life in prison every time
15 regardless of the circumstances or evidence presented just
16 like the first juror would always vote for the death penalty
17 regardless of the evidence presented in the sentencing
18 phase.

19 The third type of juror is an individual, who walks
20 down that hall, and has not yet made up his or her mind.
21 That juror is going to have to wait and be willing to listen
22 to the facts and evidence presented during the sentencing
23 phase. And based on that evidence, would issue a verdict
24 either for the death penalty or for life in prison without
25 parole.

Individual Juror Qualification

1 Now, do you understand the three types of jurors I've
2 described?

3 A Yes, I do.

4 Q All right, sir. I've placed you in that position
5 walking down the hall toward the court, courtroom to enter
6 the sentencing phase of a trial.

7 Which one of those three would best describe you in
8 that situation?

9 A I would say the third juror.

10 Q All right, sir. Based on that answer, what that tells
11 me is that you have not yet made, you would not have yet
12 made up your mind, that you would be willing to listen to
13 the evidence presented both by the State and by the defense,
14 and based on that evidence, you, if you felt that it was
15 justified, you could issue a sentence of death?

16 A Yes, sir.

17 Q And also, conversely, if you heard that evidence, both
18 presented by the State and by the defense, you could
19 possibly, or for any reason, issue a sentence of life in
20 prison without parole?

21 A Yes.

22 Q So, you would weigh the facts and circumstances in that
23 second hearing and make a determination as to what the
24 appropriate penalty should be?

25 A Yes.

Individual Juror Qualification

1

2 Q Now, sir, the last thing I want to talk to you about is
3 the fact that, if you're selected to serve on this jury,
4 that you will be required to stay with us throughout the
5 trial. We expect the trial to last anywhere from five to
6 seven days.

7 During that time, you would be housed in a local hotel.
8 You would be given and fed your meals. Your contact with
9 the outside world, world would be limited. You would have
10 limited access to television and other media outlets for
11 that period of time.

12 Now, I understand that's an inconvenience in anyone's
13 life. Don't get me wrong. Service to your country, quite
14 often, is an inconvenience.

15 However, in that situation, my real question is if you
16 were placed there, would it pose any real danger to either
17 your health or your well being?

18 A No, it wouldn't. It wouldn't.

19 Q And if you were placed in that situation, would it pose
20 any real danger to the health or well being of anyone who is
21 dependent upon you?

22 A No.

23 Q Now, that completes my questioning. I told you the
24 attorneys would be given a chance to follow-up. The defense
25 has the opportunity to do that. Mr. Reckenbeil, Reckenbeil

Individual Juror Qualification

1 is standing, and we're going to allow him to go forward.

2 MR. RECKENBEIL: Thank you, judge.

3 THE COURT: Yes, sir.

4 EXAMINATION

5 BY MR. RECKENBEIL:

6 Q Mr. Hardin, good morning. I'm John Reckenbeil.

7 A Good morning.

8 Q I'm one of the defense lawyers for Tony Torres.

9 Appreciate you coming in this morning---

10 A Thank you.

11 Q ---and this week.

12 I know this has been a grueling process for you as well
13 as the jury questionnaire filling it out and, and giving
14 some personal information. I want to ask you your general
15 view on the death penalty.

16 Do you have a position?

17 A If, if found guilty, you know, I don't have a problem
18 with it, the death penalty.

19 Q Okay. And what you're saying is that if the defendant
20 is found guilty of murder --

21 A Yes, sir.

22 Q -- then it would be your position that the appropriate
23 punishment should be the death penalty?

24 A You know, if the evidence is there and I feel like yes,
25 I could, I could agree with the death penalty.

Individual Juror Qualification

1 Q Okay. I want to break that down a little bit.

2 A All right.

3 Q Because, as the judge has explained to you, is that
4 there is a possible two stage---

5 A Yes, sir.

6 Q ---case here. The first part of the case is the guilt
7 or innocence of the defendant.

8 A Right.

9 Q In that situation, the jury would make a determination
10 and all 12 of you would have to make a determination as to
11 whether or not there is proof that the defendant is guilty
12 of murder beyond a reasonable doubt.

13 A Yeah.

14 Q Now, murder, in the State of South Carolina, means the
15 unlawful killing of an individual with malice and
16 aforethought. The willful killing, evil intent killing of
17 an individual.

18 So, putting yourself in that position, with those 12
19 other jurors, back in the jury room and now you, you made a
20 unanimous decision. Everyone's agreed the defendant is
21 guilty of murder.

22 A Uh-huh. (Affirmative).

23 Q Do you feel, sir, that the only appropriate punishment
24 would be the death penalty?

25 A No, no, I don't feel that. No, I don't feel that.

Individual Juror Qualification

1 Q All right. Now, the judge is given you the
2 instructions as to what three types of jurors would be
3 coming back into the courtroom. He was setting up a
4 scenario that could possibly happen. And understand that
5 that might not happen. The defendant is presumed innocent.

6 And just because of the fact that the defendant is been
7 served with notice of the State seeking the death penalty,
8 does that give you any preconceived notion?

9 A No, no.

10 Q Does that, in any way, inhibit you from making a clear
11 determination of guilt or innocence just because the fact
12 that the State has served notice that possibly the death
13 penalty could be sought?

14 A No.

15 Q All right. Moving to that second phase, a whole new
16 ball game. You're coming back out of that jury room. It's
17 the second part.

18 Now, obviously, you're not gonna be able to totally put
19 everything out of your mind of what you heard in part one.
20 But you understand that, when you come back into part two,
21 there is a brand new set of facts, brand new set of evidence
22 that's gonna be presented here.

23 A Okay.

24 Q The State's gonna have the opportunity, like the judge
25 is told you, to present what they call aggravating factors.

Individual Juror Qualification

1 Factors that the State feel heightens it, makes that murder
2 worse.

3 There's also gonna be an opportunity, like the judge is
4 said, that the defense is gonna present mitigating factors,
5 making it worse, less plea for mercy, those sorts of things.

6 A All right.

7 Q You feel you have the opportunity, in your mind, to
8 consider both factors before you make that decision?

9 A Yes, sir, I feel like I'd be fair and can---

10 Q Fair and impartial?

11 A Yeah.

12 Q Okay. I see that, in fact, sir, that you have, you're
13 self-employed and you work as a life insurance agent?

14 A Yes, I'm a life insurance agent.

15 Q How long have you been doing that?

16 A Seventeen years.

17 Q Okay. And do you employ other people?

18 You just work basically on your own?

19 A Basically on my own. I have agents that work for me.
20 But I'm, you know, I've hired very few. Mainly 80 percent
21 of it is on me.

22 Q Okay. So, you're independent working most of the
23 time---

24 A Yes.

25 Q ---you got to make your own decisions?

Individual Juror Qualification

1 A Yes.

2 Q You got to stick to your own decision.

3 The last thing I want to talk about is this and this is
4 a very important issue.

5 Thinking of the fact that you're gonna have to make
6 your own determination, you're one of 12 jurors in this
7 situation.

8 A Okay.

9 Q You've now heard all the facts and evidence in the
10 sentencing phase. You've made up your mind you've, which
11 way you feel. Either death or for life. You go back into
12 that jury room.

13 Do you feel you'll have a difficult time articulating
14 yourself, making other jurors known as to what you feel?

15 A To express my opinion of what -- no, I don't have any
16 trouble with expressing my opinion.

17 Q Okay. And then also do you feel that you would be
18 swayed to vote another way just because the fact the
19 majority is going a certain way?

20 Let me give you a specific example. Eleven jurors have
21 said they, they feel a certain way. You're that one that is
22 voting the other way.

23 Understanding that a verdict's got to be unanimous,
24 could you hold on to your convictions in that situation or
25 would you just go along with the majority just to have a

Individual Juror Qualification

1 unanimous vote?

2 A You know, it's a tough call. I couldn't, be honest
3 with you, I could be swayed. I don't know until you're in
4 that situation. But that's just an honest answer.

5 Q Mr. Hardin, and, and let me tell you, sir, is that
6 there is no wrong answer. It's your opinion, sir, and we
7 truly appreciate you being candid, being very honest in this
8 situation and, and, and that's what we need here.

9 A Okay.

10 Q So, in that situation, you picture yourself in that
11 deliberation, cause understand that it's gonna be emotional.
12 It's gonna be a lot of heat going back there. You got 11
13 people that have, voting a certain way.

14 What I'm hearing from you, sir, is, is that you feel
15 you could be swayed just because the fact the 11 are voting
16 that one way?

17 A They's a chance. I mean that's all I can say. I mean
18 I don't -- I can't tell you I can. But I could, I could be
19 swayed.

20 Q Okay.

21 A I think it's---

22 Q Mr. Hardin, thank you very much, sir---

23 A Thank you.

24 Q ---for you truthful answers then, sir.

25 A Thank you.

Individual Juror Qualification

1 THE COURT: State's witness.

2 SOLICITOR GOWDY: Your Honor, may it please the Court?

3 THE COURT: Mr. Gowdy.

4 EXAMINATION

5 BY SOLICITOR GOWDY:

6 Q Good afternoon, good morning, sir.

7 A Morning.

8 Q I'm gonna be very brief. I want you to imagine that I,
9 for the last 30 minutes, tried to convince you that Judge
10 Couch's robe is white.

11 If I tried for 30 minutes, could I convince you that
12 his robe is white?

13 A No.

14 Q What if I tried for an hour?

15 A No.

16 Q What about two hours?

17 A No.

18 Q What if we stayed here until the Carolina LSU game on
19 Saturday night, could I convince you that his robe is white?

20 A No.

21 Q Well, then, why on something that minor would you hold
22 true to it, but on life and death you said that you would be
23 swayed?

24 A You know, I just -- if 11 people feel that way and I'm
25 the only one, I just, you know, I -- like, like I told him,

Individual Juror Qualification

1 I don't know. I'm not a hundred percent sure I could be
2 swayed. But, you know, I think, you know, they's always a
3 possibility---

4 Q When you---

5 A ---you feel pressure to go the other route. But --.

6 Q Well, when you say swayed---

7 A I mean that---

8 Q ---I mean they're a couple different issues---

9 A Yeah.

10 Q ---there I mean, but Mr. Reckenbeil, for whom I have
11 tremendous respect for, set up a scenario where there's,
12 where there's fighting and yelling and screaming back in the
13 jury room. It doesn't have to be that way.

14 What if you're just using reason and passion and you're
15 articulating your position, would you stand up for your
16 position?

17 A Yeah, I mean -- yeah, I feel strong I can stand up for
18 my position, yes, sir.

19 Q Would you try to convince other people to see things
20 your way?

21 A Yes, sir.

22 Q Would you listen, open mindedly, to what the others had
23 to say about their position?

24 A Yeah, of course.

25 Q If you still thought that life without parole was the

Individual Juror Qualification

1 right verdict, that you believed that after all the
2 discussion, the reason and the passion, you believe life
3 without parole is the correct verdict, would you not stick
4 by your verdict?

5 A I would stick to it.

6 Q Okay. Thank you.

7 THE COURT: Follow-up questions from the defense?

8 MR. RECKENBEIL: Nothing else from the defense, Your
9 Honor.

10 THE COURT: Mr. Hardin, I'm going to give you a little
11 bit of information at this point in time. We're getting
12 fairly close to being in a position to select a jury in the
13 case. You will receive a call from the courthouse
14 concerning this matter.

15 And if you're asked to return, I will tell you you
16 should return prepared to stay for the week. Because if
17 you're asked to return, you may be serving on the jury and
18 we'll go straight into the trial and you won't be able to go
19 home or anything of that nature.

20 Now, the contact, contact information that we have for
21 you is correct.

22 Is that true?

23 WITNESS: Yes.

24 THE COURT: So, if we need to contact you, we have the
25 proper information?

Individual Juror Qualification

1 WITNESS: Yes.

2 THE COURT: I'll also caution you that my order
3 concerning no contact, no discussions, no outside
4 information continues until we tell you otherwise.

5 Do you understand that, sir?

6 WITNESS: I understand.

7 THE COURT: Thank you, sir. You're free to go at this
8 time.

9 (The following takes place outside the presence of the
10 juror.)

11 THE COURT: All right. State's position regarding Mr.
12 Hardin?

13 SOLICITOR GOWDY: Your Honor, the State's position is
14 that being swayed and caving in are two different things.
15 That's part of the, the deliberative process, that you've
16 listened to other people. It is, it is difficult to put
17 people in a situation where there's 11 people and there's
18 yelling and screaming, which frankly has not been my
19 experience with jury deliberations, but that's the scenario
20 that's set up.

21 Could you be swayed is different than would you cave
22 in. And when I asked him would you surrender your deeply
23 held convictions because the others wanted to go another
24 way, he said no. Being swayed suggest that, that reason has
25 prevailed on me, that, that they've done a good job of

Individual Juror Qualification

1 getting me to see their way, and that happens all the time
2 in jury deliberation.

3 I think what the cases are saying is would you cave in
4 simply because you were the only one, and he told me no.
5 So, we would say he's qualified.

6 THE COURT: Defense position.

7 MR. RECKENBEIL: I think there was a perfect example on
8 the witness stand with Mr. Gowdy just talking with him. He
9 changed his mind right away. He clearly answered the
10 question if there were 11 people voting one way. I asked an
11 open ended question. Wasn't passionate. Wasn't even
12 speaking a little bit more boisterous like my New York style
13 does, and he said yeah.

14 THE COURT: All right. I'm gonna take that one under
15 advisement, and I'll issue a decision on him at a later
16 time.

17 The next one in this list is Tina Painter. But we're
18 gonna take about a five minute break before we start with
19 Mrs. Painter.

20 Court will be in recess for about five minutes.

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

22 THE COURT: State ready?

23 SOLICITOR GOWDY: Yes, sir, Your Honor.

24 THE COURT: Defense ready?

25 SOLICITOR GOWDY: Yes, sir.

Individual Juror Qualification

1 THE COURT: The Court is going to disqualify Mr. Hardin
2 for reasons of his answer concerning being easily swayed by
3 other members of the jury.

4 The next one in this panel is Tina Painter, Number 210.

5 TINA PAINTER, having been previously
6 sworn, testified as follows:

7 EXAMINATION

8 BY THE COURT:

9 Q Good, good morning.

10 A Good morning.

11 Q I believe your name is Tina Painter, is that correct?

12 A Yes.

13 Q All right. Mrs. Painter, first of all, thank you very
14 much for your cooperation and your patience today. We're
15 going to try to get this to move along as quickly as
16 possible. But there's some important things we need to
17 discuss with you, and I hope you understand that.

18 What we're going to do this morning is that I'm going
19 to ask some questions, and then I will allow the attorneys
20 to ask you some questions. I realize that sitting in that
21 seat is not the most comfortable seat in the house. But we
22 will try to make it as comfortable as we can. If you have
23 any problems during this process, let me know and we'll try
24 to take care of those problems.

25 okay?

Individual Juror Qualification

1 A Okay.

2 Q I tell you now that the questions we're going to ask
3 you have no right or wrong answers. We're going to be
4 asking you concerning your positions and your feelings on
5 some things and how you would handle certain situations,
6 and, of course, the only answers are your answers to those
7 things. So, don't feel like that we're seeking a particular
8 answer or anything of that nature. We're simply trying to
9 determine some information to assist us in jury selection.

10 Now, ma'am, I have to remind you, I'm required to
11 remind you you're still under oath from Monday when you were
12 sworn for this process.

13 Do you understand that?

14 A Yes, I do.

15 Q Okay. The first question I'm going to have for you is
16 this, is this morning, is that since we talked on Monday,
17 Monday, have you heard, read, or seen anything about this
18 case or been exposed to any additional information that
19 would cause you to form any opinions about the case?

20 A No, sir.

21 Q Have you ever participated in any blog or Internet site
22 that might have as one of its subjects or main subject the
23 death penalty?

24 A No.

25 Q Have you ever participated in any political activities

Individual Juror Qualification

1 such as demonstrations, rallies, or meetings at which the
2 focus or one of the primary issues discussed would of been
3 the death penalty?

4 A No, sir.

5 Q Now, ma'am, right before you came into here, the
6 bailiffs gave you a list of names that might be witnesses in
7 the case.

8 Is that true?

9 A Yes, sir.

10 Q Did you have a chance to review that list?

11 A I did.

12 Q Now, please don't name anyone off of that list. Don't
13 say their names in court.

14 But I'm going to ask you, after having reviewed the
15 list, is it your belief that you have any social, business,
16 or personal connections with anyone who's named on that
17 list?

18 A No.

19 Q Do you believe that you have been related by blood or
20 marriage to anyone on that list?

21 A No.

22 Q So, it's your belief that you have no connection with
23 anyone who is named as a potential witness?

24 A That is correct.

25 Q Okay. Now, I'm going to ask you now some questions

Individual Juror Qualification

1 that are a little more personal in nature that have to do
2 with your opinions on certain topics. And I go through
3 preliminary questions to kind of see if you might feel
4 threatened by any of my questions. You don't seem to be
5 someone who'd be threatened by me asking you about your
6 opinions.

7 Is that a true statement?

8 A That's true.

9 Q Okay. Now, we're going to also eventually get to ask
10 some, get to the point where we ask some questions about the
11 death penalty. I want to talk about the fact that we're
12 talking about the death penalty now and explain to you
13 certain, a little bit about the procedure.

14 You understand the defendant has been charged with
15 several different crimes. One of those is the crime of
16 murder. For that murder, the State has requested or sought
17 the death penalty.

18 In, in that situation, for that crime, we will have to
19 go through, perhaps go through a two phase trial. What that
20 means is they'll be a trial concerning guilt or innocence by
21 the jury that's selected for the crime of murder. Depending
22 on the verdict, we may hold a second hearing after that.
23 The first part of that hearing would determine guilt or
24 innocence.

25 Now, if the defendant is found innocent of the crime of

Individual Juror Qualification

1 murder, or not guilty I guess is what I should say, of the
2 crime of murder, then there would be no need for the second
3 or sentencing phase of the, of the trial.

4 If, however, the jury does determine the defendant is
5 guilty of the crime of murder, since the State is seeking
6 the death penalty, we would hold a second hearing using the
7 same jury with different information, different evidence,
8 different facts being presented on the issue of the
9 appropriate penalty at that time.

10 So, that means that we're talking about penalties today
11 before there's ever been a finding of guilt, which is kind
12 of like putting the cart in front of the horse.

13 The reason for that is that once we start this trial,
14 the jury will be impaneled and we will not have a chance to
15 talk to that jury or the people who might make up that jury
16 before the second hearing occurs. So, we're gonna have to
17 talk about it today.

18 I'm just cautioning you that you should not hold
19 against the defendant or any defense that he might raise to
20 any of the charges the fact that we've talked about
21 penalties today. This is simply the only time that we can
22 do that.

23 Do you understand what I'm saying?

24 A I do.

25 Q I just wanted to caution you to be sure you're aware of

Individual Juror Qualification

1 that situation.

2 Okay. Now, I'm gonna ask you a couple of questions
3 about your application of the law potentially. If you're
4 selected as a juror in any criminal case, the judge, at some
5 point in time, will instruct you concerning the law to be
6 applied.

7 Now, would you be willing to listen to that
8 instruction?

9 A Yes.

10 Q would you be willing to accept the law as given to you
11 by the judge and apply it to the facts as you find them to
12 be?

13 A Yes.

14 Q Now, is that true even if, when you're hearing the
15 judge charge you concerning the law, you may decide well, I
16 don't really agree with that law or I don't like that law,
17 would you still be willing to set aside those feelings and
18 apply the law to the facts as you find them to be?

19 A Yes.

20 Q All right. Now, the next question I has, have of you
21 has to do with possible pretrial publicity that would of
22 occurred.

23 Have you been exposed to any publicity concerning this
24 case?

25 A No.

Individual Juror Qualification

1 Q That's good.

2 So, I'll just ask then the general question, are you
3 the type of person who could set aside any information you
4 might have heard outside of the courtroom, either before or
5 during the trial, and decide the case purely upon the
6 evidence presented at the trial and the law given by the
7 judge?

8 A Yes.

9 Q Now, two concepts we talked about on Monday. I want to
10 be sure that we've emphasized these to you and understand
11 your position on these.

12 First of all, under the Constitution and the laws of
13 our state, and our, our nation, a criminal defendant is
14 always presumed to be innocent. What that means is that a
15 defendant never has the obligation of proving himself or
16 herself innocent of a, an offense. We presume that. So,
17 therefore, a defendant never has the obligation of proof or
18 the burden of proof of any kind in this type of case.

19 Do you understand that concept?

20 A I do.

21 Q The other thing is the State does always have the
22 burden of proving its case in a criminal case, and that
23 standard is proof of guilt beyond a reasonable doubt.

24 So, the State always has the burden of proof in a
25 criminal case.

Individual Juror Qualification

1 Do you understand that concept?

2 A I do.

3 Q Now, are you willing to accept those concepts and apply
4 it to any trial in which you might be serving as a juror?

5 A Yes.

6 Q Now, do you believe that because a person has been
7 accused of a crime, arrested, or even indicted that they
8 must automatically be guilty of that crime?

9 A No.

10 Q So, that means, to me, that you could listen to the
11 evidence in a case, and listen to the law, and as you
12 determine the evidence to be, based on the things that were
13 presented, you could find someone not guilty of a crime.

14 Is that true?

15 A Yes, that would be true.

16 Q And would it also be true that you find that the State
17 does meet its burden of proof and proves someone guilty of a
18 crime beyond a reasonable doubt, that you could render a
19 verdict of guilty against someone accused of a crime?

20 A Yes, I could.

21 Q So, depending on the evidence, the strength of the
22 evidence, the way that you understand it, and the law as
23 given to you, you could find someone either guilty or not
24 guilty depending on the evidence?

25 A Yes, I could.

Individual Juror Qualification

1 Q Okay. Now, ma'am, we're now gonna get to that point
2 where we're gonna talk about the death penalty part of the
3 case again, and I want to go back over what I told you just
4 a minute ago so we're sure we understand where we are.

5 A jury, in a, in this type of situation where the,
6 where murder is charged and the State is seeking the death
7 penalty would go through the guilt phase of the trial, and
8 would find, could find either for guilty or not guilty,
9 again, depending on the standards of proof and the evidence
10 presented. If the verdict of guilt is returned, you would
11 come back for the sentencing phase.

12 Now, at the sentencing phase, there would be possibly
13 new witnesses testify, people that didn't testify before.
14 The State would present evidence of, of what is called
15 aggravating circumstances, things that the State thinks
16 makes the crime worse and justifies a more, a more strict
17 penalty.

18 The defense has, at that same hearing, the right to
19 present what are called mitigating circumstances, and those
20 mitigating circumstances are circumstances which tend to
21 lessen the severity, would tend to lessen the severity of
22 the punishment that might be imposed or be evidence that
23 mercy should be granted for some reason.

24 So, do you understand that each side would be allowed
25 to present evidence at the sentencing phase and it would be

Individual Juror Qualification

1 basically a new trial, but on different issues, on the
2 question of punishment as opposed to guilt or innocence?

3 Do you understand how that works?

4 A Yes.

5 Q Now, ma'am, I'm going to ask you to place yourself in a
6 situation theoretically. I, I want you to position yourself
7 such that you've been selected on a jury in a murder trial
8 in which the State is seeking the death penalty. You and
9 your fellow jurors have heard all of the evidence in the
10 case. You've heard the judge charge you on the law. You've
11 entered your deliberations. And after your deliberations,
12 you, unanimously, each of you have determined that the
13 defendant is guilty of the crime of murder.

14 Because of that verdict, it is necessary then, since
15 the State is seeking the death penalty, that a second
16 hearing be held concerning the appropriate sentence. And
17 there's only two choices in that, in that hearing. The two
18 possible choices are life imprisonment without parole or the
19 death penalty. Those are the two choices the jury would be
20 faced with.

21 Now, ma'am, do you understand the situation that I've
22 asked you to place yourself in?

23 A Yes.

24 Q Now, you and your fellow jurors would be then coming
25 back into the courtroom to begin that, that second phase of

Individual Juror Qualification

1 the trial.

2 Do you understand that situation?

3 A Yes.

4 Q Now, ma'am, before you walked in, I had a sheet of
5 paper handed to you that described three different kinds of
6 jurors.

7 Do you remember that sheet of paper?

8 A I do.

9 Q Did you read it?

10 A I did.

11 Q I'm going to go over that with you now to be sure that
12 we have an understanding as to the different types of jurors
13 that I described on that paper.

14 The first one I described to you is someone, when
15 they're walking down the hall coming into the courtroom, has
16 already made up his or her mind. That particular juror
17 believes that anytime someone is convicted of the crime of
18 murder that the only appropriate punishment is the death
19 penalty, and, therefore, that juror walking down the hall
20 already knows how he or she is going to vote. That juror
21 will vote for the death penalty in that situation on every
22 occasion.

23 The other juror set, number two that I described is a
24 juror, walking down that hall, who has also already made up
25 his or her mind. That particular juror believes that the

Individual Juror Qualification

1 State never has the right to take a life in punishment of a
2 crime. And so, for that reason, that juror has already made
3 up its, his or her mind that that juror will vote for life
4 imprisonment without parole and that juror would do that
5 every time in that situation.

6 The third juror is a juror, walking down that hall, who
7 hasn't made up his or her mind at that point in time. That
8 juror does not know whether he or she is going to vote for
9 life imprisonment or for death. That juror is going to have
10 to wait, listen to the testimony that's presented, the
11 evidence, both the aggravating circumstances and the
12 mitigating circumstances. And once having heard that
13 evidence, would then make a decision as to what the
14 appropriate punishment would be.

15 Now, do you understand the difference between the three
16 jurors I just described?

17 A I do.

18 Q Of the three jurors that I've described, which one of
19 those would best describe you walking into that courtroom?

20 A Honestly a tough toss up between the first one and the
21 last one.

22 Q All right. Well, I'm gonna -- we're gonna, we're gonna
23 explore that in a little more detail then.

24 I'm gonna ask you, under those circumstances and
25 keeping in mind that you have already found the defendant

Individual Juror Qualification

1 guilty of murder, the issue of guilt then is no longer a
2 concern, would you be willing to listen to the facts and
3 evidence before you reached a decision?

4 A I would be willing to listen, yes.

5 Q And if the evidence justified it, would you be willing
6 then to sentence someone to death?

7 A Yes.

8 Q By the same token, if you were to find that the
9 evidence presented during that trial did not justify the
10 death penalty or for any other reason whatsoever, and I hope
11 you understand jurors are not required to give reasons as to
12 why they issue verdicts, would you be willing also to
13 sentence someone to life imprisonment in that situation?

14 A Yes, I would.

15 Q Now, ma'am, that means that, based on the facts and
16 circumstances presented during that trial, that part of the
17 hearing, you could sentence someone to life imprisonment
18 without parole.

19 Is that true?

20 A I could.

21 Q And you could also though sentence someone to death
22 depending on those same facts and circumstances?

23 A I could.

24 Q Now, my last question's going to have to do with, I
25 guess, something a little more personal in nature. I have

Individual Juror Qualification

1 indicated earlier that, to the jury panel that the jury in
2 this case will be sequestered once they're selected.

3 what sequestration means is that the jury will be here
4 working on the case during the day. In the evenings, the
5 jury will retire to a hotel. They will be accompanied by
6 law enforcement officers who will limit the jury's contact
7 with the outside world. You will have some telephone
8 communications, some television, and some print media
9 available, but it will be filtered.

10 Now, that would be an inconvenience to anybody to be in
11 that situation, and we expect the trial will last somewhere
12 between five to seven days.

13 Now, if you were placed in that situation, would that
14 situation pose a serious risk of danger to your health or
15 well being?

16 A No.

17 Q would that situation pose a serious risk of danger to
18 the health or well being of anyone who is dependent upon
19 you?

20 A No.

21 Q All right. I'm going to now allow the attorneys to ask
22 questions and the defense can go first.

23 Mrs. Hodges, I see you standing.

24 MRS. HODGES: Yes, sir. Thank you, Your Honor.

25 THE COURT: Yes, ma'am.

Individual Juror Qualification

1 EXAMINATION

2 BY MRS. HODGES:

3 Q Morning, Mrs. Painter.

4 A Good morning.

5 Q I noticed you have some school age children?

6 A I do.

7 Q Is that -- was that kind of the---

8 A That was my kind of hesitation, yes.

9 Q ---hesitation?

10 All right.

11 A It is. I mean I have---

12 Q Do you have family?

13 I mean I know that you're divorced, you're divorced?

14 A I am.

15 Q So, I didn't know if you have family in the area that,
16 that the kids could stay with or have their needs met?

17 A I do have family. My ex-husband is in the area.

18 Q Okay.

19 A So, it would be difficult. But it's possible.

20 Q Okay. All right. And, you know, we appreciate your
21 time being here with us this week as well as your
22 willingness to answer the questions that you did on the
23 questionnaire.

24 One of the things that you had mentioned in the
25 questionnaire -- and, and like I said, these are questions

Individual Juror Qualification

1 that I would never ask you in a million years if I met you
2 out on the street.

3 But because we are where we are, you had mentioned that
4 one of your children -- you had basically sought some
5 treatment with one of your children dealing with counseling?

6 A Yes.

7 Q Anything from that experience that, that, that would
8 affect your ability in dealing with, you know, issues
9 involving, you know, life and death decisions?

10 A No, it was mainly teenage, you know, just teenage
11 hormones, dealing with a teenager.

12 Q Got you.

13 A And we went and spoke with a therapist. So, I don't
14 think it would have any bearing.

15 Q Okay. Child under any sort of medication regimen or
16 anything like that?

17 A No.

18 Q Okay. All right. One of the other things that you
19 mentioned, and I, and I think this may be part of, of where
20 you're kind of placing yourself on kind of the, kind of the,
21 on the Judge's list, trying to decide whether you're a one
22 or whether you're a three.

23 I mean you mentioned that, that your church is in favor
24 of the death penalty?

25 A They are. And you know, I've always said that yes, I

Individual Juror Qualification

1 do believe in it. But then I've never been in this
2 situation before.

3 Q Right.

4 A So, therefore, I can't say a hundred percent that I
5 would say it must happen.

6 Q Okay.

7 A That's, that's -- you're exactly right.

8 Q Okay. Can you tell me a little bit more about what,
9 what your personal views are on the death penalty?

10 A My personal views are, if the crime fits the
11 punishment, if it fits the punishment really, and if there
12 is, you know, no doubt of the guilt, and there are no
13 extenuating circumstances.

14 Q Okay.

15 A I think it's a combination of a lot of different
16 things.

17 Q Okay. And, and, and you're right, there is gonna be a
18 situation where you're going to have to, as a jury, find
19 guilt or innocence on a particular crime. And in South
20 Carolina, murder's defined as the willful and unlawful
21 killing of another person with malice aforethought. Malice
22 simply means that, you know, it's kind of done with evil
23 intent. You know kind of, kind of wicked and depraved
24 heart.

25 Once a jury has found guilt on murder, it's only then

Individual Juror Qualification

1 that, that the issue is, in a capital case, and only at that
2 point do we get to the point of where we kind of start
3 talking about what's the appropriate punishment. On a case
4 that involves murder that was, the willful killing of
5 another person, there's no sort of defense or excuse that
6 kind of justifies the killing, basically the jury is come to
7 the thought process and come to a conclusion the person did
8 the crime, they're responsible for it.

9 At that point, do you have an opinion as to whether
10 murder is the only appropriate, death penalty is the only
11 appropriate response or only appropriate penalty for that
12 kind of murder?

13 A Great question. I, I don't know. I don't know
14 without -- I've never have, been in that situation.

15 Q Okay.

16 A My background and what I say are what I've grown to
17 believe is, yes---

18 Q Okay.

19 A ---I could vote for the death penalty. But then being
20 here, facing with that, could I really?

21 It's just I would have to listen to all of the
22 circumstances. And if I felt that I heard circumstances
23 that didn't justify it, then I'm sorry, yeah, I'm going with
24 what I believe.

25 Q Okay. In the penalty phase, once the jury is found

Individual Juror Qualification

1 someone guilty of murder, in the penalty phase there is
2 evidence that is issued regarding aggravating circumstances.
3 Those aggravators basically say that the, you know, this
4 particular crime or this particular murder is worse in
5 comparison to other murders, and, therefore, because of
6 those aggravating circumstances, that the death penalty, you
7 know, is, is justified as, as an appropriate penalty.

8 There's also an opportunity for the defense to produce
9 mitigating evidence. I think you called it extenuating.
10 Mitigating is simply something that basically says, that
11 either in fairness or in mercy, you know, that the death
12 penalty is not justified, that a lesser sentence is
13 justified. And that sentence being, in this particular
14 situation, life without the possibility of parole.

15 And life, in South Carolina, is, is a true life
16 sentence. I mean it is the remainder of somebody's natural
17 life in prison.

18 That being said, you heard all these aggravating
19 circumstances, you heard any mitigating evidence, do you
20 really feel that you could vote for something other than the
21 death penalty?

22 A It's a possibility.

23 Q Okay.

24 A Yes.

25 Q Okay. You made a, a comment that if there are no other

Individual Juror Qualification

1 extenuating circumstances.

2 Would you, as a juror, have to hear extenuating
3 evidence provided?

4 Would you have to have, have the defendant bring you
5 some sort of mitigating evidence or circumstances in order
6 to justify to you voting for a life without parole sentence?

7 A Yes, I would agree with that statement.

8 Q Okay. If there was an absence of any mitigating
9 circumstances, would you automatically then kind of be back
10 to your, your, your opinion that you developed over the
11 years?

12 A Probably, yes.

13 Q Okay. All right. And you, you formed that opinion
14 over the course of years both in growing up in your, in your
15 adult life?

16 A Yes.

17 Q Okay. And that's an opinion that, that you kind of
18 consider to be firmly grounded and rooted in this, kind of
19 your soul of souls?

20 A Probably, yes.

21 Q Okay.

22 A Yes.

23 Q All right. Thank you, Mrs. Painter. I appreciate your
24 time.

25 A Thank you.

Individual Juror Qualification

1 THE COURT: State.

2 SOLICITOR BARNETTE: May it please the Court, Your
3 Honor.

4 THE COURT: Mr. Barnette.

5 SOLICITOR BARNETTE: Thank you, sir.

6 THE COURT: Yes, sir.

7 EXAMINATION

8 BY SOLICITOR BARNETTE:

9 Q Mrs. Painter, good morning.

10 A Good morning.

11 Q My name is Barry Barnette. I'm part of the prosecution
12 team along with Trey Gowdy and Cindy Crick in this
13 situation.

14 Following up what Mrs. Hodges said or whatever, when
15 you're talking about -- I noticed she asked you about though
16 mitigating circumstances.

17 A Uh-huh. (Affirmative).

18 Q You realize that mitigating circumstances can -- you
19 don't have to explain your verdict in that situation.

20 A Uh-huh. (Affirmative).

21 Q And it could come from your own feelings and things
22 like that when you listen to the evidence and everything.

23 A Right.

24 Q You don't -- the death penalty, by our law here in
25 South Carolina, you're never gonna be required to give death

Individual Juror Qualification

1 in any case. It's always a possibility in cases like this.

2 Life without parole is always an option in this situation.

3 You know, if I heard you right, you could look at
4 factors, and you'd look at the facts of the case, and you
5 wouldn't always give death in every case?

6 If you felt like there was a situation in your mind
7 that you could find life without parole in those situations?

8 A Correct.

9 Q So, it's something that you've thought about recently I
10 guess?

11 A Very recently, yeah, ever since I got the survey just
12 because they asked about it. I'm like well, how, you know,
13 after I answered, I started thinking how do I really feel
14 about it. I do feel strongly about it. But then, you know,
15 the, there could be -- I guess I keep calling it
16 circumstances or mitigation or whatever.

17 Q Okay.

18 A Mitigating circumstances.

19 Q In other words, you'd listen to the facts of the case.
20 The circumstances come from yourself based on what you see
21 off the evidence.

22 A Yes.

23 Q And you could determine those circumstances or
24 extenuating circumstances or mitigating circumstances in
25 your mind?

Individual Juror Qualification

1 A Yes.

2 Q It doesn't have to be produced from the defendant
3 itself. It could be based on what you hear from the
4 evidence in the case.

5 A True.

6 Q And would you do that if that presented itself, if you
7 heard those facts?

8 Let me rephrase that---

9 A Thank you.

10 Q ---for you. No problem.

11 So, if you heard -- in your mind, if you heard facts in
12 the case that was mitigating or extenuating circumstances,
13 you would take that into account?

14 A Yes.

15 Q And then like I say, it wouldn't have to come from the
16 defense?

17 I would come from the evidence itself?

18 A Right.

19 Q But like what was being discussed earlier, you'll hear
20 aggravating circumstances from the State. You may or may
21 not hear mitigating circumstances from the defense.

22 But you'd weigh the evidence and make your decision
23 based off that?

24 A Correct.

25 Q As well as those factors?

Individual Juror Qualification

1 A Correct.

2 Q And if the, those factors, like mitigating factors are
3 brought up, if you felt like that is warranted from the
4 facts of the case, you could find a life without parole in
5 that situation?

6 A I could.

7 Q But at the same time, you found the aggravating
8 circumstances or the facts of the case show that the death
9 penalty is warranted, you could do that also?

10 A I could.

11 Q And you'd listen to the law the judge gives to you?

12 A Yes, I would.

13 Q And like I said, I notice you're very conscientious and
14 we appreciate that cause, like I said, you listened very
15 carefully in answering his questions and our questions from
16 that standpoint.

17 But I guess the bottom line is, you would listen to --
18 you won't know what you're gonna do until you hear what this
19 case is about?

20 A Correct.

21 Q And you---

22 A I have no, no knowledge. I've actually been pretty
23 good about not listening to the news. Not letting my
24 friends talk about it even since I got the survey.

25 Q I understand.

Individual Juror Qualification

1 And you just wouldn't make your mind up after the first
2 part of the trial if we got to the second part of the trial?

3 Obviously you'd had to find guilt, guilty of murder
4 before you get to the second part of the trial.

5 A Right.

6 Q You'd listen to the second part of the trial I assume?

7 A Yes.

8 Q And you'd want to hear that second part of the trial I
9 assume before you'd made a decision---

10 A Yes.

11 Q ---you'd be asking to make?

12 A Yes.

13 Q And once that second part would be made, once you'd go
14 back in the jury room, then you'd make your decision?

15 A Yes.

16 Q And what would that be based off of, ma'am?

17 A All of the evidence, all of the testimonies, all of the
18 circumstances that have been presented during the course of
19 the time that I've been on the jury. I can't say that my
20 personal belief wouldn't also factor into it. It would.

21 Q Uh-huh. (Affirmative).

22 A You know, had you---

23 Q But you had personal experiences from that standpoint
24 that you bring to, as a juror?

25 A Right.

Individual Juror Qualification

1 Q Is that correct?

2 A Exactly.

3 Q And would, like I said, I know what your church
4 believes in---

5 A Uh-huh. (Affirmative).

6 Q ---from that standpoint, but that's not exactly what
7 you're gonna believe in in that case?

8 You're gonna have to make that decision for yourself?

9 A For myself, yes, sir.

10 Q And you'd make your decision based off of your
11 personal, off, off, by yourself?

12 A Off of my feelings from the trial and my -- I would
13 take it all into -- I would encompass all of that in making
14 my decision.

15 Q Yes, ma'am.

16 One moment, Your Honor, please?

17 THE COURT: Yes, sir.

18 (Pause.)

19 Q Thank you very much, ma'am, for answering my questions.

20 A You're welcome.

21 THE COURT: Any other questions from the defense?

22 MRS. HODGES: No, sir. Thank you.

23 THE COURT: Mr. Painter, let me just go over just a
24 couple of things with you.

25 WITNESS: Okay.

Individual Juror Qualification

1 THE COURT: We're very close to being in a position to
2 select a jury. We haven't done that yet obviously. When we
3 do that, we will be contacting those selected and those that
4 weren't selected to inform them of the, of the situation or
5 inform them as to what to do. But if you get a call and
6 you're asked to come back to the courthouse, you should be
7 prepared to stay for the week. Bring with you whatever
8 you'll need to do that and make whatever arrangements you
9 need to make to stay.

10 The -- and, and the contact information we have for you
11 I assume is correct since we got in touch with you.

12 Has it changed at all?

13 WITNESS: No.

14 THE COURT: I do also have to caution you that until we
15 tell you otherwise, my order about not talking about the
16 case, not gathering any information, information continues
17 until we tell you otherwise.

18 All right, ma'am. At this time that completes our
19 discussion this morning. Thank you for coming.

20 WITNESS: Thank you.

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

23 THE COURT: State's position?

24 SOLICITOR GOWDY: Your Honor, we believe she's
25 qualified. There's been, there's been a new question

Individual Juror Qualification

1 introduced into the voir dire process, which is if there, if
2 the defense presents no mitigation whatsoever, how will you
3 vote. In fairness to these jurors, I, I think the jurors
4 need to be told mitigation doesn't have to come from the
5 defense. It can come from thin air. It can come from her.
6 And when she knew that, all of her answers were qualified
7 answers.

8 The only time that you can even argue she was not
9 qualified was when she got a question that frankly doesn't
10 reflect the law in capital cases. So, I would say she's
11 qualified.

12 THE COURT: Defense.

13 MRS. HODGES: Thank you, Your Honor.

14 Your Honor, the juror in this particular case was
15 actually the, the, broached the subject of that if there
16 were no extenuating circumstances that, and then those were
17 her -- my recollection is that that was actually her
18 terminology was extenuating circumstances. If they're no
19 extenuating circumstances, that she could not vote for a
20 life sentence, and simply trying to follow-up with that to
21 determine whether she would require extenuating
22 circumstances to be, again, or mitigating factors to be
23 brought to her, and actually requiring the production of
24 that, and that was basically the, the question, she seemed
25 pretty clear in my understanding of her responses that, that

Individual Juror Qualification

1 she would require the defense to produce evidence in, in
2 mitigation.

3 And considering the colloquy as a whole, we would ask
4 that she be disqualified based on her responses as well as
5 our previous objections.

6 THE COURT: Anything further from the State?

7 SOLICITOR GOWDY: Only that, that, that I would argue,
8 Your Honor, that that's a hypothetical in and of itself.
9 Hypothetically if the defense presents no mitigation. We
10 know they are. I mean they told every other juror would you
11 be able to listen to our mitigation.

12 The fact is they are gonna present mitigating evidence.
13 So, to ask if we didn't, how would you vote is not only a
14 hypothetical of -- it's not a factually accurate
15 hypothetical. The totality of her responses, I believe
16 she's qualified.

17 THE COURT: The Court, the Court also finds that, from
18 the totality of her response, that she is qualified. I'll
19 place her on that list.

20 All right. We're, we're now on Panel Number Eleven.
21 The first juror there is Number 259, Delores Thomas.

22 DELORES THOMAS, having been previously
23 sworn, testified as follows:

24 EXAMINATION

25 BY THE COURT: