

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Jul 30 2021

Appeal from Lexington County

S.C. SUPREME COURT

Honorable Eugene C. Griffith, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TIMOTHY RAY JONES, JR.,

APPELLANT.

APPELLATE CASE NO. 2019-001008

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State of South Carolina)
) Court of General Sessions
County of Lexington)

2015-GS-32-0188, 0189,
0190, 0191, 0195

State of South Carolina)
) Transcript of Record
)
Timothy Ray Jones, Jr.)
)
) Defendant

April 29 - June 13, 2019

Lexington, South Carolina

B E F O R E:

Honorable Eugene C. Griffith, Jr., Judge

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

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(DW) - Denotes Defense Witness
(SW) - Denotes State's Witness

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5	101	Photo	X	2841
6	102	Photo	X	2841
7	103	Photo	X	2841
8	104	Photo	X	2841
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10	106	Photo	X	2841
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13	109	Photo	X	2841
14	110	Photo	X	2841
15	111	Photo	X	2841
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17	113	Photo	X	2841
18	114	Photo	X	2841
19	115	Photo	X	2841
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21	117	Photo	X	2841
22	118	Photo	X	2841
23	119	Photo	X	2841
24	120	Photo	X	2841
25	121	Photo	X	2841

1	122	Photo	X	2841
2	123	Photo	X	2841
3	124	Photo	X	2841
4	125	Photo	X	2841
5	126	Photo	X	2841
6	127	Photo	X	2841
7	128	Photo	X	2841
8	129	Photo	X	2841
9	130	Photo	X	2841
10	131	Photo	X	2841
11	132	Flier Flooring Sale	X	2916
12	133	Photo-Break Room (Court's 24)	X	2927
13	134	Map-Handwritten (Court's 26)	X	2927
14	135	Advise of Rights	X	2932
15	136	Miranda Form 9-2014	X	2950
16	137	Bank Records	X	4073
17	138	Saw Blades	X	3077
18	139	Goggles	X	3077
19	140	Saw	X	3077
20	141	Acid Bottle	X	3077
21	142	Mash	X	3077
22	143	Garbage Bags	X	3089
23	144	Advise of Rights	X	3100
24	145	DVD 9-8-2014	X X	3738
25	146	Aerial	X	3094

1	147	Aerial		X	3094
2	148	Photo		X	3149
3	149	Photo		X	3149
4	150	Photo		X	3149
5	151	Photo		X	3149
6	152	Photo		X	3149
7	153	Photo		X	3149
8	154	Photo		X	3149
9	155	Photo		X	3149
10	156	Photo		X	3149
11	157	Photo		X	3149
12	158	Photo		X	3149
13	159	Photo		X	3149
14	160	Photo		X	3156
15	161	Description Elias		X	3168
16	162	Description Merah		X	3168
17	163	Description Gabriel		X	3168
18	164	Description Abigail		X	3168
19	165	Description Nahtahn		X	3168
20	166	CD		X	3123
21	167	Garbage Bags/Brown Bag		X	3171
22	168	Belt		X	3172
23	169	Health Card	X	X	3188
24	170	Health Card	X	X	3188
25	171	Health Card	X	X	3188

1	172	Body Diagram Elias	X	X	3223
2	173	Body Diagram Merah	X	X	3227
3	174	Body Diagram Gabriel	X	X	3232
4	175	Body Diagram Abigail	X	X	3236
5	176	Body Diagram Nahtahn	X	X	3239
6	177	Photo-Knee	X	X	3240
7	178	Phone Records		X	3322
8	179	Phone Records		X	3322
9	180	Voice Mail 8-28-14		X	3322
10	181	Voice Mail 8-28-14		X	3322
11	182	Voice Mail 8-28-14		X	3322
12	183	Bedroom Woody Doll Photo	X	X	3354
13	184	Bedroom Woody Doll Photo	X	X	3354
14	185	Voice Mail Recording		X	3328
15	186	Video	X		3344
16	187	Video	X		3344
17	188	Video Jail Call CD	X	X	5214
18	189	Video	X	X	5214
19	190	Photo		X	3355
20	191	Photo		X	3355
21	192	Photo		X	3355
22	193	Photo		X	3355
23	194	Woody Doll		X	3360
24	195	Prescription Dosage		X	3421
25	196	Side Effects-Geodon		X	3425

1	197	Medical Records		X	3427
2	198	Redacted CD-Telephone Call	X		3535
3	199	Phone Messages	X		3593
4	200	Photo-Walmart	X	X	3725
5	201	Photo-Walmart	X	X	3725
6	202	Timeline		X	4074
7	203	Map	X		4075
8	204	Forensic Evaluation	X	X	4613
9	205	Dr. Fink Mental Health Eval.	X	X	4629
10					
11					
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PENALTY PHASEE X H I B I T SState's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
206	Body Recovery Video	X	X	5145
207	Elias Body Recovery Photos	X	X	5195
207A	Photo-Elias	X	X	5195
207B	Photo-Elias	X	X	5195
208	Merah Body Recovery Photo	X	X	5196
208A	Photo-Merah	X	X	5196
208B	Photo-Merah	X	X	5196
209	Gabriel Body Recovery Photo	X	X	5196
209A	Photo-Gabriel	X	X	5196
209B	Photo-Gabriel	X	X	5196
209C	Photo-Gabriel	X	X	5196
209D	Photo-Gabriel	X	X	5196
210	Abigail Body Recover	X	X	5197
210A	Photo-Abigail	X	X	5197
210B	Photo-Abigail	X	X	5197
211	Nahtahn Body Recovery Photo	X	X	5198
211A	Photo-Nahtahn	X	X	5198
211B	Photo-Nahtahn	X	X	5198
211C	Photo-Nahtahn	X	X	5198
211D	Photo-Nahtahn	X	X	5198
212	Autopsy-Eli	X	X	5223

1	212A	Photo-Eli	X	X	5223
2	212B	Photo-Eli	X	X	5223
3	212C	Photo-Eli	X	X	5223
4	212D	Photo-Eli	X		5224
5	212E	Photo-Eli	X		5224
6	212F	Photo-Eli	X		5224
7	212G	Photo-Eli	X		5224
8	212H	Photo-Eli	X		5224
9	212I	Photo-Eli	X		5224
10	213	Autopsy-Merah	X	X	5225
11	213A	Photo-Merah	X	X	5225
12	213B	Photo-Merah	X	X	5225
13	214	Autopsy-Gabriel	X	X	5226
14	214A	Photo Body-Gabriel	X	X	5226
15	214B	Photo Shirt-Gabriel	X	X	5226
16	214C	Photo Slipper-Gabriel	X	X	5226
17	214D	Photo Journal-Gabriel	X	X	5226
18	214E	Photo Diaper-Gabriel	X	X	5226
19	214F	Photo Body-Gabriel	X		5227
20	214G	Photo Body-Gabriel	X		5226
21	214H	Photo Body-Gabriel	X		5227
22	215	Autopsy Abigail	X	X	5227
23	215A	Photo Body-Abigail	X	X	5227
24	215B	Photo Body-Abigail	X	X	5227
25	216	Autopsy Nahtahn	X	X	5229

1	216A	Photo Body-Nahtahn	X	X	5229
2	216B	Photo Body-Nahtahn	X	X	5229
3	216C	Photo Elbow-Nahtahn	X	X	5229
4	217	Photo-Merah	X	X	5271
5	218	Photo-Eli	X	X	5271
6	219	Photo-Eli and Nahtahn	X	X	5271
7	220	Photo-Gabe	X	X	5271
8	221	Photo-Gabe Face	X	X	5271
9	222	Photo-Abigail	X		5214
10	223	Leadership Book-Merah	X	X	5237
11	224	Yearbook Tribute	X	X	5254
12	225	Photo-Mural	X		5254
13	226	Photo-Mural photo	X	X	5254
14	227	Photo-Mural photo	X	X	5254
15	228	Photo-Mural	X	X	5254
16	229	Photo-Mural	X	X	5254
17	230	Photo-Mural	X	X	5254
18	231	Photo-Mural	X	X	5254
19	232	Photo-Mural	X	X	5254
20	233	Photo-Mural	X	X	5254
21	234	Photo-Mural	X	X	5254
22	235	Photo-Mural	X	X	5254
23	236	Photo-Mural	X	X	5254
24	237	CD of Elias Reading	X	X	5263
25	238	Merah Class Photo-1st Grade	X	X	5238

1	239	Merah Class Photo-2nd Grade	X	X	5238
2	240	Merah Class Photo	X	X	5238
3	241	1st Grade photo	X	X	5238
4	242	Merah Spring Photo	X	X	5238
5	243	Merah Fall School Photo	X	X	5238
6	244	Merah Certificate	X	X	5238
7	245	Merah Kit Kat	X	X	5238
8	246	Merah Award	X	X	5238
9	247	Merah Award	X	X	5238
10	248	Merah StarBucks	X	X	5238
11	249	Merah Award	X	X	5238
12	250	Merah 1st Day of School	X		5239
13	251	Merah Achievement Award	X	X	5238
14	252	Merah "My Mother"	X	X	5238
15	253	Merah "Great Job"	X	X	5238
16	254	Merah Mission Statement	X		5297
17	255	Eli Leadership Book	X	X	5297
18	256	Eli School Picture	X	X	5297
19	257	Eli Teacher Note	X		5297
20	258	Eli Get Well	X	X	5297
21	259	Eli Farley Frog	X		5297
22	260	Eli American farewell	X		5297
23	261	Eli Army Man	X		5297
24	262	Eli 5K Butterfly	X	X	5297
25	263	Eli Award	X	X	5297

1	264	Eli Award	X	X	5297
2	265	Eli Drawing	X	X	5297
3	266	Eli Classroom Photo	X	X	5297
4	267	Eli Classroom Photo	X	X	5297
5	268	Eli Classroom Photo	X	X	5297
6	269	Eli Classroom Photo	X	X	5297
7	270	Eli Classroom Photo	X	X	5297
8	271	Eli Classroom Photo	X	X	5297
9	272	Eli Classroom Photo	X	X	5297
10	273	Eli Classroom Photo	X	X	5297
11	274	Eli Classroom Photo	X	X	5297
12	275	Eli Classroom Photo	X	X	5297
13	276	Eli Classroom Photo	X	X	5297
14	277	Eli Classroom Photo	X	X	5297
15	278	Nahtahn Leadership Book	X	X	5237
16	279	Nahtahn Spring Photo	X		5237
17	280	Nahtahn Fall Photo	X	X	5329
18	281	Nahtahn Class Photo	X	X	5329
19	282	Nahtahn Photos	X		5237
20	283	Mera Photos	X		5237
21	284	Eli Photos	X		5237
22	285	Photo-Necklace	X	X	5333
23	286	Photo-Merah	X		5237
24	287	Eli Paperwork	X		5237
25	288	Eli 1st Grade Paperwork	X	X	5297

1	289	Bus. Record Off Global Link	X	X	5219
2	290	Shadow Player Info Page	X	X	5220
3	291	McHenry County Clerk	X	X	5210
4	292	McHenry County Clerk	X	X	5210
5	293	McHenry County Clerk	X	X	5210
6	294	McHenry County Clerk	X	X	5210
7	295	McHenry County clerk	X	X	5210
8	296	Eli School Photo	X		5271
9	297	Eli School Photo	X	X	5271
10	298	Children's Photo	X		5271
11	299	Children's Photo	X		5271
12	300	Disney Photo	X		5271
13	301	Children's Restaurant Photo	X		5271
14	302	Merry-Go-round	X		5271
15	303	Merah and Abigail	X	X	5271
16	304	Merah Photo	X	X	5271
17	305	Merah Photo	X	X	5271
18	306	Merah Photo	X		5271
19	307	Eli Go-cart photo	X	X	5271
20	308	Eli Photo	X		5271
21	309	Eli Photo w/drawing	X	X	5271
22	310	Eli Photo	X	X	5271
23	311	Nahtahn photo	X	X	5271
24	312	Nahtahn Photo	X	X	5271
25	313	Nahtahn Photo	X	X	5271

1	314	Nahtahn Photo	X	X	5271
2	315	Nahtahn Photo	X		5271
3	316	Gabriel Photo	X		5271
4	317	Gabriel Photo	X	X	5271
5	318	Gabriel Photo	X	X	5271
6	319	Gabriel Photo	X	X	5271
7	320	Abigail Photo	X	X	5271
8	321	Abigail Photo	X	X	5271
9	322	Abigail Photo	X	X	5271
10	323	Abigail Photo	X	X	5271
11	324	Abigail Photo	X	X	5271
12	325	Abigail Photo	X	X	5271
13	326	Abigail Photo	X		5271
14	327	Abigail Photo	X		5271
15	328	Abigail Photo	X		5271
16	329	Abigail Photo	X		5271
17	330	Redacted Jail Call		X	5220
18	331	Eli's Yearbook	X		5271
19	332	Classroom Photo	X	X	5297
20	333	Death Certificate-Elias	X	X	5230
21	334	Death Certificate-Merah	X	X	5230
22	335	Death Certificate-Gabriel	X	X	5230
23	336	Death Certificate-Abigail	X	X	5230
24	337	Death Certificate-Nahtahn	X	X	5230
25	338	Merah 1st Grade Review	X	X	5254

1	339	Nahtahn Woody Writing	X	X	5307
2	340	Nahtahn K-5 Diploma	X	X	5315
3	341	Nahtahn 5-5 Graduation	X	X	5316
4	342	Verdict Form	X	X	5335
5	343	Indictments	X	X	5335
6	344	Eli Birth Certificate	X	X	5335
7	345	Merah Birth Certificate	X	X	5335
8	346	Abigail Birth Certificate	X	X	5335
9	347	Gabrial Birth Certificate	X	X	5335
10	348	Nahtahn Birth Certificate	X	X	5335

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E X H I B I T SDefendant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Travis Snyder CV (Court's 78)	X		2457
2	Imaging-Imgen	X	X	2465
3	Slide - T. Jones	X	X	2466
4	Photo	X	X	2697
5	Text Messages		X	2697
6	Text Messages		X	2697
7	White Board Info		X	2720
8	Booking Sheet (Court's 19)		X	2806
9	Log for Jail (Court's 20)		X	2806
10	Map		X	2824
11	Map		X	2824
12	Miscellaneous Papers	X	X	2894
13	Miscellaneous Papers	X	X	2906
14	Vehicle Photos	X	X	2906
15	Safety Plan Paperwork	X	X	2895
16	Notes Children	X	X	2907
17	Winter Words Book	X	X	2907
18	Advance Auto Parts	X	X	2907
19	Weekly Folder	X	X	2907
20	Basketball Drawing Paper	X	X	2907
21	Gingerbread Project	X	X	2907
22	Weekly Folder	X	X	2907

1	23	Reading Logs	X	X	2907
2	24	Book-Stocks	X	X	2907
3	25	Full Tone Fast Photo	X	X	2907
4	26	Achievement Certificate	X	X	2907
5	27	Art Award	X	X	2907
6	28	Congratulation Certificate	X	X	2907
7	29	Gold StarBucks	X	X	2907
8	30	Success Certificate	X	X	2907
9	31	Door Hanger	X	X	2907
10	32	Student Award	X	X	2907
11	33	Purple Home Challenge	X	X	2907
12	34	Blue Home Change	X	X	2907
13	35	Star Student Award	X	X	2907
14	36	KitKat Award	X	X	2907
15	37	Highest Reading Cert.	X	X	2907
16	38	I Want To Be	X	X	2907
17	39	Highest Math Cert.	X	X	2907
18	40	Owl	X	X	2907
19	41	Report Card	X	X	2907
20	42	Book-Red String	X	X	2907
21	43	Merah-Problems/Family	X	X	2908
22	44	Star-Christmas	X	X	2908
23	45	Report Card Folder	X	X	2908
24	46	8 of 12 Stock	X	X	2908
25	47	All About Me Booklet	X	X	2908

1	48	Buy Paperwork	X	X	2908
2	49	Blue Bible	X	X	2908
3	50	Bible-Nathan Jones	X	X	2908
4	51	Bible-Merah Jones	X	X	2908
5	52	John Wrapper	X	X	2910
6	53	Kindle/Recorder	X	X	2910
7	54	Bonds	X	X	2910
8	55	CD and Disney Card	X	X	2903
9	56	Checkbook/Paper	X	X	2903
10	57	Disney Word Pass	X	X	2903
11	58	Marriage Cert	X	X	2903
12	59	Phi Theta Kappa	X	X	2903
13	60	Masons SC Book	X	X	2911
14	61	Elias Note	X	X	2911
15	62	Bible-Eli Jones	X	X	2911
16	63	Inventory Box	X	X	2912
17	64	Discharge Cert	X	X	2912
18	65	Car Freshener	X	X	2912
19	66	Child Abuse Pamphlet	X	X	2912
20	67	Pay Stubs	X	X	2912
21	68	Divorce Papers Final	X	X	2912
22	69	Photos	X	X	2912
23	70	Lights, Camera	X	X	2912
24	71	Red Notebook	X	X	2912
25	72	School Portraits	X	X	2912

1	72A	Nahthan School Picture	X	X	2912
2	73	Baby Book	X	X	2910
3	74	Bible	X	X	2910
4	75	Diploma	X	X	2913
5	76	Cassette	X	X	2903
6	77	Godly Home Box Tapes	X	X	2899
7	78	Medication	X	X	2913
8	79	Photos	X	X	2894
9	80	Photo	X	X	2891
10	81	Photo	X	X	2891
11	82	Photo	X	X	2892
12	83	Photo	X	X	2892
13	84	Photo	X	X	2892
14	85	Photo	X	X	2892
15	86	Photo	X	X	2892
16	87	Photo	X	X	2895
17	88	Photo	X	X	2895
18	89	Photo	X	X	2895
19	90	Photo	X	X	2895
20	91	Photo	X	X	2895
21	92	Photo	X	X	2897
22	93	Photo	X	X	2897
23	94	Photo	X	X	2897
24	95	Photo	X	X	2897
25	96	Audio File Transcript	X	X	3143

1	97	Photo	X	X	3141
2	98	Photo	X	X	3141
3	99	Photo	X	X	3141
4	100	Photo	X	X	3141
5	101	Photo	X	X	3141
6	102	Photo	X	X	3141
7	103	Mental State Int	X	X	3142
8	104	Photo		X	3197
9	105	Photo		X	3197
10	106	Photo		X	3197
11	107	Photo		X	3197
12	108	Photo		X	3197
13	109	Photo-Merah	X		3262
14	110	Photo-Elias	X		3262
15	111	Photo-Nahtahn	X		3262
16	112	Photo-Gabriel	X		3262
17	113	Photo-Gabriel	X		3262
18	114	Cause of Death		X	3249
19	115	Cause of Death		X	3249
20	116	Cause of Death		X	3249
21	117	Cause of Death		X	3249
22	118	Cause of Death		X	3249
23	119A	Photos		X	3267
24	119B	Photo-Medicine		X	3267
25	119C	Photo-Books		X	3267

1	120	Chantix		X	3268
2	121	Chantix		X	3268
3	122	Godly Seed Book		X	3347
4	123	Affidavit Amber	X		3350
5	124	Chantix Information	X	X	3402
6	125	Chain of Custody Form-Miss.		X	3461
7	126	Note-Officer Pressley		X	3503
8	127	Cell Phone Photos		X	3612
9	128	Video-Travis Snyder		X	3621
10	129	Mental State Protocol-PowerPt.	X		3621
11	130	Car Audio Tape 9/9/14		X	3692
12	131	Report-Dr. Aghardar	X		3765
13	132	Report-Dr. Aghardar	X		3765
14	133	Chantix		X	3268
15	134	Affidavit	X	X	3881
16	135	CD Dr. Bigler-Images	X	X	3937
17	136	Vitae Dr. Bigler	X		3934
18	137	Powerpoint		X	3977
19	138	Flashdrive	X	X	4036
20	139	Photo	X	X	4029
21	140	Photo	X	X	5511
22	141	Photo	X	X	5511
23	142	Photo	X	X	5511
24	143	Photo	X		4030
25	144	Photo	X	X	4029

1	145	Photo	X		4030
2	146	Photo	X	X	4029
3	147	Photo	X		4030
4	148	Photo	X	X	4029
5	149	Photo	X	X	4029
6	150	Photo	X	X	4920
7	151	Photo	X	X	4029
8	152	Photo	X	X	4029
9	153	Photo	X	X	4029
10	154	Photo	X	X	4029
11	155	Photo	X	X	4029
12	156	Photo	X		4030
13	157	Photo	X	X	4029
14	158	Photo	X	X	4029
15	159	Photo	X		4030
16	160	Photo	X	X	4029
17	161	Photo	X		4030
18	162	Photo	X	X	4029
19	163	Photo	X	X	4029
20	164	Photo	X	X	4029
21	165	Photo	X	X	4010
22	166	Photo	X	X	4010
23	167	Photo	X	X	4010
24	168	Photo	X	X	4010
25	169	Photo	X	X	4010

1	170	Photo	X	X	4010
2	171	Photo	X	X	4010
3	172	Photo	X	X	4010
4	173	Photo	X	X	4010
5	174	Photo	X	X	4010
6	175	Photo	X	X	4010
7	176	Photo	X	X	4010
8	177	Photo	X	X	4010
9	178	Photo	X	X	4010
10	179	Photo	X	X	4010
11	180	Photo	X	X	4010
12	181	Photo	X	X	4010
13	182	Photo	X	X	4010
14	183	Photo	X	X	4010
15	184	Photo	X	X	4010
16	185	Photo	X	X	4010
17	186	Photo	X	X	4010
18	187	Photo	X	X	4010
19	188	Photo	X	X	4010
20	189	Photo	X	X	4010
21	190	Photo	X	X	4010
22	191	Photo	X	X	4010
23	192	Photo	X	X	4010
24	193	Photo	X	X	4010
25	194	Photo	X	X	4010

1	195	Photo	X	X	4010
2	196	Photo	X	X	4010
3	197	Photo	X	X	4010
4	198	Photo	X	X	4010
5	199	Photo	X	X	4010
6	200	Photo	X	X	4010
7	201	Photo	X	X	4010
8	202	Photo	X	X	4010
9	203	Photo	X	X	4010
10	204	Photo	X	X	4010
11	205	Photo	X	X	4010
12	206	Photo	X	X	4010
13	207	Photo	X	X	4010
14	208	Photo	X	X	4010
15	209	Photo	X	X	4010
16	210	Photo	X	X	4010
17	211	Photo	X	X	4010
18	212	Timeline	X	X	4059
19	213	CD-Video-Lipman		X	4101
20	214	Photo		X	4122
21	215	Photo		X	4122
22	216	Photo		X	4122
23	217	Photo		X	4122
24	218	Photo		X	4122
25	219	Photo		X	4122

1	220	Photo		X	4122
2	221	Photo		X	4122
3	222	Photo		X	4122
4	223	Photo		X	4122
5	224	Photo		X	4122
6	225	Photo		X	4122
7	226	Photo		X	4122
8	227	Photo		X	4125
9	228	Photo		X	4125
10	229	Photo		X	4125
11	230	Photo		X	4125
12	231	Photo		X	4125
13	232	Photo		X	4125
14	233	Photo		X	4125
15	234	Timeline		X	4125
16	235	Safety Plan		X	4143
17	236	Photo	X	X	5511
18	237	Photo	X		4476
19	238	Photo	X	X	5511
20	239	Photo	X		4476
21	240	Photo	X		4476
22	241	Photo	X	X	5828
23	242	Photo	X	X	4476
24	243	Photo	X	X	4431
25	244	Photo	X		4476

1	245	Photo	X	X	4476
2	246	Photo	X	X	4476
3	247	Photo	X	X	4476
4	248	Photo	X		4476
5	249	Photo	X		4476
6	250	Photo	X		4476
7	251	Photo	X	X	4431
8	252	Photo	X	X	4431
9	253	Photo	X	X	4431
10	254	Photo	X		4476
11	255	Photo	X		4476
12	256	Photo	X		4476
13	257	Photo	X		4476
14	258	Photo	X		4476
15	259	Photo	X	X	4431
16	260	Pinata Video	X		4431
17	261	Swimming Pool Video	X		4431
18	262	Photo	X	X	4352
19	263	Photo	X		4353
20	264	Photo	X		4353
21	265	Photo	X		4353
22	266	Photo	X	X	4353
23	267	Voluntary Stmt-C. Ballentine	X	X	4266
24	268	Photo	X	X	4300
25	269	Photo	X	X	4300

1	270	Photo	X	X	4300
2	271	Photo	X	X	4300
3	272	Photo	X		4300
4	273	Photo	X		4300
5	274	Photo	X		4300
6	275	Photo	X		4300
7	276	Photo	X		4300
8	277	Photo	X		4300
9	278	Photo	X		4300
10	279	Photo	X		4300
11	280	Photo	X	X	4300
12	281	Photo	X	X	4300
13	282	Photo	X	X	4300
14	283	Photo	X		4300
15	284	Photo	X		4300
16	285	Photo	X		4300
17	286	Photo	X	X	4300
18	287	Photo	X		4300
19	288	Photo	X		4300
20	289	Photo	X	X	4300
21	290	Photo	X		4300
22	291	Photo	X		4300
23	292	Seaworld Ticket	X	X	4296
24	293	Red Lobster Receipt	X		4300
25	294	Facebook-Joy Lorick	X		4300

1	295	Report-Matt Martin	X		4300
2	296	Parking Permit	X	X	4290
3	297	Red Lobster Receipt	X	X	4293
4	298	Video-Beach	X	X	4291
5	299	Department of Navy	X	X	4571
6	300	Photo-Cell-Suicide	X	X	4565
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PENALTY PHASE**E X H I B I T S**Defendant's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
301	Photo-Merah	X	X	5265
302	Photo-Children	X	X	5265
303	Photo-Nahtahn & Tim Jones	X	X	5265
304	Photo-School/Family/Eli	X	X	5265
305	Photo	X	X	5274
306	Photo		X	5274
307	Photo		X	5274
308	Photo		X	5274
309	Photo		X	5274
310	Photo		X	5274
311	Photo		X	5274
312	Photo		X	5274
313	Photo		X	5274
314	Photo		X	5274
315	Photo		X	5274
316	Photo		X	5274
317	Photo		X	5274
318	Photo		X	5274
319	Photo		X	5274
320	Photo		X	5274
321	Photo		X	5274

1	322	Photo		X	5274
2	323	Photo		X	5274
3	324	Photo		X	5468
4	325	Photo		X	5468
5	326	Photo	X	X	5511
6	327	Photo	X	X	5511
7	328	Photo	X	X	5511
8	329	Photo Back Tattoo	X	X	5524
9	330	Photo	X		5524
10	331	Photo-Tim Sr.	X		5524
11	332	Photo-Tim, Sr. and Kids	X		5524
12	333	Photo-Tim, Sr.	X		5524
13	334	Family Photo	X		5524
14	335	Tim, Jr. and Sr.	X		5524
15	336	Photo	X	X	5862
16	337	Photo	X	X	5862
17	338	Photo	X	X	5862
18	339	Photo-Julie	X	X	5827
19	340	Photo-Julie	X	X	5827
20	341	Photo-Julie	X	X	5827
21	342	Photo-Kids	X	X	5827
22	343	Photo	X	X	5827
23	344	Photo	X	X	5870
24	345	Photo	X	X	5870
25	346	Photo		X	5870

1	347	Photo	X	X	5870
2	348	Photo	X	X	5870
3	349	Photo	X	X	5870
4	350	Photo	X	X	5870
5	351	Photo	X	X	5870
6	352	Flash Drive		X	5473
7	353	Family History Records 1-33	X		5593
8	354	Family History Records 34-37	X		5593
9	355	Family History Records 38-1	X		5593
10	356	Family History Records 38-2	X		5593
11	357	Family History Records 38-3-51	X		5593
12	358	Family History Records 52-95	X		5593
13	359	Family History Records 96-146	X		5593
14	360	Family History Records 147-212	X		5593
15	361	Flash Drive Pool video	X	X	5516
16	362	Genogram One	X	X	5666
17	363	Genogram Two	X	X	5782
18	364	Audio Memorial Video	X	X	5870
19	365	Audio Bikes Video	X	X	5828
20	366	Photo Tim Jones	X	X	5853
21	367	Family Photo	X	X	5854
22	368	Photo-Julie and Kids	X	X	5828
23					
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25					

E X H I B I T SCourt's 1 through 64 were marked during pretrial hearings

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
1	Qualifications-Molly Miller	X		PreTrial
2	H. Briggs Case	X		Pretrial
3	McClendon Case	X		Pretrial
4	G. Dale Case	X		Pretrial
5	R. Drake Case	X		Pretrial
6	Map	X		Pretrial
7	Photo	X		Pretrial
8	Photo	X		Pretrial
9	State's 59-Photo	X		Pretrial
10	Photo	X		Pretrial
11	State-s 60-Photo	X		Pretrial
12	Photo-Sign	X		Pretrial
13	Affidavit C. Johnson	X		Pretrial
14	Indictment	X		Pretrial
15	Photo	X		Pretrial
16	Photo	X		Pretrial
17	Affidavit	X		Pretrial
18	Affidavit for Search Warrants	X		Pretrial
19	Defense 8-Intake Form Jail	X		Pretrial
20	Defense 9-Suicide Watch Forms	X		Pretrial
21	Disk/Interview	X		Pretrial
22	Sheriff Patterson Notes	X		Pretrial

1	23	Interrogation Form	X	Pretrial
2	24	State 134-Map of Interview Rm	X	Pretrial
3	25	Children Handwritten Notes	X	Pretrial
4	26	State 133-Photo Interview Rm	X	Pretrial
5	27	Notes in Case	X	Pretrial
6	28	Eric Johnson Investigator	X	Pretrial
7	29	Marty Patterson Notes	X	Pretrial
8	30	Photo	X	Pretrial
9	31	Photo	X	Pretrial
10	32	Photo	X	Pretrial
11	33	Photo	X	Pretrial
12	34	Photo	X	Pretrial
13	35	Photo	X	Pretrial
14	36	Photo	X	Pretrial
15	37	Photo	X	Pretrial
16	38	Photo	X	Pretrial
17	39	Photo	X	Pretrial
18	40	Photo	X	Pretrial
19	41	Disk	X	Pretrial
20	42	Advice of Rights	X	Pretrial
21	43	Audio-Interview	X	Pretrial
22	44	Def.96-Transcript Interview	X	Pretrial
23	45	Advice of Rights	X	Pretrial
24	46	Map of Alabama	X	Pretrial
25	47	Transcript Interview	X	Pretrial

1	48	Transcript Interview	X	Pretrial
2	49	Defense 103-Mental State Protocol	X	Pretrial
3	50	Photo	X	Pretrial
4	51	Photo	X	Pretrial
5	52	Photo	X	Pretrial
6	53	Photo	X	Pretrial
7	54	Photo	X	Pretrial
8	55	Photo	X	Pretrial
9	56	Creech's Interview Report	X	Pretrial
10	57	Memo to support Suppression of Evidence	X	Pretrial
11	58	Tim Jones Affidavit	X	Pretrial
12	59	Defense Memorandum	X	Pretrial
13	60	Department of Mental Health	X	Pretrial
14	61	Notebook of Photos	X	Pretrial
15	62	YouTube Blog	X	Pretrial
16	63	Witness List	X	Pretrial
17	64	Three types of Jurors	X	Pretrial
18	65	SC Capital Voir Dire	X	180
19	66	Types of Potential Jurors	X	169
20	67	Newspaper Article	X	448
21	68	NOT Photo	X	724
22	69	Sentencing Flow Chart	X	724
23	70	Medical Photos	X	724
24	71	Sentencing Principles	X	724
25	72	Handwritten note for Court	X	908

1	73	Info Sheet-Rachna Prasad	X	1304
2	74	Newspaper Article	X	1919
3	75	Motions 1-102	X	2444
4	76	State Article	X	2372
5	77	Recording Interview	X	5974
6	78	Travis Snyder DV	X	2466
7	79	Search Warrant	X	2525
8	80	Mental Health Evaluation	X	2547
9	81	Scooby Snax Evidence Log	X	5974
10	82	Justin Smith CV	X	5974
11	83	Preliminary Instructions	X	2906
12	84	Booklet of Crime Scene Photos	X	3163
13	85	Transcript Travis Snyder	X	3621
14	86	Defense 129-Powerpoint	X	5974
15	87	Mental Health Audio-Amber Kyzer	X	3341
16	88	Defense 132-Appendix	X	3776
17	89	Dr. Agharkar Defense 131-Report of	X	3807
18	90	Dr. Agharkar Video-Cynthia Turner	X	3923
19	91	Notice of Petition	X	3924
20	92	Elias-Health Care Records	X	4162
21	93	Merah-Health Care Records	X	4162
22	94	Forensic Evaluation	X	4611
23	95	CV-Dr. Frierson	X	4611
24	96	Suicide Video	X	4543
25	97	Patient Handbook	X	4603

1	98	Limiting Instructions	X	4713
2	99	Deborah Grey Social History	X	4714
3	100	CV Julie Dorney, MD	X	4773
4	101	Illinois State Police	X	4840
5	102	Forensic Evaluation	X	4985
6	103	Forensic Psychiatry	X	4907
7	104	Dr. Kruse Testing	X	4980
8	105	Note-Curative Instruction	X	4985
9	106	Defense Request Jury Charges	X	4985
10	106A	YouTube Videos	X	5051
11	107	Audio Tape 14, Godly Home	X	5974
12	108	State's 33A-CD Phone Extraction	X	5089
13	109	Printed Summary-State's 33A	X	5089
14	110	Defense Portion of Extraction Report	X	5096
15	111	Jury Note for Extraction	X	5096
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Penalty Phase**E X H I B I T S**Court's

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>	<u>PAGE#</u>
112	Letter from Amber to Tim, Jr.	X		5159
113	Letter from Rick to Tim, Jr.	X		5159
114	McHenry County Clerk	X		5210
115	McHenry County Clerk	X		5210
116	McHenry County Clerk	X		5210
117	McHenry County Clerk	X		5210
118	Jail Call	X		5219
119A	Autopsy Photos	X		5278
119B	State's 59-Photo	X		5278
120	Dr. Maddox Report	X		5398
121	Genogram	X		5592
122	Adriana Flores CV	X		5630
123	Affidavit A. Flores	X		5630
124	Interpretative Consideration	X		5630
125	Witness List	X		5606
126	Defendant's Proposed Charges	X		5974
127	Jury Instructions	X		5974
128	Jury Note	X		5974
129	Jury Note-Verdict	X		5974
130	Jury Sworn Information	X		5974

1 April 29, 2019

2 THE COURT: All right, this morning, when we left
3 Friday at our status conference there was an issue we had
4 pending is to when to arraign, we have got to arraign Mr.
5 Jones before the jury is selected. So we need to do that
6 and there was a discussion as to whether to do the
7 arraignment in the presence of the jury and we can arraign
8 Mr. Jones now and we could possibly do it again in front
9 of the jury. Mr. Young, please let me hear you on that
10 issue.

11 MR. YOUNG: Your Honor, Mr. Jones is requesting a
12 formal arraignment in front of the jury panel.

13 THE COURT: All right.

14 MR. HUBBARD: We absolutely oppose it, there is no
15 right to be arraigned in front of the jury panel. In this
16 case he is seeking to take the plea of not guilty by
17 reason of insanity. We have had months and months of
18 discussion about everything from the mailer we sent out,
19 the questionnaire we sent out to the jurors and all the
20 debates we are going to have on voir dire. This let's
21 them know specifically what his claim is, it is too early.
22 This is not the forum for that. I think prudence is to
23 arraign him here, it is not a violation of his rights, it
24 secures his rights and we go in there and we draw a panel
25 of jurors without specifically identifying their plea. I

1 don't believe them stating that he is not guilty by reason
2 of insanity is something they are entitled to do in front
3 of that jury.

4 MR. YOUNG: We can't start a trial without telling
5 the jury that he has plead not guilty by reason of
6 insanity.

7 MR. HUBBARD: Actually, we can, it is called opening
8 statement. It is opening statement, what they propose for
9 Your Honor was clearly an opening statement when he
10 absolutely and inappropriately for the Court to state
11 something that they can then change. Now a Court has
12 staked out a factual, you know, defense for that. I think
13 that is highly inappropriate. I think prudence is, we
14 have been so prudent for you to conduct this hearing right
15 here, let's go in there and draw and qualify the big panel
16 and stick to our plan, Judge. I think we are spot on
17 right now on how you are doing it.

18 MR. YOUNG: Judge, the State wants to put a bag over
19 the jury's head and not tell them what is going on because
20 they want this trial to result in the death of Mr. Jones.
21 Mr. Jones is going to be put to death or sentenced to life
22 based on what the jury decides. And to ask them to decide
23 that with blinders on is just ridiculous and it is unfair
24 and it deprives Mr. Jones of due process and the Sixth
25 Amendment right to a fair jury and his rights to due

1 process under the Fourteenth Amendment in South Carolina
2 and the U.S. Constitution. I have never seen a case where
3 the Judge didn't say, this is what he is charged with,
4 this is how he has plead.

5 MR. HUBBARD: And, Judge, there is no case saying he
6 has a right to do it front of a panel, period.

7 THE COURT: All right, here, I have thought about
8 this since Friday, with it being a Capital case, slightly
9 different rights or additional rights are at play with the
10 Defendant and Mr. Jones is in that position of being
11 noticed by the State to, the State seeking the death
12 penalty. My fear is that he is allowed to be arraigned in
13 the presence of the jury, he is allowed to be entered to a
14 plea. Understanding that not guilty is request for a jury
15 trial and then an affirmative defense of the not guilty
16 being by reason of insanity. I think it would be
17 inappropriate for me to comment on the facts and I don't
18 want to do that. I think that until the testimony comes
19 out that my process with the jury is, Mr. Jones has
20 entered a plea of not guilty by reason of insanity. The
21 State has the burden of proving his guilt. I am already
22 looking at what the form of the verdict form would be
23 right now. But until we fill in testimony to that I am
24 uncertain as to what all that would or could include.
25 Potentially guilty, guilty but mentally ill, not guilty by

1 reason of insanity or not guilty are all on the table, are
2 they not?

3 MR. YOUNG: I haven't argued about, the only reason
4 that not guilty would be on there would be jury
5 nullification.

6 THE COURT: I mean that is all out there for me right
7 now because I have no testimony to consider what would be
8 on the thing. But potentially those are out there.

9 MR. YOUNG: By statute, the statute says that when a
10 Defendant enters a plea of not guilty by reason of
11 insanity the Judge shall include four verdicts on the
12 verdict form.

13 MR. HUBBARD: That is after testimony is in. Let's
14 talk about we don't want the jury to know about this plea
15 is absurd. It is just the timing of it. And, Judge,
16 there is nothing that suggest that it is imperative that
17 we do it right now. This is, it is premature, you haven't
18 even qualified this panel. They are bringing in this
19 courtroom now, all of preconceived notions of what is
20 going on in this trial, what the law is, what the facts
21 are, who knows. So it is inappropriate at this time. It
22 just makes the challenge for everybody a steeper uphill
23 climb. That is why you need to be in charge and I think
24 the best way to retain the integrity of this case is to do
25 what we need to do right here, have an arraignment right

1 here, go in there and, Judge, I think they are the ones
2 that need to come out in their opening and say they have
3 got an affirmative defense. Because when we do the jury
4 qualification, you know, all of those cases, Hill,
5 Patterson, others about specific defenses or mitigating
6 circumstances, we all make it, the law is clear, it has
7 got to be brought. So we absolutely undermine what we are
8 going to do right there.

9 MR. YOUNG: It doesn't undermine us to get a fair
10 Juror who can fairly consider not guilty by reason of
11 insanity, guilty but mentally ill, guilty and not guilty.
12 Those are all questions which Your Honor has to ask them
13 in order to determine whether or not they are, in fact,
14 impartial in the matter or should be set aside under the
15 South Carolina code.

16 THE COURT: I think we have got all the challenges
17 which the Solicitor is enumerating, which the Defense is
18 aware of. We have got huge challenges in qualifying this
19 jury no matter which road we take. I am not aware of
20 another Capital case in South Carolina where the plea was
21 entered not guilty by reason of insanity. I am not aware
22 of it. There may be one, is Stanko a possibility?

23 MR. YOUNG: Yes.

24 THE COURT: And I have not read Stanko. I think the
25 more, I am going to call it, conservative approach to

1 protect Mr. Jones' rights is to arraign him in the
2 presence of the jury and allow him to enter that plea in
3 that fashion so as to not, I am going back to some other
4 cases that I have seen, Judges in Capital cases advise the
5 State, they advise the Defense lawyers, yes, yes, yes,
6 that is correct and that is done. But you have got to
7 advise the Defendant too and I am kind of using that as an
8 analogy. If Mr. Jones isn't allowed to do that
9 potentially that is a mistake from the getgo.

10 MR. HUBBARD: Here is why I don't think it is. First
11 of all, there is no case saying, he has a right to be
12 arraigned. There is no case that says it must be in front
13 of a jury panel, none, anywhere. Secondly, Stanko, which
14 the plea was, he was claiming that he was insane. Even in
15 the voir dire the Judge did not allow them to specifically
16 ask about not guilty by reason of insanity. And,--

17 MR. YOUNG: Because it has--

18 MR. HUBBARD: I have got the floor, I will give you a
19 chance. The Judge broke it down and said, here are these
20 ten options on mitigating circumstances and other matters.
21 And so, Judge, to me, it undercuts everything if you do
22 that, by taking him out there and letting him enter his
23 plea right now. That is going to be on all the news right
24 now and then when we are qualifying them they are going to
25 be saying, well, Judge, you have already informed the jury

1 so we might as well go down that road that no other Court
2 is letting them do. Didn't do it in Blackwell, didn't do
3 it in, you know, when they wanted to have a definition of
4 murder, when they, you know, wanted to get into the
5 various mitigating circumstances they wanted -- the Judge
6 said, no, I am going to read the list. That is what
7 Stanko is about too. To me, you are going to be hearing
8 that argument the minute you give them this and they are
9 not entitled to it. They are entitled to an arraignment
10 right here. That is why I am going to ask you to
11 reconsider or we are going to have a really big mess when
12 we start tomorrow on panels. And I think it would be to
13 the detriment of getting a jury which is ultimately,
14 ultimately, it is not the Defense's lawyer's right, the
15 Defendant's, it goes to getting fair jurors. And I think
16 it is going to undermine the process of getting a jury
17 panel.

18 THE COURT: It is going to be tough either way we go.
19 All right, Mr. Young.

20 MR. YOUNG: Your Honor, I was just going to comment.
21 The ruling in Stanko was that the voir dire issues weren't
22 preserved, they didn't use all of their strikes. There is
23 a lot of dicta going back and forth about the Judge said,
24 the Judge at one point and time said, well, if you are
25 going to talk about affirmative defenses you have to list

1 them all. The Defense said, well, we are abandoning that
2 line of questioning. That is as far as it went. The
3 opinion then goes on to say, at the end, we are in no way
4 saying that the Defendant should not be entitled to ask
5 about jurors views about the insanity defense and inquire
6 -- there is nothing that says that shouldn't be allowed.
7 The way that it was done and then abandoned in Stanko did
8 not render the jury in that case fundamentally unfair and
9 then Justice Pleicones' dissent goes into a pretty good
10 lengthy discussion about how unfair it would be had the
11 Defense elected to push the position on inquiring about
12 not guilty by reason of insanity, which they had
13 abandoned.

14 MR. HUBBARD: Here is the thing, Stanko wasn't
15 talking about arraignment.

16 THE COURT: Do y'all have a copy of Stanko while we
17 are talking about it? Wait a minute, I have got it in my
18 notebook.

19 MR. HUBBARD: Judge, here is the thing, they are
20 talking about voir dire now. And the Court said, yeah, it
21 wasn't preserved but we are going to go ahead and address
22 it. So they did because they knew a Judge like yourself
23 would be faced with this exact same question. But what
24 they are doing is interlacing voir dire with his right to
25 come in here and plead not guilty by reason of insanity.

1 It is a separate thing. My argument is though, Judge, you
2 would actually be undermining all of your previous rulings
3 by ruling that he can claim not guilty by reason of
4 insanity in front of the jury panel because then it will
5 undercut everything you have talked about on voir dire.
6 But the case focuses on voir dire, they said they are
7 going to give the Judge discretion, he did nothing wrong.
8 I think--

9 THE COURT: She.

10 MR. HUBBARD: Judge Couch. No, no, Judge Deadra
11 Jefferson, I am sorry, Couch was in Blackwell. But the
12 Judge did nothing wrong. And Pleicones is actually, it is
13 like they are building their argument on the dissent.
14 But, Judge, it is not voir dire we are talking about now
15 but if you rule the way you suggested you might we are
16 going to be having a whole other argument about voir dire
17 that these other Judges have carefully avoided. And I
18 would suggest, Your Honor, that what your Colleagues did
19 was very prudent by reserving that issue for yourself.
20 Let him do it now, outside the presence of a jury and then
21 when we do move to the voir dire you do what Judge Couch
22 did and I think Judge Jefferson did it as well, that you
23 don't let them get into specific factors. Judge, our
24 position ultimately is simple. There is, when you are
25 ultimately arraigned you are either guilty or not guilty.

1 They have to come forward at some point and put forward
2 evidence of not guilty by reason of insanity. They don't
3 have a right to claim it now without putting anything
4 forward.

5 MR. YOUNG: They have our report from an expert that
6 is saying--

7 MR. HUBBARD: That is their evidence, they are
8 obligated to put forward and the Court can't embrace it at
9 this point.

10 MR. YOUNG: I can put it in now.

11 MR. HUBBARD: We usually try stuff in front of a jury
12 once they are actually sitting on a jury and not now.

13 MR. YOUNG: Unless we lie to them.

14 MR. HUBBARD: Judge,--

15 THE COURT: Hang on. Y'all don't get all--

16 MR. HUBBARD: I would suggest this too. It is not
17 unusual for people on the Defense side to abandon a plea,
18 take another tact, I think it undercuts all of that.

19 THE COURT: That is their risk if they do that. I
20 mean, I agree with you. They can go where ever the
21 testimony goes.

22 MR. HUBBARD: That is why this needs to start off
23 right here in this room, Judge, not out in front of that
24 panel. Because that is a risk and that is what we can
25 take care of.

1 MR. YOUNG: Judge, my understanding is that the Court
2 has ruled on the arraignment issue and I would like to
3 move on to one other matter.

4 THE COURT: I am not ready yet. Mr. Young, you want
5 to be heard any further on this, Mr. Hubbard?

6 MR. HUBBARD: Judge, my final thought just to make it
7 very plain. I think if we do this in front of the jury we
8 will have created an issue during the entire voir dire
9 process that we can avoid.

10 THE COURT: How are we going to avoid it. Let's
11 suppose the plea is entered not guilty, I mean, I am
12 sorry, not guilty and gets a trial. Then during voir dire
13 your proposal would be ask the jurors during their
14 individual questioning, what are your opinions for these
15 mitigating factors and list most of them.

16 MR. HUBBARD: I think you have to list all of them
17 and that is what the prudent course the Judges have taken
18 because it keeps the Court neutral. And it also
19 recognizes that is something that the Defense has to come
20 forward on. So you stay neutral that way. But it
21 protects the Defendant's rights because it is covered and
22 the degree of how much that questioning is, Judge, you can
23 determine that. And we may haggle over that but how far
24 it goes, we will leave that to you and we understand that
25 is your call. But right now an arraignment process, there

1 is two pleas, guilty, not guilty. They have to put
2 something forward to say not guilty by reason of insanity.
3 That is why through the voir dire process you don't focus
4 on any one plea or any one piece of mitigating evidence.
5 You just, can you be fair for all of these things. That
6 way they haven't locked in and when they do that is fine.

7 MR. YOUNG: Judge, if that were true, which it is not
8 then I wouldn't have to provide them with notice of an
9 intent to offer a not guilty by reason of insanity. I
10 wouldn't be required to submit to State evaluations, we
11 wouldn't have any of that.

12 MR. HUBBARD: That has nothing to do with arraignment
13 or voir dire.

14 THE COURT: My thinking is if he is allowed to enter
15 a plea of not guilty by reason of insanity and be tried by
16 God and my Country and then we go with the jury selection
17 process then the process then would turn to considering
18 the aggravating factors, considering mitigating factors
19 and list them, numerous ones. Can you consider whatever
20 is presented, whether it be aggravating, mitigating and be
21 fair and impartial. Is that not basically the same result
22 is, if they plead not guilty but do the jury voir dire in
23 that fashion.

24 MR. HUBBARD: It is not for this reason. Really when
25 we get to aggravating and mitigating we are talking about

1 penalty phase. Not guilty by reason of insanity says we
2 don't even get there. But what they want to do is, there
3 is mental questions you can ask in mitigation. So it is
4 going to be confusing to a jury, when does this even come
5 up.

6 THE COURT: Oh, it is confusing.

7 MR. HUBBARD: Well, it is going--

8 THE COURT: It is for a non-courtroom participant,
9 people that do this understand.

10 MR. HUBBARD: Which is why, if you rule that he
11 enters his plea right here, however he wants to enter it,
12 it really doesn't matter to us here. Out there it does
13 because it is going to add to the confusion. That is your
14 job to keep things from being confusing. And then when we
15 go through this process it is clear that we have that
16 burden, the guilt phase, we have a burden in the penalty
17 phase should we get there to establish aggravating
18 circumstances. And if you look at like Blackwell, for
19 instance, they actually said because we have that burden,
20 beyond a reasonable doubt. Actually said what the
21 aggravating circumstances were in Blackwell as to the
22 penalty phase and the mitigation factors the Judge said,
23 here is the list. So there they had to claim a mental
24 retardation. They didn't get into that on his plea, they
25 didn't get into that in the voir dire. All of that was

1 done without the jury knowing and yet that trial was
2 affirmed, the Judge was deemed to have done a proper job,
3 used his discretion properly, that was Judge Couch.
4 Stanko was NGRI and the Rule focused at that time was what
5 do you do when you get to mitigating, aggravating. But it
6 is very clear from there, the Judge was doing everything
7 he can to not, not announce what is going on to the jury
8 and certainly not from the Court. But he stuck, she stuck
9 to those factors as well and that case was upheld, it was
10 judicial discretion but it made sense. There was one
11 dissent and that is really the argument being taken by the
12 Defense now. So proper course and prudence is to do the
13 arraignment here. There is no prejudiced, there is no
14 case anywhere that says ask in front of a jury. In fact,
15 prudence would say it isn't. I have never known an
16 arraignment where you enter in anything but guilty/not
17 guilty anyway. But say he wants to do it here--

18 THE COURT: Well, you know, in Stanko that wasn't
19 discussed is whether he was arraigned, whether he did or
20 not.

21 MR. HUBBARD: Right.

22 THE COURT: That hadn't been addressed.

23 MR. HUBBARD: But you see from how Judge Jefferson
24 handled the NGRI issue as far as mitigating circumstances.
25 She made them read the list and I think that is why. If

1 she had done, I think implication is if the arraignment
2 had been done in front of the panel it would undercut all
3 of that.

4 MR. YOUNG: Nobody ever read any list in Stanko.

5 MR. HUBBARD: They went through, they didn't get into
6 specifics.

7 THE COURT: I thought they named off several--

8 MR. YOUNG: She said, if you want to ask about
9 insanity you got to ask about all of them.

10 MR. HUBBARD: That's right.

11 MR. YOUNG: And in dicta, they said we are not
12 getting to that, that claim was abandoned by the Defense,
13 there is no issue to rule on.

14 MR. HUBBARD: But they went ahead and ruled on it to
15 give--

16 MR. YOUNG: They didn't rule on anything, they just
17 said--

18 MR. HUBBARD: They most certainly did--

19 THE COURT: Y'all be careful now. Joy is doing a
20 tough job over here.

21 MR. HUBBARD: Although it was abandoned and the
22 dissent disagreed with that. Although it was abandoned we
23 will go ahead and address it. Because they know Judges
24 like yourself need guidance and that guidance says the
25 prudent course--

1 THE COURT: All right, here is what I think the
2 ruling in Stanko was. They kind of took the middle ground
3 and contrary to dissent's view which would be Justice
4 Pleicones' view, our hold in no way interposes an absolute
5 band on questioning jurors about their views of the
6 insanity defense, rather we hold the trial Court's ruling
7 limiting the scope didn't deprive him of a fair trial.

8 MR. HUBBARD: Right.

9 THE COURT: So they didn't say you couldn't do it,
10 they said the way she did it was fair anyway.

11 MR. HUBBARD: Right. And Judge Couch did it that way
12 and my argument is this, is that is the product course
13 that, Your Honor is going into a massive trial with a ton
14 of issues. You have two Judges, Judge Couch and Deadra
15 Jefferson that kind of set a good path for you, something
16 that you know has been tried and true. My question is, is
17 Your Honor comfortable carving a path on your own without
18 any guidance at that point. I think you cut the tether at
19 that point because the minute you do this in front of the
20 jury panel their argument is going to be, Judge, they
21 already know. So why are you limiting us like Judge
22 Jefferson did, why are you limiting us like Judge Couch
23 did. And then it is just going to become, what do you
24 think about insanity. It is going to open up a can of
25 worms.

1 THE COURT: I think we already got that can of worms
2 open. I understand what you are saying.

3 MR. HUBBARD: How, Judge?

4 THE COURT: How are they not going to ask the
5 mitigating factors to the jury.

6 MR. HUBBARD: I think they can as they go along but
7 when you harp on one I think that's where Judge Couch and
8 Judge Jefferson said, no, prudence says leave it wide open
9 because right now the trial hasn't started.

10 THE COURT: I agree with you and I don't want them to
11 focus on one but I want them to focus on all of them in
12 the questioning, the voir dire questions of the jurors.

13 MR. HUBBARD: But then at that point the jury is
14 going to know, well, we don't need to focus on any of
15 these others. That is the problem and right now they need
16 to be open to whatever is there. That is my problem,
17 Judge.

18 THE COURT: Okay. Hang on, go ahead.

19 MR. YOUNG: Insanity is not a mitigating factor.
20 That is not relevant, if he is found insane we don't have
21 a penalty phase. Insanity is not a mitigating factor, you
22 can't address insanity as if it were a mitigating factor
23 because the jury has to be told, if you find, like they
24 were in Blackwell, if you find him insane it is over,
25 there is nothing else for you to consider. The State in

1 Blackwell asked jurors repeatedly, even if he is found
2 mentally disabled or mentally retarded can you still
3 consider death. That was their question, that was their
4 issue on a specific mitigating factor to get jurors to
5 say, yeah, even if he was mentally disabled we would still
6 give consideration to death. That is what Blackwell
7 holds. To say that insanity or to imply that insanity is
8 appropriately addressed as a mitigating factor, I mean, I
9 don't even know where to start on that as far as, that is
10 Morgan and United States Supreme Court cases go, you have
11 to first find somebody guilty of a death eligible murder
12 and then ask them how they feel about the different
13 penalties that they are going to be asked to consider.
14 That is what we intend to do, that is what we did in
15 Blackwell which is the transcript of the State and the
16 Defense have handed up. Blackwell wasn't an insanity
17 case. I do think Your Honor is going to have to address
18 biased as to whether or not a Juror can fairly consider
19 not guilty by reason of insanity as a possible verdict and
20 then ask them, having discarded that defense, say, all
21 right, let's say you say he is not insane then we could
22 move to a second phase and these are issues that you have
23 to consider there. You have to be fair and impartial in
24 the first phase, you have to be fair and impartial in the
25 second phase.

1 MR. HUBBARD: In Stanko, Your Honor, the question was
2 affirmative defenses, going through various affirmative
3 defenses for that first stage. Here is the problem,
4 Judge--

5 MR. YOUNG: What are the other ones?

6 MR. HUBBARD: Well, self-defense would be one and
7 things that we end up having to overcome and disprove by
8 evidence beyond a reasonable doubt. I think that the
9 appropriate time for a jury to hear from you on this issue
10 is when you are telling them what the law is. Because
11 then the evidence is in, it is premature right now. Now
12 if they want to cover any other affirmative defenses out
13 there and go over those that is fine.

14 MR. YOUNG: You can't cut a new path by allowing the
15 Defense to do what it wants to do. The only thing that
16 you can do is unnecessarily restrict the Defense and run
17 the risk of impaneling a fundamentally unfair jury. Why
18 even get close to the line. There is nothing improper or
19 wrong about what we have been asked to do. The only thing
20 that you could do is say, no and run the risk of saying,
21 well, the Defense requested it, they weren't given it, now
22 we have got to do it again. The case of State v. Aerial,
23 South Carolina Supreme Court 311 SC 35 said it is not
24 error, then the Defense can't complain about it later when
25 they waived their right to arraignment, we are not doing

1 that.

2 MR. HUBBARD: Here is what I would propose, Judge.
3 Just to make it clear to a jury about the guilt phase.
4 That we list out all defenses and affirmative defenses
5 such as guilty but mentally ill, NGRI, but we also have
6 like self-defense. And there is probably just going to be
7 a handful, short list, that all of those are out there.

8 THE COURT: Depending how the testimony came out
9 those were potentials.

10 MR. HUBBARD: Right, for voir dire. But for this
11 purpose we don't, and then he is protected, he is
12 protected because every single Juror can potentially be
13 asked about this, without going out there and saying,
14 well, we are sticking to this one. See what I am saying.
15 I think that is the compromise.

16 THE COURT: I like your voir dire suggestion very
17 much and I think that is kind of my thinking, that is
18 where I am going on voir dire but they get to be arraigned
19 and say what they want to say.

20 MR. HUBBARD: But, Judge, my problem with--

21 THE COURT: I understand the risk, it can--

22 MR. HUBBARD: Then it kind of undercuts having a
23 list, why have a list.

24 THE COURT: Because if I am going to be neutral on
25 the facts I don't know how the testimony is going to come

1 out. I can honestly say that, y'all have a better idea,
2 y'all have talked to your witnesses. But you never know.

3 MR. HUBBARD: We don't.

4 THE COURT: So the testimony comes out after hearing
5 all the testimony, evidence presented and received from
6 the Court, their affirmative defenses, their mitigating
7 factors, their aggravating factors. Whatever has been
8 proved beyond a reasonable doubt and/or with the
9 affirmative defenses, can you be fair and impartial in
10 light of all of that, all the mitigating's, all the
11 affirmatives, all the aggravating. I am not saying we
12 list them all every time but list, don't list the two that
13 are in this case, list multiple ones with each Juror.

14 MR. YOUNG: In Blackwell we just listed the two,
15 kidnapping and murder of a child under the age of eleven.

16 MR. HUBBARD: That was because, that standard
17 practice for aggravating circumstances, when the State is
18 coming forward with the burden of proving beyond a
19 reasonable doubt, that is standard to put the State's
20 mitigation, aggravating factors. But, Judge, this goes
21 really basically the arraignment process, when you have a
22 list of affirmative defenses or defenses they are picking
23 one. So in my mind what I am trying to argue, trying to
24 prevent is, it is kind of like, all right, jurors, focus
25 on this one and then it becomes a staking question which

1 you are trying to avoid in voir dire by listing. So why
2 do that part in front of them, it serves no purpose
3 whatsoever but to create an issue when they get up and go,
4 but Judge, you already did it in front of the jury. Why
5 do we need to go through this or why can't we just focus
6 on one.

7 THE COURT: I don't want to focus on one, I agree
8 with you.

9 MR. HUBBARD: That is why, I think if you do it here,
10 we go out there, all his defenses are out there. They are
11 protected one-hundred percent, both of his lawyers and
12 certainly more importantly as the Defendant. Otherwise
13 the law doesn't require him to do in front of a jury
14 panel. And, Judge, if there was a case they would be
15 putting that in front of you ASAP. There is not one, they
16 are asking you to go where no one else has gone and I am
17 asking why, when we can protect his rights and the
18 obligations of his Defense attorneys by doing this right
19 here and going out there and then when we break up the
20 panels and do voir dire, we will have a short list of
21 defenses including insanity, guilty but mentally ill
22 because that is going to be an option, that is going to be
23 an option if they put forward any evidence and we know
24 they will. And at some point they could, it leaves them
25 the pathway of saying, that could be their best option at

1 some point. I know they don't think that now, maybe it is
2 not. But that way you stay out of it all together and you
3 do it here, we walk out there, qualify this panel. That
4 is the best way, otherwise you are carving new ground and
5 going where other Judges haven't gone.

6 THE COURT: All right. I don't think I agree with
7 you on everything but I think they get to be able to say
8 that and I can tell them, I am not going to buy their
9 argument, well, just focus on the one that you have
10 already basically waived it as legal argument, not so.
11 Mitigating factors, not going to focus on one, we are
12 going to focus on several. Aggravating factors, the same
13 thing. Affirmative defenses, more than one. They are not
14 going to be able to say, Judge, you said it when they
15 arraigned him, the cat is out of the bag. That is all we
16 want to do is stake them out on that.

17 MR. HUBBARD: But that is the fear we have with
18 getting a qualified Juror panel, jury panel, petit jury,
19 is that the cat is out of the bag. So that, all right,
20 you have given us these other ones but clearly those don't
21 matter, those don't matter, and now, but they might at
22 some point, that is the danger that even--

23 THE COURT: That is the benefit too, is telling the
24 jury, an individual, look, there are several options here.
25 The State has got to put its case up and prove what

1 happened, the aggravating factors, you also need to
2 consider mitigating factors, you also need to consider
3 affirmative defenses, multiple ones when you are talking
4 to the jury. Yes, they are going to be focused on it but
5 aren't they anyway.

6 MR. HUBBARD: Well, but the problem is, now they have
7 scoped out the jury right now, the panel before we even
8 have had them raise their right hands and qualify them.
9 And said, listen, you may hear a list but there is only
10 one we are concerned about so you don't really need to
11 focus on the list. It takes that from you and gives it to
12 them, that power, Judge. And there is no case law saying
13 they are entitled to that.

14 THE COURT: I got that. You keep arguing, all right,
15 stop now.

16 MR. HUBBARD: I know, Judge.

17 THE COURT: I have kind of made up my mind.

18 MR. HUBBARD: All right.

19 THE COURT: I am going to let them to do it but I am
20 not going to let them streamline and focus on just
21 insanity.

22 MR. HUBBARD: Okay.

23 THE COURT: Can't do it.

24 MR. HUBBARD: Yes, sir.

25 THE COURT: I agree with you on that, that it has got

1 to be considering what is presented because I don't know
2 what is going to be presented, there is going to be
3 multiple things presented factually through the evidence
4 and to the testimony, exhibits. And what is presented is
5 what I am going to be required to instruct on the law.
6 And I am going to try to do that. Now, am I clear in my
7 ruling that when we get into voir dire, I don't want an
8 argument. If I am going to get one then I want to know it
9 now. Judge, forget about all the other mitigating
10 factors, we are not staking but we are going to only ask
11 very focused questions on that one issue. Am I going to
12 get that.

13 MR. YOUNG: Your Honor, I am happy, I know that we
14 have motion number 98 which we are going to address this
15 afternoon after the qualification of the jury regarding
16 what we request Your Honor to charge the Juror panels
17 before proceeding with individual, sequestering voir dire.

18 THE COURT: I have not read that yet. Tell me what
19 that is, you said 98. It is hard for me, 98 is exactly,
20 what does it say.

21 MR. YOUNG: It asked the Court to instruct the jurors
22 prior to individual sequestering voir dire about not
23 guilty by reason of insanity, what that means, who has the
24 burden of proof on that. And to be open and honest in
25 their feelings about whether or not that is something that

1 they can give fair consideration to. And if they reject
2 that defense can they then fairly consider penalties of
3 life or death and to be open and honest with their
4 response. This is not a legal task, they are just
5 supposed to tell us how they feel about certain things.
6 The State is trying to put blinders on a jury, don't tell
7 them what the truth is so that they can impanel the jury
8 uncommonly willing to convict and sentence to death.

9 THE COURT: Hang on, stop, I am reading very rapidly.
10 Is this not more or less what I said to Solicitor Hubbard,
11 is I want to present guilty, guilty but mentally ill,
12 insanity, not guilty, broad terms because I am not aware
13 of what the testimony is going to come out to be. Is this
14 not exactly that?

15 MR. YOUNG: Yes, sir.

16 THE COURT: Then I want the Solicitor to tell me why,
17 if I rule like I do and say, not guilty by reason of
18 insanity, we kind of got to do this but all of them.

19 MR. YOUNG: Yes, sir.

20 MR. HUBBARD: If Your Honor rules as you have already
21 ruled, that we are going to do his arraignment out there
22 in front of the jury and he says what he is going to, what
23 his plea is, that motion is unnecessary. At that point
24 this Court does not need to latch in on one defense and
25 say, let me tell you about that one. And then when voir

1 dire comes we have a list. So I absolutely object to that
2 motion, that undermines what you just ruled. And that has
3 been my concern from the beginning.

4 THE COURT: All right, is this not commenting on the
5 facts?

6 MR. YOUNG: No, sir.

7 THE COURT: How is it not, that is what I am trying
8 to avoid is, I don't appear to take a position on the
9 facts and am required to not.

10 MR. YOUNG: Yes, sir.

11 THE COURT: The fact is, potential Juror, Mr. Jones
12 does not contest that he killed his five children. Pretty
13 fact specific.

14 MR. HUBBARD: Which is staking-out.

15 MR. YOUNG: Staking-out means asking a jury to, I
16 mean staking-out has a meaning. I understand the State
17 says it all the time. But that phrase means asking a
18 Juror if I prove he is insane will you agree to vote not
19 guilty which hopefully it would take the path that it has
20 to. But if I prove that his dad loves him will you agree
21 to vote for life. That is the stake-out motion.

22 MR. HUBBARD: There is not a case that says, here's
23 the definition of staking-out.

24 MR. YOUNG: There is a lot of cases--

25 MR. HUBBARD: If I can state my--

1 THE COURT: Y'all are going to get beat up in a
2 minute. Don't talk over each other.

3 MR. HUBBARD: Many cases talk about staking-out and
4 Patterson is one of them and Hill, I believe. Your Honor,
5 the bottom line is, they are asking you to do what no
6 Court does, comment on the facts. So now the black robe
7 is giving the, premature of their defense. I think it is
8 improper, absolutely improper and will undercut everything
9 we have been working on.

10 THE COURT: All right, Mr. Young, one more time, why
11 would I be allowed to comment on the facts of the, taking
12 the lives of the five children.

13 MR. YOUNG: That is just what the plea means. I
14 mean, it is not a comment on the facts to say this means
15 he admits he killed his kids. That is not an issue, it
16 has already been decided. It is not something that the
17 jury has to worry about, are they going to decide it or
18 not to decide it. Here is what their issue is for their
19 trial. As far as cases, there is not a case that defines
20 staking-out, there are cases that go into great depth
21 about defining staking-out. We provided the Court with
22 U.S. v. Johnson. I know it is an Iowa District Court
23 opinion but it goes into great detail from around the
24 Country in addressing all the laws about staking-out and
25 the only definition that South Carolina has ever used is

1 the one from North Carolina which is cited and discussed
2 at great length in Johnson.

3 THE COURT: Here is what I am going to do. I want to
4 hear you further on this but that sounds like that's
5 commenting on the facts. I am apprehensive about that.
6 We are going to arraign Mr. Jones in front of the jury, I
7 am going to let him say not guilty. I want to leave his
8 affirmative defense off in the presence of the jury. And
9 then when we get into voir dire we are going into the
10 broader portions. I am not going to let him say it in
11 front of the jury for fear I get caught in commenting on
12 the facts. Later on want to tell the jurors individually,
13 can you consider what the State can prove, aggravating,
14 mitigating, affirmative, broad picture so as to not get
15 into the staking-out issue. I am concerned about that.

16 MR. YOUNG: We can't do that. We can't go out there
17 and say he pleads not guilty because it is not true.

18 THE COURT: But, I mean, can you name a case where
19 someone says, I am not guilty by reason of self-defense,
20 is that allowed to be plead?

21 MR. YOUNG: No.

22 THE COURT: Why not?

23 MR. YOUNG: It is not an affirmative defense, it puts
24 the burden on the State to disprove self-defense whereas
25 in an insanity case by law in the statute we have the

1 burden by a preponderance of the evidence to prove
2 insanity. You have to, this is how he has plead. This
3 puts the burden on the defense by a preponderance to prove
4 this defense.

5 MR. HUBBARD: That is just it, it is a factual
6 question. I am concerned also about, addressing burden
7 shift and right in the beginning. So I think what Your
8 Honor said will be fine. And then on voir dire,
9 everything they want will be covered in voir dire but
10 under your control, your control, Judge. They are not
11 going to go out and be affirmative defense of guilty of
12 mentally ill. I mean, how do you do that. So that is
13 where we are, Judge. Because I would still be entitled to
14 try the case and say, no, he's just guilty.

15 MR. YOUNG: Guilty but mentally ill.

16 MR. HUBBARD: And I am elected to prove his guilt. I
17 think Your Honor's final conclusion, I am fine with that.
18 We will probably get into a lot more stuff than I want to
19 on voir dire but that is certainly Your Honor's
20 discretion. But I think that handles the arraignment
21 appropriately, not guilty is not guilty. We can come into
22 the reason later and it is not guilty because of reason of
23 insanity. The effect is the same.

24 THE COURT: Let me hear back from Mr. Young.

25 MR. YOUNG: It is not what the law is and that is not

1 what, not guilty by self-defense or not guilty by
2 entrapment are not verdict forms. The verdict form is not
3 guilty by reason of insanity, guilty but mentally ill,
4 guilty, not guilty. His plea is not guilty by reason of
5 insanity. To go out there and say, we are going to start
6 voir dire by lying to the jury panel and telling them
7 something that is not true so that we can pretend that we
8 are not getting a jury uncommonly conditioned to convict
9 and sentence to death is, I don't know, something that I
10 have never seen.

11 MR. HUBBARD: Here is a compromise then, here is my
12 compromise. Since we have already talked about how we
13 will handle voir dire, handle it the way Your Honor
14 suggested, just go ahead and do the arraignment here and
15 therefore it takes that issue away. He doesn't have a
16 right to be out there anyway. He can plead the way he
17 chooses now, there is no comment on facts then we are
18 good. If we just do it that way we are good, Judge.
19 There is no issue at all.

20 MR. YOUNG: As long as the Court instructs them that
21 he plead not guilty by reason of insanity.

22 MR. HUBBARD: There is no law saying Your Honor, no
23 case law saying Your Honor has to inform the panel.

24 THE COURT: Here is what I am going to do. We are
25 going to arraign him right here. He can enter the plea as

1 you wish. We will go in front of this jury panel out here
2 and say, we are here to pick a trial, here are the
3 indictments, he has asked for a jury trial. And then we
4 get into the voir dire. How does that strike you. Not
5 going to say he has entered a plea of not guilty therefore
6 gets a jury trial. I am going to start out, he has asked
7 for a jury trial. Voir dire, we get into all of this.

8 MR. YOUNG: Well, we have to say he has entered a
9 plea of not guilty by reason of insanity and we will talk
10 to you about it individually when you come back. And then
11 we can hash out this afternoon what gets said and what
12 doesn't get said.

13 MR. HUBBARD: We will be doing that anyway. I think
14 what Your Honor poses is perfectly appropriate. And then
15 the information they want is going to be covered but in
16 panels under your control. So you have individual jurors
17 at that point, that keeps you in charge.

18 MR. YOUNG: All you can do by agreeing with the State
19 is put an issue in the case. If you agree with me is not
20 putting an issue in the case.

21 THE COURT: No, no. Every time I make a ruling I am
22 putting an issue in the case. It is a ball or it is a
23 strike, it is an issue. All right. I am much more
24 comfortable with what I just decided. We are going to
25 arraign him right here, he enters his plea as he wishes.

1 We will go into the jury room to qualify the jury, publish
2 the indictments. He has asked for a jury trial. And then
3 we qualify the jury in big panels, I mean in the big panel
4 and then once we bring back to smaller panels we get into
5 all of this as you suggested here. That is when we start
6 saying, all right, he has entered a plea and we can tell
7 them that, that he wants a jury trial, here are your array
8 of choices that are going to be, considering this. That
9 is kind of what I am envisioning, is that going to be
10 unfair to your client?

11 MR. YOUNG: Yes, sir.

12 THE COURT: How?

13 MR. YOUNG: Because they are not going to be told
14 that he has entered a plea of not guilty by reason of
15 insanity.

16 MR. HUBBARD: Your Honor, the question for the jury
17 is, if that plea is made, in addition of whatever else may
18 be made, can they consider it, will they understand it and
19 could they actually, if they believe it true, vote on it.
20 That is handled in voir dire. Your Honor's ruling
21 protects the Defendant that way. I think it protects them
22 completely. What they are asking about fairness has
23 nothing to do with the arraignment.

24 THE COURT: Now, we are going to arraign him here. I
25 am going to leave it open right now as to when I get in

1 the voir dire whether the Juror, individually is told
2 exactly what you are asking. That is not off the table, I
3 am going to leave that open but for purposes of the big
4 panel he is going to have a trial by jury, he is going to
5 be arraigned in here. All right.

6 MR. YOUNG: Yes, sir. I want to just sort of enter
7 my objection and make sure that I am protected on the
8 record with regard to this issue.

9 THE COURT: Sure.

10 MR. YOUNG: Okay.

11 MR. HUBBARD: Thank you.

12 MR. YOUNG: So I don't want to have to object to Your
13 Honor out in front of the big panel.

14 THE COURT: You will not, I will note the arraignment
15 took place earlier and we are ready to go with the jury
16 qualification process and everyone is protected on the
17 record. That should protect you sufficiently on that
18 issue.

19 MR. YOUNG: Thank you, Your Honor. Two other issues
20 that I need to address with the Court. This is the first
21 available opportunity, I know that I have sent it to
22 everybody about the potential Gag Order violations for Mr.
23 Jones. I want to make sure I have raised it on the record
24 at my first available opportunity. We have obviously
25 moved for relief, or not obviously, we haven't done it on

1 the record yet and we do move for a continuance and change
2 of venue and the punishment option based on the subsequent
3 violation of the Gag Order. I will imagine, I have
4 discussed that with the State and we will take that up
5 further this afternoon.

6 THE COURT: But for the purposes of the record your
7 request for continuance, violation of the Gag Order and
8 all of that, you have made a timing, appropriately done
9 that. And we will argue it this afternoon after we
10 qualify the big panel. Is that sufficient. I have not
11 ruled on that but, yes, you are protected.

12 MR. YOUNG: I have made everybody and the record
13 aware about it.

14 THE COURT: And that was for several issues but one
15 was the chat-room video that was on the internet for a
16 short time over the weekend. And the Court was, I had an
17 opportunity to review it before it came down. And
18 whatever other issues you may have with the media and any
19 publicity this morning. We will discuss that this
20 afternoon but you are protected for that. I have not
21 ruled on it but you are protected.

22 MR. YOUNG: Thank you, Your Honor. Two other issues,
23 one other issue that I need and I know I asked the Court,
24 I think it was probably late Friday to see if they could
25 call over to the sheriffs department's and see what was

1 going on with Mr. Jones' glasses.

2 THE COURT: And we did. She did.

3 LAW CLERK: We are following up, I just haven't heard
4 back.

5 MR. HUBBARD: And I will state from our point of
6 view, the glasses, you mean of evidence of the broken
7 glasses or what are you talking about or glasses that he--

8 MR. YOUNG: He needs to be able to see.

9 THE COURT: During one of the pretrial hearings from
10 the last two to three weeks, it was brought to my
11 attention that his glasses had been broken or been lost
12 and not the ones that you may have, the ones he was using
13 over the last several months. Something happened and he
14 had been examined for a new pair and they were in route
15 somewhere and if they are where they are, can we hustle
16 them up, what I understood the request to be.

17 MR. YOUNG: That is what the request is and, you
18 know, just point out to the Court, the recent Fourth
19 Circuit decision, Bryant versus Sterling, March 19th, 2019
20 decision in which a Juror couldn't hear and they reversed
21 the trial because the Juror couldn't hear. And I would
22 analogize that to the Defendant not being able to see. I
23 understand and I think, I don't, I am waiving Mr. Jones
24 not having glasses today but we need to get them before we
25 get started in the trial. He has got to be able to see.

1 THE COURT: Do you have any idea?

2 OFFICER: I didn't inquire Friday, my fault, I
3 inquired this morning and I am waiting on that.

4 THE COURT: Thank you.

5 MR. YOUNG: I understand.

6 THE COURT: Okay.

7 MR. YOUNG: Mr. Secor had asked, I think I had asked
8 and I misrepresented to the Court on Friday that the Juror
9 types that were in the questionnaire in Blackwell, that is
10 not correct, in the questionnaire in Blackwell. They were
11 in the questionnaire in Daise which is another transcript
12 that I am happy to provide the Court. However, I do think
13 that the easiest way to handle that would be to go to the
14 jury types or allowing the jurors to go to those types
15 today. Everybody who selects one or two, going to the
16 back of the line, let's just talk to the people who select
17 three and move forward from there.

18 THE COURT: I am uncomfortable with that. I think we
19 will do them in the panels of four as we are going to call
20 them in starting tomorrow and give it to them as prompt as
21 we can before they come in. I understand that request and
22 since we hadn't sent them in the questionnaire, we were
23 already there so I am going to stick with the plan on
24 that.

25 MR. YOUNG: One final thing as far as timing goes, in

1 reviewing the Blackwell transcript this weekend, it looked
2 like we did about twelve jurors a day to get the qualified
3 panels.

4 THE COURT: And we are looking for twelve tomorrow,
5 we are going to do four at 9:00, four at 1:00 and four at
6 3:30.

7 CLERK OF COURT: No, you said eight.

8 MR. YOUNG: Eight at 9:00.

9 CLERK OF COURT: Eight at 9:00, eight at 1:00, eight
10 at 3:30.

11 THE COURT: That's right. I have been reading
12 Blackwell, four, four and four. That is where I got the
13 number from.

14 MR. YOUNG: We will see how it goes, I just wanted to
15 make sure that the Court was aware that is about how it
16 went.

17 THE COURT: And I would like, Ms. Frick, I am going
18 to lean on her and Ms. Counts. If it moves slower then,
19 we are going to delay them and get them where they are not
20 stacked up on each other because that is no fun. We don't
21 want that pressure of them sitting there waiting and I
22 don't want to inconvenience them if we don't have to. All
23 right.

24 MR. YOUNG: Mr. Jones has asked me to ask the Court,
25 due to his status at the Lexington County Detention

1 Center, he is not permitted to have like a safety razor to
2 shave unless Your Honor were to order them to allow him to
3 shave, it is my understanding. I don't want to run afoul
4 of any of the jail rules where they can stand there, watch
5 him with a safety razor, so that he would be allowed to
6 shave.

7 THE COURT: He hasn't done that?

8 MR. YOUNG: No sir, he has just been using clippers.

9 THE COURT: Are they allowed to shave?

10 OFFICER: They are provided razors, Your Honor.

11 MR. YOUNG: Mr. Jones is not because of his mental
12 health status.

13 OFFICER: I will check with the jail administrator.

14 THE COURT: We will check with the jail
15 administrator. I don't see a problem with him provided,
16 he is supervised and having a safety razor to shave and it
17 doesn't seem, with a little bit of supervision, that
18 shouldn't be an issue at all.

19 MR. YOUNG: Yes, sir. We can turn it right back in.

20 THE COURT: We can get something worked out on that
21 issue. Okay. That shouldn't be problematic tomorrow.
22 Y'all want a minute before we do the arraignment because I
23 want to step off and use the restroom.

24 MR. YOUNG: Sure.

25 (Whereupon, a short break was taken.)

1 THE COURT: Y'all can have a seat. We are waiting on
2 the Clerk of Court.

3 MR. HUBBARD: I believe she has got the indictments.

4 THE COURT: She does, I think they are in an
5 envelope.

6 MR. HUBBARD: I hope so.

7 MR. YOUNG: Your Honor, we will waive reading of the
8 indictments.

9 THE COURT: We will publish the numbers and the
10 charges on the record for purposes of the arraignment.

11 MR. YOUNG: I think they are on, right there in front
12 of Your Honor.

13 MR. HUBBARD: Here are the five indictments, Your
14 Honor.

15 THE COURT: For purposes of the record, the State has
16 handed up indictments 15-GS-32-188, 189, 190, 191 and 195.
17 All five indictments are for the offense of murder. The
18 indictments allege, in general, that Mr. Jones in
19 Lexington County between the 28th of August, 29th of
20 August of 2014 did with malice kill the victim, Merah
21 Gracie Jones, in violation of 16-3-10.

22 Indictment 189, August 28th and 29th of '14 did with
23 malice kill the victim, Elias Jones, in violation of
24 16-3-10.

25 August 28th and 29th alleged Mr. Jones did take with

1 malice kill the victim, Abigail Jones, in violation of
2 16-3-10. That was indictment 190.

3 Indictment 191, Mr. Jones in Lexington County on the
4 28th and 29th did with malice kill Gabriel Jones in
5 violation of 16-3-10.

6 And lastly, 195, indictment alleges that Mr. Jones in
7 Lexington County on the 28th and 29th of '14 did with
8 malice kill Nahtahn Jones in violation of 16-3-10.

9 I didn't read verbatim each indictment but summarized
10 them. Mr. Jones, you stand here in the courtroom with
11 Counsel, these five indictments presented are intended to
12 be called.

13 MR. JONES: Yes.

14 THE COURT: How do you plead?

15 MR. JONES: Not guilty by reason of insanity.

16 THE COURT: How do you wish to be tried?

17 MR. JONES: By God, by my Country.

18 THE COURT: Very well. We will proceed in the other
19 courtroom with selection and qualifying of the jury,
20 qualifying the jury momentarily. Anything else for the
21 record? Mr. Young?

22 MR. YOUNG: No, sir.

23 THE COURT: Solicitor?

24 MR. HUBBARD: Nothing from the State. Thank you.

25 (Whereupon, a break while we moved to another

1 courtroom.)

2 (Whereupon, the jury came into open court at
3 approximately 10:40 p.m.)

4 (Whereupon, the jury panel was sworn at approximately
5 11:06 a.m.)

6 THE COURT: Thank you for your patience and I figured
7 with this bigger crowd it would take it longer than 20
8 minutes to get everybody in and out. So we hit my number.
9 Is the State ready to proceed?

10 MR. HUBBARD: Yes sir, Your Honor.

11 THE COURT: Is the Defense ready to proceed?

12 MR. YOUNG: Yes, Your Honor.

13 THE COURT: Call the case, please.

14 MR. HUBBARD: Thank you, Your Honor, may it please
15 the Court?

16 THE COURT: Yes, sir.

17 MR. YOUNG: The State calls indictment
18 2015-GS-32-188, the State versus Timothy Ray Jones, Jr.,
19 indicted for murder.

20 Indictment 2015-GS-32-189, the State versus Timothy
21 Ray Jones, Jr., indicted for murder.

22 Indictment 2015-GS-32-190, the State versus Timothy
23 Ray Jones, Jr., indicted for murder.

24 Indictment 2015-GS-32-191, Timothy Ray Jones, Jr.,
25 indicted for murder.

1 Indictment 2015-GS-32-195, State versus Timothy Ray
2 Jones, Jr., indicted for murder.

3 Your Honor, all of these have been true billed, the
4 State is ready for trial.

5 THE COURT: All right, ladies and gentlemen of the
6 jury panel or venire, the State has called its case to be
7 presented for trial. Mr. Jones has asked for a trial, we
8 are going to proceed with selection of a jury for that
9 trial as we go forward. Now, I am going to read the
10 indictments for the record. I want to explain several
11 things to you as we go. The indictments have been
12 presented to the Lexington County Grand Jury and first and
13 foremost, indictments are noticed documents. When a
14 person is accused of a crime they have got to be provided
15 notice of exactly what they are being accused of. The
16 indictment process is that notice to a person accused.
17 Now, I am going to publish the indictments, I am going to
18 introduce the lawyers and I am going to go over a few
19 questions with you as we go forward and then later on we
20 will divide up into little smaller groups to go forward
21 from there to ask more specific questions as to your
22 knowledge of the facts of the case and such as that.

23 First indictment is 188, 2015-GS-32-188. The State
24 alleges that Timothy Ray Jones in Lexington County between
25 the dates of August 28th and 29th of 2014 did unlawfully,

1 willfully, feloniously with malice aforethought kill the
2 victim, Merah Gracie Jones by means of strangulation or
3 other violent means or instruments. The victim died as a
4 result between August 28th and 29th of '14 in Lexington
5 County as approximate result thereof in violation 16-3-10
6 of the South Carolina Code of Laws.

7 Indictment 15-GS-32-189. The State of South Carolina
8 alleges that Timothy Ray Jones, Jr. did in Lexington
9 County on or between August 28th and 29th of 2014 did
10 unlawfully, willfully, feloniously with malice
11 aforethought kill the victim, Elias Jones by means of
12 strangulation and or violent means or instruments and the
13 victim died between, on or between August 28th and 29th of
14 '14 in Lexington County as approximate result thereof in
15 violation of section 16-3-10 of the South Carolina Code of
16 Laws.

17 Indictment 15-GS-32-, indictment 190. The indictment
18 alleges that Timothy Ray Jones, Jr. did in Lexington
19 County on or between August 28th and 29th of '14
20 unlawfully, willfully, feloniously and with malice
21 aforethought kill the victim, Abigail Jones by means of
22 strangulation and or other violent means or instruments
23 and the victim died on or between August 28th and 29th of
24 2014 in Lexington County as approximate result thereof in
25 violation of section 16-3-10 of the South Carolina Code of

1 Laws.

2 Indictment 15-GS-32-, indictment 191. Timothy Ray
3 Jones, Jr., it is alleged that in Lexington County on or
4 between August 28th and 29th of '14, he did unlawfully,
5 willfully, feloniously and with malice aforethought kill
6 the victim, Gabriel Jones by means of strangulation and or
7 other violent means or instruments and the victim died on
8 or between August 28th and 29th of '14 in Lexington County
9 as approximate result thereof in violation of section
10 16-3-10 of the South Carolina Code of Laws.

11 And lastly, indictment 15-GS-32-, indictment 195. It
12 is alleged by the State that Timothy Ray Jones, Jr. did in
13 Lexington County, on or between August 28th and 29th of
14 2014, did unlawfully, willfully, feloniously and with
15 malice aforethought kill the victim, Nahthan Jones by
16 hitting or striking the victim or by causing physical
17 exhaustion by mortally injuring or causing injuries to the
18 victim by means of instruments unknown and or by unknown
19 means of wanton, reckless disregard for human life and the
20 victim died as a result on or between August 28th and 29th
21 of 2014 in Lexington County as approximate result thereof
22 in violation of section 16-3-10 of the Code of Laws of
23 South Carolina.

24 Those are the indictments presented by the State to
25 the Court for the trial to be called. Mr. Jones has asked

1 for a jury trial. We are ready to proceed with that. The
2 State in every criminal case has the burden of proving the
3 allegations made by it to the legal standard called beyond
4 a reasonable doubt. We will explain that more as we go.
5 Now, it is important, there were questionnaires sent out by
6 the Court and the Clerk of Court to which you responded.
7 That is information gathering for all parties to be
8 assisted and kind of understanding more about you as
9 jurors. Those responses will be utilized in the selection
10 process of the jurors. I am going to ask a few questions
11 today, right now and the end result questions always going
12 to be notwithstanding my friendship, my relationship too,
13 if there is a potential witness you may be connected to,
14 one of the lawyers you may or may not be connected to,
15 somebody's family you may be connected to in some fashion
16 by friendship or by kinship. The end result question is,
17 can you be a fair and impartial Juror in light of those
18 facts or that relationship. And if you can you can, if
19 you can't it is okay too. But that is how my questions
20 are going to go to that end, can you be fair and
21 impartial. And so the end result, I want a jury selected
22 from your number, you as a group who can sit fairly and
23 impartially, give a fair trial to both the State of South
24 Carolina and to Mr. Timothy Ray Jones, Jr. seated here in
25 the courtroom. That is our intent and that is my job here

1 today and later as we go this week. So I am going to ask
2 a few questions and I may ask that question a time or two
3 today but the majority of the questions are going to be
4 more focused in more smaller groups. So we will get to
5 that organization in a moment. First and foremost, I am
6 going to let the lawyers from the State, I am going to let
7 Solicitor Hubbard introduce his table and then I am going
8 to let Mr. Madsen introduce his table or Mr. Young,
9 whichever. So, Solicitor, introduce your table.

10 MR. HUBBARD: Thank you, Your Honor. I am Solicitor
11 Rick Hubbard, the Solicitor of the Eleventh Circuit which
12 includes Lexington. Assisting me in this case will be
13 Deputy Solicitor Shawn Graham and Deputy Solicitor Suzanne
14 Mayes.

15 THE COURT: Thank you, sir.

16 MR. HUBBARD: Thank you, Your Honor.

17 THE COURT: Mr. Madsen.

18 MR. MADSEN: My name is Robert Madsen. This is Boyd
19 Young, Timothy Jones, Casey Secor and Bill McGuire.

20 THE COURT: All right, ladies and gentlemen, all
21 right, I didn't go over this. It is much like the first
22 line of questioning. If I ask a question to which you
23 need to respond please stand, let me call on you and get
24 your Juror number again and then I will ask you for your
25 response. And most of my questions are going to be yes or

1 no. So if I need a fuller response I will ask for you to
2 come up and give me that response in the more private
3 setting. And so if I cut you off because you are trying
4 to offer an explanation just understand that is how I want
5 to be responded to is yes, no, and if I need a fuller
6 explanation I will bring you up. First question, any
7 member of the jury panel related by blood, marriage, close
8 personal friends to any of the attorneys just so
9 introduced to you here in the courtroom, please stand.

10 (No response.)

11 THE COURT: No one is standing. Any member of the
12 jury panel ever been represented in any capacity by any of
13 the attorneys just introduced, if so please stand.

14 (No response.)

15 THE COURT: No one is standing. After publishing the
16 indictments, I named off five victims. Mr. Timothy Ray
17 Jones is the person accused here in the courtroom. Is any
18 member of the jury panel related by blood, marriage, close
19 personal friends to any members of the Jones' family. If
20 so please stand.

21 (No response.)

22 THE COURT: No one is standing. All right, this
23 question is for information to be delved into later. This
24 case is a case that has received some publicity in the
25 local newspaper, local television, perhaps social media.

1 What I need to know is if any member of the jury panel has
2 seen, read or heard any of the publicity regarding the
3 cases involving these five victims and Mr. Jones. So what
4 I am going to do is ask you to stand and I am going to
5 call on you and get your name and Juror number if you have
6 heard publicity. I may come with a follow-up question
7 later but anybody heard any pretrial publicity please
8 stand. I tell you what I am going to do. I am going to
9 work right and left. So middle sit down and left sit
10 down, I will come back to y'all. I am going to work on
11 the far right panel first. Just so I am clear with the
12 attorneys, name and Juror number, they have heard pretrial
13 publicity sufficient for going forward later?

14 MR. HUBBARD: Yes sir, Your Honor.

15 MR. YOUNG: Yes, sir.

16 THE COURT: All right. Starting on the front row the
17 best I can. Ma'am, in the front row, tell me your name
18 and Juror number.

19 JUROR: Emily Atkins, Juror number 19, publicity.

20 THE COURT: Juror number 19, heard publicity. In the
21 green shirt, tell me your name.

22 JUROR: Todd Bedenbaugh, Juror 32. I have heard
23 publicity.

24 THE COURT: Fair enough, that is all I need. In the
25 green shirt.

1 JUROR: 101, David Connelly.

2 THE COURT: You have heard pretrial publicity?

3 JUROR: Yes.

4 THE COURT: Thank you, sir. The gentleman right
5 behind Mr. Connelly, tell me your name.

6 JUROR: Michael Gore, 166.

7 THE COURT: You have heard pretrial publicity?

8 JUROR: Yes.

9 THE COURT: You may be seated.

10 JUROR: Johnny Rowell, 363, publicity.

11 THE COURT: Yes, sir.

12 JUROR: Fredrica Anderson, Juror 12.

13 THE COURT: You may be seated.

14 JUROR: Dianna Wise, Juror 488, publicity.

15 THE COURT: Yes, Ma'am.

16 JUROR: Sarah Fucci, 150, publicity.

17 THE COURT: Going back to the left.

18 JUROR: Toni Clark, 96, publicity.

19 THE COURT: Thank you.

20 JUROR: Richard Gentle, 159, publicity.

21 THE COURT: You may be seated.

22 JUROR: Laura Nielson, 312, publicity.

23 THE COURT: Thank you, Ma'am. Back to the left.

24 JUROR: Amy Boozer, 44.

25 THE COURT: You heard from publicity?

1 JUROR: Yes.

2 THE COURT: Thank you.

3 JUROR: Juror 331, Mary Pia.

4 THE COURT: Thank you very much. Ma'am.

5 JUROR: Patricia Teal, 430.

6 THE COURT: Ma'am in the red.

7 JUROR: 469, Candy Whisenant, publicity.

8 THE COURT: Thank you.

9 JUROR: 416, Kelly Stone, publicity.

10 THE COURT: The next row back.

11 JUROR: Jazmin Bradshaw, 48.

12 THE COURT: You may be seated. Ma'am, beside her.

13 JUROR: Caroline Elliott, 137, publicity.

14 THE COURT: Thank you, Ms. Elliott.

15 JUROR: James Waters, 458, publicity.

16 THE COURT: Very well.

17 JUROR: Robin Ehrlich, 136, publicity.

18 THE COURT: Very well. The next row back.

19 JUROR: Thomas Lee, 245, publicity.

20 THE COURT: Thank you, sir.

21 JUROR: 117 Jeremy Davis, publicity.

22 THE COURT: Thank you, sir. Ma'am, in the next row.

23 JUROR: Amy Girardeau, 162, publicity.

24 THE COURT: Thank you so much. Ma'am, in the red.

25 JUROR: Tamika Summers, 421, publicity.

1 THE COURT: Thank you. The one in the white.

2 JUROR: Joe Medlock, 286, publicity.

3 THE COURT: Okay and in that same row.

4 JUROR: Jeff Griffith, 169.

5 THE COURT: Okay. On this side, going left to right,
6 row to row. Ma'am, in the front.

7 JUROR: 366, Ashley Russell, publicity.

8 THE COURT: Thank you.

9 JUROR: 201, Priscilla Hunt.

10 THE COURT: Thank you so much. Ma'am in the next
11 row.

12 JUROR: Gail Massaro, 273.

13 THE COURT: Thank you.

14 JUROR: Tonya Sasser, 372, publicity.

15 THE COURT: Thank you, Ms. Sasser.

16 JUROR: Jonathan Jackson, 210, publicity.

17 THE COURT: Thank you, Mr. Jackson.

18 JUROR: Deborah Arnold, 16, publicity.

19 THE COURT: Thank you.

20 JUROR: Number 40, Lisa Blackmon, publicity.

21 THE COURT: Okay.

22 JUROR: Kenneth Hall, 174, publicity.

23 THE COURT: 174?

24 JUROR: Yes, sir.

25 THE COURT: Thank you, sir.

1 JUROR: Tommy Cave, 84, publicity.

2 THE COURT: Thank you, sir.

3 JUROR: Emilia Wright, 497, publicity.

4 THE COURT: 497?

5 JUROR: 497.

6 THE COURT: Gentleman behind her.

7 JUROR: Christopher Wilde, 476, publicity.

8 THE COURT: Thank you.

9 JUROR: Suzanne Taylor, 428, publicity.

10 THE COURT: Thank you, Ma'am.

11 JUROR: Stephen Parkin, 322, publicity.

12 THE COURT: Thank you.

13 JUROR: Thosha Hill, 191.

14 THE COURT: Thank you, Ms. Hill. Ma'am.

15 JUROR: Doris Taylor, 426.

16 THE COURT: Okay.

17 JUROR: Timothy Farley, 142, publicity.

18 THE COURT: 142.

19 JUROR: Victoria Schneider, 377.

20 THE COURT: Behind her.

21 JUROR: Sylvia Cannon, 74, publicity.

22 THE COURT: Thank you, Ms. Cannon.

23 JUROR: James Prescott, 339, publicity.

24 THE COURT: All right, come back to the left. Ma'am?

25 JUROR: Misty Wise, 489, publicity.

1 THE COURT: Thank you, Ms. Wise.

2 JUROR: 89, Nathan Chapman.

3 THE COURT: Thank you, Mr. Chapman.

4 JUROR: Tammaka Staley, 414.

5 THE COURT: Thank you.

6 JUROR: Brian Pugh, 343, publicity.

7 THE COURT: Thank you, sir. The next row back.

8 JUROR: 348, Avery Renwick, publicity.

9 THE COURT: Thank you.

10 JUROR: Tina Penn, 325, publicity.

11 JUROR: Phillip Smith, 405, publicity.

12 THE COURT: Thank you, Mr. Smith. Left side, stand
13 up, please. Left to right.

14 JUROR: Number 8, Wendy Allison, publicity.

15 THE COURT: On the left.

16 JUROR: Amy Simpson, 396.

17 THE COURT: Ms. Simpson, thank you so much. Right
18 behind her.

19 JUROR: 147, Patricia Fowler.

20 THE COURT: Thank you.

21 JUROR: Travis Ross, 361.

22 THE COURT: 361, thank you so much. Next row back.

23 JUROR: Shanna Nelson, 308.

24 THE COURT: Ms. Nelson, thank you so much.

25 JUROR: Melissa Williams, 479.

1 THE COURT: 479, thank you.

2 JUROR: 272, Jeremy Mason.

3 THE COURT: Thank you, Mr. Mason.

4 JUROR: Scott Spigener, 411.

5 JUROR: Melody Bailey, 22.

6 THE COURT: Thank you, Ms. Bailey.

7 JUROR: Garrett Johnson, 221.

8 THE COURT: Mr. Johnson, 221. Thank you.

9 JUROR: Dawn Appelgate, Juror 14.

10 THE COURT: Thank you, Ms. Appelgate. Ma'am, in the
11 pink.

12 JUROR: Linda Smith, 403.

13 THE COURT: Thank you, Ms. Smith.

14 JUROR: Anh Pham, 329.

15 JUROR: 329. To his left.

16 JUROR: Kimberly Hughes, 200.

17 THE COURT: Next row.

18 JUROR: Anderson Chambers, 86.

19 THE COURT: Thank you.

20 JUROR: Tonya Harmon, 179.

21 THE COURT: 438, Kelly Tomlinson.

22 JUROR: 457, Dinah Washington.

23 THE COURT: Thank you. Next.

24 JUROR: 314, Judy Nixon.

25 THE COURT: 314. Far left.

1 JUROR: 368, Sara Ann Russo.

2 THE COURT: Thank you, Ms. Russo, 368.

3 JUROR: Kristiana McGill, 24.

4 THE COURT: Thank you.

5 (Whereupon, a bench conference was held in the
6 presence of the jury panel but out of the hearing of
7 the jury panel.)

8 THE COURT: All right, folks. We are trying to lay
9 out the game plan. As y'all know, you have been summoned
10 here for jury selection in this case. Some of you heard
11 about it earlier through news media and whatnot, we will
12 address that later. My primary goal, my ultimate goal is
13 to select a fair and impartial jury as best I can with the
14 assistance of the attorneys on both sides. This case is a
15 little bit different, some aspects, it is a Capital case.
16 So the selection process and the questions, it is called
17 voir dire in Latin, that is Latin for asking jurors
18 questions why they may be fair or unfair, can they be fair
19 or unfair, things of that nature. In a Capital case that
20 is done individually. And the Court ask questions and the
21 attorneys are allowed to ask certain questions to
22 determine whether or not either side believes there is an
23 impartiality of anything of that nature. So what I intend
24 to do is to divide you up into smaller groups to call you
25 back in. And this process is going to take a while.

1 Unfortunately the inconvenience to you and for that I say
2 I am going to try to minimize the inconvenience to you. I
3 am well aware that serving on jury service is an
4 inconvenience because you are here, you are not working,
5 you are away from your family and your responsibility to
6 your home, I am fully aware of that and I will try to
7 minimize that. But in our State a trial by jury is a
8 right everyone has and when someone asked for a jury trial
9 the jury's come from the community where that person
10 lives. So we have got to delve into certain issues but it
11 is much easier and manageable for me, rather than asking
12 the next question, what did you see and hear. Now, I am
13 going to divide you up in smaller groups and Ms. Frick and
14 I and the Deputy Clerk of Court, they are going to help
15 me, they are part of the Lexington County Clerk of Court
16 staff, they are going to help me arrange y'all into
17 smaller groups and the attorneys are going to be there and
18 we are going to try to manage y'all in smaller groups the
19 best we can. This is important, this is very important.
20 From this point forward I, y'all took an oath earlier, on
21 your oath, you are going to give truthful answers. It
22 took a lot of effort to coordinate getting y'all in here
23 today by Lexington County Clerk of Court's office. It is
24 important that this trial be conducted by a fair jury and
25 a jury who considers testimony, evidence, most also

1 instructions on the law. I don't need jurors who are
2 going to be influenced by something outside the courtroom.
3 And whether that be a neighbor, someone you see in the
4 grocery store, something you read on the internet,
5 newspaper, television. I can't control anything outside
6 the courtroom as a Judge. Inside the courtroom there can
7 be steady presentation of testimony and evidence to a
8 jury. Outside of the courtroom I have no control on what
9 is said, how it is said and the impact has on you as a
10 jury. That is not fair to anyone for the State or the
11 Defense. So part of your oath and I am going to ask you
12 to reaffirm is that you will not discuss the case with
13 anyone, tonight, tomorrow, during the trial if you are so
14 selected, you will not seek out, conduct research, look on
15 the internet. I don't want outside influencing on you.
16 Now I am well aware there is a lot of influences and
17 certainly it can happen unintentionally but my primary
18 focus is to conduct a fair trial for the State and for Mr.
19 Jones and I can't do that if you will not follow my
20 instructions. And understanding under your oath you are
21 not to do these things. It really create problems for
22 you. Is anyone, a member of this panel, not going to be
23 able to accept the oath, reaffirmation. We have already
24 given you your oath, if you are not going to be able to
25 live up to it I need to know now because this process is

1 going to take several days. And if you are going to leave
2 here and go get on Facebook and say, guess what. That is
3 a violation of the oath you have been given. There is a
4 lot of time and effort and huge amount of organization put
5 in by both sides to get this case to where it is right now
6 and we don't need it undone by someone who is going to be
7 carelessly accepting an oath, a responsibility to this
8 case and in being a fair and impartial Juror. Is there
9 any member of this jury panel not going to be able to
10 accept the instructions by the Court to not communicate or
11 communicating to by someone or someone tries to approach
12 and says, I would like to tell you something about that
13 case you may not know. You may not do so, I don't want to
14 hear it. Please do not talk to me about the case, I am
15 told not to talk about the case. Is there any member of
16 the jury panel not going to be able to accept and reaffirm
17 their oath that they are going to follow the instructions
18 of the Court and not communicate with anyone about this
19 case. If so please stand if you are not going to be able
20 to follow the oath.

21 (No response.)

22 THE COURT: Additions, there is going to be
23 newsprint, television and the television and news, they
24 have a right to know, they are going to report certain
25 things. I don't have any control over what they report.

1 If a news report comes on and you notice them discussing
2 something about this trial please change the channel, do
3 not listen to it, do something different. You will be
4 amazed that the trials that I have, the jurors say, I have
5 no idea this was the system, this is how things work. I
6 have learned so much. The fact is, we can't conduct a
7 fair trial here if you don't follow my instructions
8 because I tell jurors all the time, what you need to
9 decide this case, every case I have presented before now,
10 you don't need anything to decide this case other than
11 what you hear in the courtroom. Everything else is not
12 relevant, not to be discussed, not to be considered. That
13 is your oath. Another thing, the lawyers, I am not
14 working from a script, I am working with experience in
15 this big of a crowd. If someone tries to communicate with
16 you. If you overhear a conversation, if you watch a news
17 account, part of your oath is to let the Court know, Clerk
18 of Courts know and then we can go froward from there. Let
19 me reassure you, the news media, the reporters and
20 whatnot, they are not going to be asking you any questions
21 whatsoever, they know to stay away. Other people
22 potentially around the Court House coming to and from the
23 courtroom may not know you are a potential Juror. You
24 know you are a potential Juror, minimize those
25 conversations. All right. Now, y'all bear with us a

1 moment. We are going to randomly generate a list from
2 your number. So your number is going to be selected in
3 random orders so we may get Juror 184, 415, something like
4 that. Randomly your names are going to be placed in
5 certain panels. The panels, I decided on panels of eight,
6 we are going to start with the first panel of eight in the
7 morning, the second one about midday and the last one
8 about mid-late afternoon. So bear with me and I am about
9 to notify of which panels y'all fall into. Here is what
10 we are going to do. We are going to pick the first
11 several panels and y'all will know right now, in a moment
12 what time tomorrow to come back in. The other panels that
13 are going to come in Wednesday and Thursday, y'all will be
14 given the card momentarily. You are going to be given the
15 card momentarily that is going to allow you to check a
16 website to find out when your panel is and what time you
17 will be reporting to come in for additional voir dire.
18 Any member of the jury panel not utilized the internet and
19 get on a website, like the County website. Anybody cannot
20 use a website, please stand.

21 (No response.)

22 THE COURT: Everybody is going to be able to get on
23 the website if I give you the web address. That is
24 amazing. All right, folks, I am going to make certain
25 that we are clear. What is going to happen next, the

1 Clerk of Court's office is assigning you to the first
2 three panels so we will know who those 24 people are
3 shortly. And maybe I didn't explain it as well as I
4 should but we are going to voir dire those panels, eight
5 people at a time but one person at a time, ask them
6 questions and whatnot, take down the information. Until
7 we go through all of you and make determinations of
8 qualified as jurors for this case and there is no reason
9 to excuse you for whatever reason, that may take several
10 days. So as you come up in panels and report to the Court
11 House and answer the questions proposed by the Court and
12 the lawyers you will be given further instructions on
13 where to check back with or when to find out where to
14 report back after that. I am not certain I did a good job
15 of explaining that. But the second group of panels
16 starting on Wednesday, I am likely to say report back at
17 9:00, that is going to be the information on the website.
18 If you are panel number four which will be the first panel
19 Wednesday morning, you will report. And I should have
20 told you this, we are not going to be back here, we are
21 going over to the new Court House and we will be upstairs
22 on the fourth floor. I am certain I have not told you
23 that. So we will be over there and as you come in through
24 the security, the security will direct you to the elevator
25 which is right there by the elevator and you will go up to

1 the fourth floor and we have got a room for you up there
2 where you will be placed, there is water, coffee,
3 bathrooms, whatnot while you wait your turn to be brought
4 into the courtroom. The no communication about the facts
5 of the case, the allegations and even something as
6 innocent to someone, yeah, I am in that big jury panel as
7 a potential Juror, innocently you may be inviting a
8 conversation to start with someone and that person starts
9 a conversation with you and who knows what they say. I
10 don't and I can't control that so please understand when I
11 am vigorously admonishing you to, don't talk about the
12 case, don't tell somebody you are a potential Juror.
13 Certainly you have got to tell your family that you are
14 doing that but don't discuss the case any further than
15 that. And for heavens sake, don't go on Facebook or
16 Twitter and put something like that because you certainly
17 will get a response from somebody. And there is no way
18 that I can assure both parties in this case that I am
19 doing the job as the Judge in giving a fair trial to both
20 sides if I can't have that assurance from you, potential
21 jurors. Communication about investigation, web search,
22 news paper articles, barber shop, beauty shop, I don't
23 need you investigating or seeing what has been written
24 about this case. That is not important, what is important
25 is it, if you are qualified as a Juror that nothing has

1 influenced you in making a decision before you come to
2 court. There is going to be plenty for you to consider at
3 at the appropriate time from the witnesses and evidence
4 which will be presented. So on your oath, when we leave
5 here today, communication about the case is prohibited.
6 If someone tries to communicate with you terminate the
7 conversation and when we call you in individually on your
8 panel please let me know at that time. If you see a news
9 report inadvertently I want to know about it then also.
10 You are not going to be in trouble, but I can't measure
11 the, what you have heard or what you have seen unless I
12 know about it. And so, again, my primary goal, I am going
13 to be very diligent about it, is to find and seek out a
14 fair jury that can listen appropriately to what is
15 presented and make a determination. Now here is what you
16 don't know also is, a lot of what is done in the
17 courtroom, jurors listen and they answer questions of
18 fact. But particularly a lot of those questions of fact
19 are given parameters by the instructions of what the law
20 actually is. And that is my job, is to instruct you on
21 the law and right now one of the instructions is, don't
22 talk about the case, don't let anyone communicate with you
23 about the case, don't go investigate the case. What you
24 need to decide the case you will be given in the courtroom
25 by either witnesses, evidence or instructions of the

1 Court. That is how it works. If you can't follow that
2 oath you are going to be harmful to the jury rather than
3 helpful to the jury system. Are we ready to go with the
4 panels?

5 CLERK OF COURT: Yes, sir.

6 THE COURT: All right, the Clerk of Court is going to
7 call your names and let you know the first three panels.
8 Please listen to her instructions and are we going to
9 excuse them as we go. Y'all follow the instructions of
10 the Clerk of Court and we will move forward with their
11 procedure.

12 CLERK OF COURT: When I call your name and number
13 please come forward. This is panel one that we are
14 calling. Juror number 97, Robert Cody. 174, Kenneth
15 Hall. 256, Paul Long. 221, Garrett Johnson. 240, Thomas
16 Langdale. 473, Jacob Whitten. 150, Sarah Fucci. 339,
17 James Prescott.

18 THE COURT: All right, on the back you see the
19 website, the drop box down box. 9:00 tomorrow morning in
20 the new Court House, come through security, elevator,
21 fourth floor. The bailiffs in the red jackets will direct
22 you where to go when you get to the Court House. We will
23 start y'all at 9:00 and we will go forward from there.
24 Don't talk about the case, all of you understand that.
25 Anything else from any of the lawyers about my preliminary

1 instructions. From the State?

2 MR. HUBBARD: No, sir.

3 THE COURT: From the Defense?

4 MR. YOUNG: No, Your Honor.

5 THE COURT: All right.

6 CLERK OF COURT: This is panel two. 432, Kandy
7 Thivierge. 91, Arthur Chavis. 368, Sara Russo. 24,
8 Kristiana McGill. 219, Paul Jennings. 135, Martha
9 Edwards. 421, Tamika Summers and 393, Keith Shirey.

10 THE COURT: Y'all are group two. Go to the new Court
11 House, come through security, fourth floor, 1:00.
12 Everybody understand.

13 CLERK OF COURT: Panel number three. 166, Conrad
14 Gore. 172, Daniel Hall. 312, Lauren Neilson. 416, Kelly
15 Stone. 283, Sarah McNeal. 405, Phillip Smith. 231,
16 Tiffany Kent and 293, Jessica Miller.

17 THE COURT: Y'all are panel three. Check the
18 website. Go to the Court House over here, 3:30 tomorrow
19 afternoon. Do not investigate, communicate, have anyone
20 to try to communicate about the case, don't discuss the
21 case. Even though you know very little don't discuss the
22 case. See y'all tomorrow afternoon at 3:30 on the fourth
23 floor.

24 Let me ask this again. Anybody not going to be able
25 to check the Lexington County website for Juror

1 information. Anybody not going to be able to do that.

2 (No response.)

3 THE COURT: If you can't do it please stand.

4 (No response.)

5 THE COURT: Everybody is good. The next panels,
6 panel four is going to start Wednesday morning, panel five
7 probably late Wednesday morning, closer to lunch time.
8 Not knowing those exact times right now you are going to
9 have to check them. Panel four, you can probably figure
10 9:00, the other one will be 11:30, I don't know, that will
11 be panel five. It will be on the Lexington County website
12 which is on the green card. Six, likewise; after the
13 seven and then the other ones are different dates. Y'all
14 have accepted an oath from the Court to not discuss the
15 case, to not let anyone discuss it with you, do not do any
16 investigation, social media, internet or otherwise. If
17 anyone communicates with you I would like to know about it
18 when you report back. If you see a news report please
19 minimize it, if you see one you need to report it to me so
20 that we can make a determination whether or not that is
21 going to be an issue for us. The Clerk's will call you up
22 on panels from here on out. But y'all, panel four, 9:00
23 o'clock Wednesday morning. We will start at 9:00. If you
24 are on panel five or further you will have to check to
25 know. Anyone not understand that.

1 (No response.)

2 CLERK OF COURT: Y'all are panel four. 162, Amy
3 Girardeau. 302, David Murphy. 59, Nathanael Brown. 101,
4 David Connelly. 125, Hope Derrick. 226, Desiree Jordan.
5 373, Taylor Sawyer. 169, Jeffrey Griffith.

6 THE COURT: 9:00 Wednesday morning. The new Court
7 House, fourth floor.

8 CLERK OF COURT: Panel five. 110, Sabrina Cureton.
9 411, Scott Spigener. 179, Tonya Harmon. 247, Andrew
10 Lewis. 286, Joe Medlock. 306, Franklin Nelson. 272,
11 Jeremy Mason. 260, Carmen Lucas.

12 THE COURT: Check the website to find out what time
13 to come in on Wednesday. No communication about the case.
14 See y'all Wednesday.

15 CLERK OF COURT: Panel six. Kelly Tomlinson, 438.
16 183, Ryan Hatcher. 457, Dinah Washington. 444, Philip
17 Turner. 275, Carolyn Mayers. 329, Anh Pham. 476,
18 Christopher Wilde and 383, Geoffrey Shackley.

19 THE COURT: Y'all check the website tomorrow after
20 6:00 to check when to come in on Wednesday. Don't talk
21 about the case, don't discuss the case with anyone. All
22 right.

23 CLERK OF COURT: Panel seven. 348, Avery Renwrick.
24 17, Kristin Ashburn. 464, Tracy Wehr. 129, Elizabeth
25 Durham. 186, Lawryn Henderson. 237, Peter Kleemoff.

1 177, Terrie Hanley. 338, Rachna Prasad.

2 THE COURT: Y'all check the website tomorrow after
3 6:00 on what date and time to come back. Do not
4 communicate about the case, do not let anyone communicate
5 about the case, do not do any research. See y'all when I
6 see you next, it may be Thursday morning.

7 CLERK OF COURT: Panel eight. 249, Sharon Lindler;
8 254, Jeffery Long. 19, Emily Atkins. 241, Toshia
9 Latimer-Addison. 10, Edgardo Alvira. 363, Johnny Rowell.
10 273, Gail Massaro and 496, Antonio Wright.

11 THE COURT: Y'all are number eight. Check the
12 website, maybe sometime Thursday, check after 6:00. Go to
13 the Court House on the fourth floor. Don't communicate
14 about the case, don't let anyone communicate to you about
15 the case, don't do any research.

16 CLERK OF COURT: Panel nine. 74, Sylvia Cannon.
17 146, Stacey Foster. 287, Lasharee Melvin-Jonas. 314, Judy
18 Nixon. 96, Toni Clark. 89, Nathan Chapman. 426, Doris
19 Taylor. 156, Zachery Gantt.

20 THE COURT: Panel nine, check the website tonight
21 after 6:00. Y'all are potentially Thursday morning. If
22 it is not posted check a little later. Don't discuss the
23 case, don't communicate about the case, don't investigate
24 the case. See y'all soon.

25 CLERK OF COURT: Panel ten. 199, Barbara

1 Howell-Stevenson. 159, Richard Gentle. 372, Tonya
2 Sasser. 62, Todd Buehrig. 495, Amy Wright. 136, Robert
3 Ehrlich. 244, Ladonna Lee and 56, Elizabeth Brown.

4 THE COURT: Y'all are number 10, look at the website
5 tomorrow night, and then the following night if it is not
6 posted for what time you will be in. You will be in the
7 new Court House over here on the fourth floor. Don't
8 communicate about the case, do not let anyone communicate
9 with you about the case, don't do any research. See y'all
10 soon.

11 CLERK OF COURT: Panel eleven. 255, Laurie, Long.
12 77, Debora Carter. 117, Jeremy Davis. 430, Patricia
13 Teal. 147, Patricia Fowler. 288, Tameka Merritt. 236,
14 Andrew Kirkwood and 308, Shanna Nelson.

15 THE COURT: See the website on the back. Check it
16 each evening after 6:00 to see, date and time when to
17 report. Go to the new Court House on the fourth floor, be
18 there. Don't discuss the case, don't communicate with
19 anybody and don't let anyone communicate with you, don't
20 do any research. See you soon.

21 CLERK OF COURT: Panel twelve. 396, Amy Simpson.
22 210, Jonathan Jackson. 428, Suzanne Taylor. 222, Scott
23 Johnson. 326, Karen Perez. 402, Jason Smith. 355,
24 Lashonda Roberts and 65, Kayla Burgess.

25 THE COURT: Panel twelve, check the website tomorrow

1 after 6:00 to see what date and time. No communication
2 about the case, don't let anyone communicate with you
3 about the case, don't do any kind of independent research.
4 See you soon.

5 CLERK OF COURT: Panel thirteen. 39, Donnie
6 Blackmon. 14, Dawn Applegate. 370 Roger Sandy. 481,
7 Reba Williams. 44, Amy Boozer. 325, Tina Penn. 425,
8 Robert Tate. 417, Joseph Straczek.

9 THE COURT: Y'all are panel thirteen. Y'all check
10 the website, check tomorrow night and find out what date
11 and time you will come in. Don't discuss the case, don't
12 let anyone discuss the case with you, don't do any
13 independent research. See y'all soon.

14 CLERK OF COURT: Panel fourteen. 361, Travis Ross.
15 109, 109, William Cunningham. 26, Curtis Barber. 392,
16 Richard Shinn. 181, Matthew Haslinger. 343, Brian Pugh.
17 8, Wendy Allison and 403, Linda Smith.

18 THE COURT: Y'all are panel fourteen. Check the
19 website on each night, find out what time to report back
20 to the new Court House, fourth floor. Do not communicate
21 about the case, don't let anyone communicate with you
22 about the case and don't do any independent research. See
23 y'all soon.

24 CLERK OF COURT: Panel fifteen. 200, Kimberly
25 Hughes. 357, Christopher Rocker. 305, Joseph Neeley.

1 461, Susan Watson. Number 7, Linda Allen. 34, Timothy
2 Belay. 32, Todd Bedenbaugh. 86, Robers Chambers.

3 THE COURT: Y'all are fifteen. Y'all check the
4 website for your date and time to reappear. It will be
5 several days before I see you again. Don't let anybody
6 communicate with you, do not communicate with anybody,
7 don't discuss the case, don't do any independent research.
8 See you soon, Court House, fourth floor.

9 CLERK OF COURT: Panel sixteen. 264, Teresa MacFawn.
10 245, Thomas Lee. 285, Taylor Medlin. 143, Bryan
11 Ferreira. 377, Victoria Schneider. 366, Ashley Russell
12 469, Candy Whisenant. 83, Laguadia Caughman.

13 THE COURT: You are panel sixteen. Check the website
14 and find the schedule, find out when y'all are to come
15 back and it will be panel sixteen, Friday morning,
16 whatever. The date, time, when to be there in the new
17 Court House on the fourth floor. It will be several days.
18 Don't communicate with anyone, don't let anyone
19 communicate with you, don't do any independent research,
20 don't talk about the case. See y'all when I see you next.

21 CLERK OF COURT: Panel seventeen. 499, Sylvester
22 Young. 12, Fredrica Anderson. 322, Stephen Parkin. 66,
23 Steven Burke. 489, Misty Wise. 414, Tammaka Staley. 92,
24 Michael Chestnut and 282, Warren McMurry.

25 THE COURT: Y'all are panel seventeen. Y'all are to

1 check the website each evening after 6:00 to determine the
2 date and time to come back in. Until that time don't
3 discuss the case, don't let anybody discuss the case with
4 you, do not do any independent research. We will revisit
5 that issue, don't do that. We will see you on the date
6 and time on the schedule then.

7 CLERK OF COURT: Panel eighteen. 488, Dianna Wise.
8 22, Melody Bailey. 16, Deborah Arnold. 51, Christine
9 Broach. 449, Felix Vazquez. 376, James Schirmer. 40,
10 Lisa Blackmon. 483, Donald Willis. Ms. Broach is
11 protected for Tuesday. She walked out the door. She
12 shouldn't have left. She is on panel eighteen and we will
13 call her.

14 THE COURT: Y'all are eighteen. Check the website
15 each day until you find out the date and time you are
16 scheduled to come back. Until that time don't discuss the
17 case, don't let anybody discuss the case or attempt to
18 discuss with you, don't do any independent research. We
19 will be in the new Court House upstairs. See y'all then.

20 CLERK OF COURT: Panel nineteen. 67, Gregory
21 Burroughs. 487, Devon Wise. 479, Melissa Williams. 315,
22 Kaylee Northrop. 342, Stephen Pueblo. 354, Jorge Rivas.
23 497, Emilia Wright. 320, Esther Oliver.

24 THE COURT: Y'all are panel nineteen. Check the
25 website each evening after 6:00. Now, y'all are down the

1 line, check it and double check it to make certain it is
2 not on there. Okay. Don't discuss the case until you
3 come back, don't let anybody discuss the case with you, do
4 not do any independent research. Understood. See y'all
5 then.

6 CLERK OF COURT: Panel twenty. 458, James Waters.
7 456, Cassidi Warner. 220, Donnie Johnson. 149, Barbara
8 Friendly. 201, Priscilla Hunt. 276, Robert McCarter.
9 218, Rebecca Jeffers and 137, Caroline Elliott.

10 THE COURT: Y'all are panel twenty. Check the
11 website, find out what date and time to report. You may
12 not be there for a night or two so reject the following
13 night. Don't discuss the case, don't let anybody
14 communicate with you about the case, don't do any
15 independent research. See y'all when you come back in the
16 new Court House on the fourth floor. Thank you.

17 CLERK OF COURT: Panel twenty-one. 48, Jazmin
18 Bradshaw. 190, Nathan Hill. 304, Dean Nash. 359,
19 Virginia Rogers. 331, Mary Pia. 84, Tommy Cave. 37,
20 Stephanie Bernique. 142, Timothy Farley.

21 THE COURT: Y'all are twenty-one. Check the website
22 every evening after 6:00 to find out what date and time
23 y'all will come back as a group. We will be in the new
24 Court House on the fourth floor. Until that time don't
25 talk about the case, don't let anybody communicate with

1 you about the case, don't discuss the case, do not do any
2 independent research. It may be a day or two, depends on
3 how everyone else goes, how the lines moves, beware of
4 that. See y'all when I see you.

5 CLERK OF COURT: Panel twenty-two. 480, Ninfa
6 Williams. 214, Michael Jadin. 206, Diana Ireland. 191,
7 Thosha Hill. 208, Brandon Jackson.

8 THE COURT: Check the back of the card and check the
9 website. Don't discuss the case, don't talk to anyone
10 about the case, don't let anyone discuss the case with
11 you, do not do any independent research. It will be in
12 the new Court House over here. See you then.

13 All right. This is important. Y'all have not been
14 in here to hear all the discussions of what is going on, I
15 had nearly 200 people in here earlier. Everybody has been
16 divided into panels. Y'all ten are the balance of the
17 panel. On the back of those cards you will notice
18 Lexington County website, that is how to find out when to
19 come back. Y'all's panel, like the, you have not been
20 scheduled yet. Check the website every evening after
21 6:00. Y'all are going to be the balance of the panel.
22 Twenty-two is the last panel, y'all are the ones after
23 twenty-two. It will tell you when to come back in here, I
24 may need you. I am not very happy y'all were late, I
25 understand it is probably a reason for that. I am not

1 dealing with that now. Y'all have not been placed under
2 oath. We will discuss how to use you when you come back
3 in, check that website until you come back in. If you
4 don't come back I will send you a ride. Now, y'all are
5 lucky, there are about 25 that didn't show up at all.
6 They don't have the benefit of coming back to be able to
7 come back and talk to me. See y'all on the appointed day,
8 balance of the panel is y'all's number. Okay. See y'all
9 then.

10 Tell me, it is 2:30. What is the preference of the
11 group. Everybody is hungry, we can eat and come back in a
12 while. Would that be the best thing to do?

13 MR. YOUNG: Yes, sir.

14 MR. HUBBARD: Yes, sir.

15 THE COURT: It is 2:25. Let's come back at 3:30.

16 (Whereupon, a lunch break was taken.)

17 THE COURT: Anything we need to hear before we get
18 into our panels in the morning.

19 MR. YOUNG: If we can take care of a couple of
20 housekeeping matters. At the time where we filed our, we
21 made a Court's exhibit, I don't remember what number it
22 was, it was a notebook that had all of the photographs of
23 the remains, about 415 pictures. And we have handed up
24 and given a copy to the State of a memorandum of law with
25 a couple of articles attached regarding the emotional

1 nature of gruesome photographs and how they should be
2 served. I filed that motion today just to make sure that
3 it is part of the record so that would be Defense motion
4 102.

5 THE COURT: And that motion will reflect back to the
6 large notebook, I think it was 59 or 60.

7 MR. YOUNG: Yes, sir.

8 THE COURT: Whatever the big notebook is. It is only
9 a big notebook as a Court's exhibit. It will be reflected
10 in regards to that.

11 MR. YOUNG: Yes, sir.

12 THE COURT: Okay, fair enough.

13 COURT REPORTER: That was number 61.

14 THE COURT: It is number 61.

15 MR. YOUNG: So the memorandum, Defense motion number
16 102 is in regards to the pictures contained in Court's
17 exhibit number 61.

18 THE COURT: Right. And is there a ruling on that
19 motion, did I not defer until the State decided what they
20 wanted to use and what they intended to use and then we
21 take up at that time whether it was relevant and or undue
22 prejudicial under 403 or whatever bases y'all raised.

23 MR. YOUNG: Yes, sir.

24 THE COURT: Okay.

25 MR. YOUNG: And that, Your Honor, was going to voir

1 dire on gruesome photographs to the jurors.

2 MR. HUBBARD: Voir dire on gruesome photographs?

3 THE COURT: Well, I think the nature is not exactly
4 on gruesome photographs. The voir dire was going include
5 some comment from the Court of subject matter of the trial
6 involved the deaths and bodies of young children, a
7 subject matter of that type, would cause you not to be a
8 fair Juror, something along those lines.

9 MR. HUBBARD: Because I know how we are going to try
10 to try it, obviously as clean and straightforward.
11 Obviously we run a risk of, you know, looking like we are
12 parading kids in front of a jury. So I would request that
13 it will involve graphic testimony involving small
14 children. And it may be just that, that way that covers
15 testimony but it covers whatever physical evidence might
16 come in too.

17 THE COURT: And that what he was alluding to, voir
18 dire as to the subject matter in general with maybe
19 photographs.

20 MR. YOUNG: There is going to be photographs of young
21 children who were in a car during the summer for
22 approximately ten days.

23 MR. HUBBARD: That is just getting into the facts at
24 that point, Judge. What I prefer and what I think is
25 clean, this is going to involve murder of, a case that

1 involves the charge of the murder of five small children.
2 And I am fine up to, some testimony or evidence may be
3 graphic in nature. But other than that I think you are
4 commenting on the facts.

5 THE COURT: Subject matter being that in general.

6 MR. HUBBARD: It is sensitive subject matter, can you
7 listen to that.

8 THE COURT: All right.

9 MR. YOUNG: Your Honor, I am going and I have made
10 these Court's exhibits number 64 and 65. Number 64 is the
11 Defense's proposed three types of jurors, the State has a
12 copy, I believe the Court has a copy as well but I will
13 give the Court another copy of what we propose the jurors,
14 in determining whether or not they are one of the types.
15 I know the State proposed a different version. I am happy
16 to argue about that now.

17 MR. HUBBARD: We propose the standard version that
18 has been used in every Capital case for as long as I have
19 been practicing law.

20 MR. YOUNG: That is just not true. I mean, I know
21 that they wrote standard form on the bottom of it. That
22 does not mean the standard form is not a form from the
23 Court. The Prosecution has proposed it in a number of
24 cases. And that form, and it was the form that was
25 proposed in Blackwell but it is not a standard Court form,

1 it is not the form that has been used in every Capital
2 case. And there is a number of problems with the form
3 that they have proposed. And when Your Honor reads or the
4 jurors read that form to themselves it requires jurors to
5 say, I am the type of person who has already made up my
6 mind without regard to any evidence as to the appropriate
7 punishment. And that is not what we are asking jurors to
8 decide. We are asking jurors, based upon a conviction for
9 an aggravated murder, do you feel the death penalty is
10 always appropriate. Do you feel the life penalty is
11 always appropriate or do you feel the life or the death
12 penalty may be appropriate. That is the way we have
13 written it out, it is very short, it is very brief, it is
14 not confusing. The way the State has laid it out, it
15 says, the first one is, do you think you are required to
16 give the death penalty in every case of murder. Well,
17 first off, Your Honor is going to tell them that at the
18 start that the death penalty is never required, not in
19 this case, not in any case, not in the worse case you can
20 imagine. To put required in there just signals to the
21 jurors that a jury that has been selected, type one, is
22 going to be an unfair Juror. It says, you are the type of
23 Juror who is unfair and can't consider anything. And we
24 think that language is problematic and the easiest way to
25 do it is to simplify it and say, are you the type of Juror

1 who thinks based upon a conviction, beyond a reasonable
2 doubt, for aggravated murder, the death penalty is always
3 appropriate. It is one sentence, it is one thing, it is
4 easy, you compare it to number two. And the State's
5 proposal for number two is like, are you the type of Juror
6 who would come back with penalty having already made up
7 your mind that it is going to be life without regard to
8 any evidence which, of course, signals to jurors not to
9 select number two. And then number three, I believe it
10 reads something like, are you a fair person who and all of
11 that language in it, leads the Juror to one conclusion.
12 Just ask them a fair question and get a fair answer. We
13 are going to voir dire on it anyway.

14 MR. HUBBARD: What motion number is this?

15 MR. YOUNG: It is not a motion, we are just arguing
16 about, we submitted three types for the jurors
17 consideration. First off, we would ask that the three
18 types not be used at all. That motion was denied. Based
19 on that denial we have submitted a proposal for the three
20 types for the jury--

21 THE COURT: What is the standard three types.

22 MR. YOUNG: Judge, they wrote standard at the bottom
23 of the form.

24 THE COURT: Where is the one that you are referring
25 to that is not standard.

1 MR. HUBBARD: The one he is referring to?

2 THE COURT: Yes.

3 MR. HUBBARD: The one he gave you is not standard
4 because I have never seen it. I can tell you, in all the
5 Capital cases I have been in, the one that you see in
6 Blackwell and these other cases--

7 THE COURT: That is what you are talking about on a
8 piece of paper, that is what I am asking.

9 MR. HUBBARD: I think, I have submitted it. I don't
10 have a copy.

11 MR. YOUNG: I don't have a clean copy.

12 MR. HUBBARD: We will try to get you a clean copy,
13 Judge.

14 THE COURT: I am certain I was handed one up and Ms.
15 Frick and I had one and we discussed when we were working
16 on the proposed questions questionnaire.

17 MR. HUBBARD: That is the one that is all marked with
18 his editorial--

19 MR. YOUNG: You can ignore my notes as far as what
20 the actual language they handed up is.

21 MR. HUBBARD: Judge, we will get you a clean copy but
22 it is what they used in Blackwell, that is what they have
23 used in these other Capital cases. It didn't come from
24 our office, it is not what I am trying to persuade you to
25 use like it is some kind of new form. It has been used

1 multiple, multiple times. Your Honor, we are having
2 somebody send it to you.

3 THE COURT: I have got it.

4 MR. HUBBARD: Okay. I thought we had talked about
5 this some time ago, Your Honor.

6 MR. YOUNG: When?

7 MR. HUBBARD: Your Honor, I think if you look at the
8 Blackwell, the transcript, it will give you multiple times
9 in the transcript where Judge Couch when over those three
10 types.

11 THE COURT: I am looking at the one that was on the,
12 I am not exactly sure of its source, but it is more of the
13 traditional one. I've looked at what Judge Mullen used
14 when she had a trial several years ago and I am looking at
15 the one presented by the Defense. I am leaning going
16 towards the traditional one. You see a lot of testimony
17 back and forth with Judge Couch on the traditional one and
18 some modifications of it. And then you see a lot of
19 testimony and the question is, Juror type one is basically
20 defined, kind of generalized. And I expect that is going
21 to happen here. There are going to be some editorializing
22 of the three types, you are not going to read it verbatim.

23 MR. YOUNG: The jurors are going to be asked to read
24 it verbatim.

25 THE COURT: I understand.

1 MR. YOUNG: And it is not coming from the Court. And
2 this form has never been approved by the South Carolina
3 Supreme Court. They never said, these are the appropriate
4 types of jurors. The South Carolina Supreme Court is, ask
5 the Juror, are you a type one who thinks it is definitely
6 always appropriate somebody commit a murder. Type two,
7 the Juror gets the life penalty, it is always appropriate
8 for somebody who commits a murder. Or type three, a Juror
9 thinks life or death might be the appropriate penalty for
10 somebody convicted of murder. They have never cited this
11 form and said this is the correct standard. That has
12 never happened. This form fundamentally misstates the
13 law. And it would be an error to give it to a Juror and
14 or read it to a Juror in this format and it would deprive
15 Mr. Jones of his right to a fair and impartial jury and
16 the Sixth Amendment.

17 THE COURT: Isn't that one very similar, the standard
18 form, very similar to the one used in Blackwell?

19 MR. YOUNG: Yes, sir. It was very similar to the one
20 that was used in Blackwell. The Blackwell Supreme Court
21 never addressed the Defense's objection to the use of in
22 Blackwell, it wasn't raised on appeal. The only Juror
23 issue raised in Blackwell was a Juror who we had alleged
24 was a burden shift. But, yes sir, no doubt that the,
25 Donnie Myers, the Eleventh Circuit Solicitor's Office has

1 prepared a form, they labeled it as standard form number
2 two and they have sent it out to all Prosecutors saying,
3 hey, use this, you will be more like the Eleventh Circuit
4 and you will get death verdicts. If you get this form to
5 jurors it educates jurors who have feelings that would
6 otherwise disqualify them where they pick that the death
7 penalty is the most appropriate punishment for somebody
8 that has been convicted of murder, it educates them to not
9 saying it and hiding what their true feelings are and they
10 hide behind the form. And it deprives the Defendant of a
11 fair jury.

12 MR. HUBBARD: Your Honor, this has been argued all
13 the way back to 1985, State versus Robert South. That
14 case was tried in this courtroom, it was a death penalty
15 case, 1985. They dealt with this issue on the three types
16 of jurors. I am going to read a quote from that case.
17 During voir dire the trial Judge asked each perspective
18 Juror whether they would, A. Always vote for the death
19 penalty; B. Always vote for life imprisonment; or C. Vote
20 for either depending on the evidence. Appellate claims
21 this inquiry improperly steered the jurors. This
22 contention is without merit. That is exactly what our
23 questioning asked, exactly what we have in South. Judge,
24 this issue has been debated going back all the way to
25 1985. That is where that form came from and there may be

1 some variations but it is that always language. Because
2 ultimately you are looking at a Juror will always be
3 against the death penalty so that person just can't
4 possibly sit because by saying that they are not going to
5 listen to the evidence. If they are always for the death
6 penalty it won't matter what mitigating evidence there is.
7 That is what it means, we want somebody, you know what, I
8 will keep an open mind, I will listen to both types of
9 evidence before making a decision and I can believe either
10 one will be appropriate depending on the evidence. That
11 is how it has always been done. That is what it says in
12 Self. The language cited in South is a far cry from what
13 they have handed up as their standard form number two
14 where they say the type of Juror who thinks that the death
15 penalty is required. There is a type of Juror who once
16 the crime of murder has been proved by the State and the
17 jurors consider the punishment feels that he or she is
18 required to give the death penalty in each and every case.
19 This Juror simply feels that once the murder has been
20 committed the death penalty is the most appropriate
21 punishment no matter the circumstances of the case.
22 Actually here is what we turned over to Your Honor. Type
23 one is the type of Juror who, once the crime of murder has
24 been proved by the State and the jurors considering
25 punishment feels that he or she is required to give the

1 death penalty in each case and in every case. This Juror
2 simply feels that once murder has been committed the death
3 penalty is the most appropriate punishment no matter what
4 the circumstances of the case. It is exactly what we are
5 saying. It is not because the law requires, that is what
6 they feel. Type two, a Juror is one who, although guilt
7 of the Defendant has been determined under circumstances,
8 under no circumstances could they ever give the death
9 penalty. This Juror would not need to hear what the facts
10 and circumstances and aggravation or mitigation in this
11 particular case were because the Juror would have his or
12 her mind made up concerning the punishment no matter what
13 he or she heard. That is exactly what you are looking at.
14 Those two types of jurors come in and they are either
15 going to believe death is always appropriate in a murder,
16 particularly if it is aggravated or death is never
17 appropriate, life is the only sentence. That is all we
18 are asking. But it is always, just like it says in South,
19 always. That is the only way I know to clearly
20 differentiate the types of jurors we are trying to keep
21 off the jury. And so that is consistent with State v.
22 South.

23 THE COURT: I am going to call it the, one the State
24 has presented, I am comfortable with that, Mr. Young.
25 What part of it other than you want me to adopt Court's

1 exhibit 64 which I don't believe gives enough explanation
2 as the State's standard exhibit number 2. Whatever that
3 is called, I don't think, I don't know that we have it
4 marked anywhere. Can we print and make it a Court's
5 exhibit 65.

6 MR. YOUNG: If the State wants to, yes sir.

7 THE COURT: I think you want to because you are
8 comparing it against, it is what the State is proposing.

9 MR. YOUNG: I would like what the Defense proposed.

10 THE COURT: I know that. But if I say no then I want
11 to make the record what you are arguing against. Don't I?

12 MR. YOUNG: Yes, sir.

13 THE COURT: Okay. Can we make the State's because I
14 am not aware that it is in the record as a Court's
15 exhibit, it is the one that Solicitor Hubbard has been
16 reading from. I have it in an email, it has been given to
17 me and reviewed but I am not sure it is a part of the
18 Court's exhibit record marked as an exhibit, as this is
19 what we are going to hand out. I don't think we ever got
20 that.

21 MR. HUBBARD: We will be happy to do that, I can have
22 it printed out.

23 THE COURT: Have it printed out and be marked as
24 exhibit 65, Court's.

25 COURT REPORTER: That would be 66.

1 THE COURT: What is 65.

2 COURT REPORTER: The witness list.

3 THE COURT: Oh, I was unaware of that. It will be
4 marked as the next subsequent--

5 COURT REPORTER: No, the witness list is, anyway it
6 will be 66 coming up.

7 THE COURT: Okay, fair enough.

8 (Whereupon, Court's Exhibit 66 was marked for
9 identification only.)

10 THE COURT: Let's move on to the next issue and you
11 can answer my question in a moment. I am, I don't want to
12 call it the standard three question, three types of Juror
13 questions but the marked one is what I am going to call
14 it.

15 MR. YOUNG: Okay.

16 THE COURT: All right.

17 MR. YOUNG: Your Honor, what I have marked as Court's
18 exhibit number 62, this is, there is a video, it is on a
19 CD in here, there is a blog on U-Tube, I believe it is
20 called Mommy Ramblings blog. It appears that on or about
21 April 25th Amber Kaiser begin chatting with the, the blog
22 is a woman who puts a camera in her kitchen and she talks
23 to people on the internet.

24 THE COURT: She called it a chat room, the lady on
25 the video.

1 MR. YOUNG: Yes, sir.

2 THE COURT: The host of the event called it the chat
3 room of some type.

4 MR. YOUNG: Yes, sir. And at about an hour into the
5 event a woman named Syfus Kaiser began commenting and
6 reported that her husband was charged with murder of her
7 five kids in Lexington County. The chats went on, they
8 eventually asked her to call in, they opened up a phone
9 line. It was, in fact, Amber Jones who called in to the
10 blog on, she reported that there was a Gag Order in the
11 case but that she could discuss information that was
12 publicly available. She then called in and that call in
13 section, approxiamtely a thirty minute phone call
14 interview with the blogger woman which is what the
15 Defense, a video captured the phone call portion, not the
16 full blog, they are making that part of the record. In
17 addition U-Tube has the ability to make a transcript,
18 there is a close-captioned button near the bottom of the
19 video. You can hit transcript and print the whole
20 transcript of the blog. That is also included in Court's
21 number 62. This U-Tube URL was sent to the Defense on
22 Saturday, that day we made the Court, the State, attorneys
23 for Mr. Jones aware of the blog and what was going on with
24 it. We said that we would be filing appropriate motions.
25 That night, Saturday night I believe the video, the blog,

1 she calls in the 25th, on the 26th she does call in and as
2 far as I am aware it doesn't chat, I don't know, I didn't
3 get a chance to review the whole thing, the case discussed
4 at length, the case is suppose to begin on the 27th. She
5 does chat some on the 27th, I don't have copies of those,
6 those videos and blogs were taken down on Saturday night.
7 But also on Saturday night there was another blog that
8 Amber did not call into but it was just a 14 minute video
9 given by the same host where she went on about how
10 somebody had sent the URL to Tim Jones' attorneys and now
11 that Amber may be in trouble for violating the Gag Order
12 and announcing that they were going to take down the whole
13 videos and to start removing comments. Another video that
14 was attached, evidently that person had requested
15 donations be made to that site and Amber had always said
16 she was not looking for any money, she didn't want people
17 to send her any money, she wasn't setting up any accounts.
18 So there a whole other video that was taken down as a
19 result of all of this. At my last look, this video had
20 been viewed some 10,000 plus times. As far as I know,
21 obviously the Global media never got it. I don't know if
22 any of the jurors got it, I don't have the, we were never
23 able to get the chats. There were a number of jurors, not
24 jurors, but a number of people in the chat room who were
25 saying that they were going to come to court with Amber,

1 that they were going to support Amber, that they were
2 local and near Amber and that Amber could stay with them
3 if she needed a place to stay during court. They were
4 going to help fly her mother in and then on the 14th she
5 reported that the State had made arrangements for her
6 family to come and she didn't need all of that. This is,
7 I believe this is the fourth time that the Court has had
8 to deal with violations of the Gag Order that was
9 originally installed by Judge Russo back at the time of
10 these events in early 2014. The first time was from the
11 Sheriffs office where the Defense filed a motion for
12 sanctions for a violation of the Gag Order, the sanctions
13 were not granted but all the parties were made aware that
14 the Gag Order meant something, it was in fact in place and
15 that they needed to watch comments. The second time was
16 another violation from the sheriffs department and the
17 Solicitor's office immediately jumped in, took corrective
18 action and stopped it. We did not file a motion for
19 sanctions, violation of the Gag Order at that time
20 although we did address it on the record in court and I
21 don't recall the date but the record will speak for
22 itself. After that there was a third violation of the Gag
23 Order where Ms. Jones went onto WIS and gave an interview.
24 Her attorney went onto WIS in an attempt to do damage
25 control. Her interview was mostly about her frustration

1 at the delay in the trial. That interview has, of course,
2 rerun this morning and this weekend in preparation of the
3 jury selection in this trial. And then, of course, there
4 was her giving an interview to the U-tube site on the 25th
5 which we plead to be a violation of the Gag Order. At
6 this time, based on the publicity and the continued
7 violation of the Gag Order the Defense would move for
8 appropriate sanctions and strike death as an available
9 punishment. In the event that the Court feels that that
10 is an inappropriate sanction for violating the Court's
11 order we would move for a continuance and a change of
12 venue.

13 THE COURT: All right. Solicitor.

14 MR. HUBBARD: Your Honor, I was here back in 2014, I
15 believe it was when Judge Russo signed that Gag Order. I
16 think not long after that legal council for the sheriffs
17 department somehow made a statement, we had a hearing,
18 Judge Russo said that he had not dealt directly with that
19 issue, admonished everybody again, no one was sanctioned.
20 The second issue with the sheriffs department, I have no
21 idea what that is. It might have been when I was gone, I
22 have no idea. No one has apprized me of that, any other
23 issue until Amber Jones got on TV unbeknownst to us and to
24 the Defense and did an interview and frankly unbeknownst
25 to her sole attorneys. She pulled a solo. And Saturday I

1 am sitting in my house, I got an email that she is on some
2 chat line with some woman out of upstate New York on some
3 Mommy what, Rambles. I have never heard of that. I have
4 never been on chat line so it is not something I do.
5 Don't know why she was on, clearly she thought about the
6 case, whether she had reached out to somebody far away,
7 shoulder to lean on or she just wanted to talk about her
8 case, I don't know. But, Judge, our position has always
9 been, she is not acting for our behest. But our position
10 has always been, we have five victims, the kids. And when
11 it comes to Ms. Jones, we have always had to reach out
12 through her attorney, I have never had to do that before
13 frankly, and that is what she feels is necessary that is
14 fine. But she is kind of an independent figure out there
15 that I have no control over, the Defense has no control
16 over and apparently there are times when her own attorneys
17 that are representing her have no control over her. And
18 to say that the State has to be sanctioned now, we don't
19 have control over her, seems to be a little over the top.
20 However Your Honor wants to handle it with Ms. Jones,
21 obviously Your Honor has complete discretion in that.
22 There is no fault on the State.

23 THE COURT: Well, I was aware and participated in the
24 hearing, when the interview on the television station came
25 out many months ago and I remember her civil lawyer was

1 very apologetic and lacked client control the best way I
2 can remember him representing to the Court is, it was
3 against his advise, I remember that. But how can I
4 sanction the State on something that they haven't been
5 utilizing or using her as the victim, contact person,
6 civil attorney can't give her advise that she will follow,
7 Mr. Young.

8 MR. YOUNG: We would have to have a hearing where she
9 would testify to determine what they knew, when they knew
10 it, who knew what.

11 THE COURT: I am not going to impose sanctions at
12 this time. Now, I certainly think it is going to be
13 appropriate for us to inquire to any of the potential
14 jurors if they saw it and whether they did or not.

15 MR. YOUNG: And there were a number of false
16 statements made. One was about in South Carolina she was
17 not allowed to bury the kids because Tim wouldn't agree to
18 release the remains to her, not true. She says that she
19 had a hearing with the Judge where she expressed that she
20 was in fear of her safety, that Mr. Jones was not in
21 shackles or visibly restrained during the hearing. As far
22 as I am aware, the Court has never had a hearing with them
23 about that.

24 THE COURT: I am not certain I have had a hearing
25 with her in the courtroom.

1 MR. YOUNG: Other than the released of her cell phone
2 is the only hearing I am aware of that she was at.

3 THE COURT: Was she at that one?

4 MR. YOUNG: Yes, sir.

5 THE COURT: I remember that hearing and that was
6 early on, the copy of the cell phone contact list, text
7 records, it was a copy of the cell phone to the civil
8 attorney.

9 MR. YOUNG: At that hearing, extensive discussion
10 about the Gag Order, the nature of the Gag Order and the
11 lifting of the Gag Order for the soul specific purpose of
12 getting her cell phone was explained to her, to her
13 attorneys and to all parties involved at that time.

14 THE COURT: It was.

15 MR. YOUNG: There is a number of things that she said
16 that were potential Brady evidence, where she said that
17 Tim had never abused the kids, he had never directed any
18 abuse to the kids, that Tim was a great Dad to the kids.
19 He would never know something like this would happen, that
20 he was an emotionalist, disconnected.

21 THE COURT: You are not suggesting that the State has
22 been withholding that has Brady evidence when it was just
23 published over the weekend without their knowledge,
24 without your knowledge on a blogger U-Tube website?

25 MR. YOUNG: No, sir. But this would be in direct

1 contradiction to what the State furnished to us on Friday
2 as her statement and regarding Tim's abuse.

3 THE COURT: And certainly if she is called as a
4 witness, the Defense calls her as a witness, that is fair
5 game.

6 MR. YOUNG: She told the chat room that Tim had
7 killed the kids because she was getting ready to get full
8 custody of them.

9 THE COURT: Mr. Young, I want to inquire with the
10 jurors as to whether they, what media they have seen
11 because roughly half of the venire stood up when they said
12 they have seen publicity. This could be considered one of
13 those things. I don't mind inquiring into it with each
14 Juror as to, you know, whether this was seen by them
15 and/or it influenced them. And to the extent you say it
16 is Brady material, I mean, if Ms. Jones testifies I don't
17 see, I think it is fair game for you to utilize with her.
18 I don't see why you wouldn't.

19 MR. HUBBARD: And I don't have any problem with that.
20 First, it is not Brady material because it was never in
21 our possession. The Defense notified us of the chat room.

22 THE COURT: Right. That is why I asked the first
23 question, y'all would have provided it to them. If it is
24 there I think it is fair game--

25 MR. HUBBARD: Whatever she says is fair game. I

1 agree, Your Honor. Whoever might put her up they can ask
2 whatever.

3 THE COURT: Recent statements made by her are fair
4 game. But you disclosed it, Mr. Young, as soon as you
5 found out about there was something out there. But I
6 don't think until maybe yesterday did you get a full
7 review of everything, did you?

8 MR. YOUNG: I never did get a full review.

9 THE COURT: Right. So it is not nothing that anyone
10 has been sitting on more than an hour or two. As soon as
11 you saw it, the Defense, you sent it to the State, notice
12 of it which was appropriate and then notified the blogger
13 and they terminated upon that communication.

14 MR. YOUNG: Rather than me to just wait for somebody
15 to google her name. All you have to do is put her name in
16 the google and U-Tube videos would come up.

17 THE COURT: Buy any statement she made during that
18 interview, they are fair game for you or for the State to
19 utilize if she makes a statement inconsistent with it if
20 she is called as a witness. I think, I mean I think she
21 can explain that.

22 MR. YOUNG: Yes, sir.

23 THE COURT: I am not going to sanction anyone
24 currently. If something else changes with her because I
25 think I hear more from her and decide on that but the

1 State is not going to be sanctioned for her independent
2 behavior.

3 MR. HUBBARD: And just for the record, Your Honor.
4 When Mr. Young sent that to us we turned around and
5 forwarded it to her civil lawyers, letting them know who
6 is talking and they needed to take control.

7 THE COURT: Okay. So for the record, I am not going
8 to, I don't know the verb to use, but strike the intent to
9 seek the death penalty from the State as a sanction. I am
10 not going to do that.

11 MR. YOUNG: Yes, sir. And for a continuance to try
12 and collect and review the thirteen hours of video.

13 THE COURT: Thirteen hours, I thought it was an hour
14 or so.

15 MR. YOUNG: The one that she called into was four and
16 a half hours long. There is another five and a half hour
17 one the next day. There was another five and a half hour
18 one, the next day that I forgot. And then there was a
19 fourteen minute one on Saturday night and then there was
20 another last night that was five and a half hours, I saw
21 it briefly this morning.

22 THE COURT: Five to ten hours last night?

23 MR. YOUNG: Five and a half hours last night, yes
24 sir.

25 THE COURT: Amazing that she talks that much.

1 MR. YOUNG: It is.

2 THE COURT: No sir, I am not getting a continuance on
3 that. Any of it y'all want to use is free game but the
4 State is obviously not going to use it, they can't get it
5 and I will let either side use it if it is inconsistent
6 with the testimony she provides if she is called.

7 MR. YOUNG: I have given a copy of the video to the
8 State today.

9 THE COURT: Okay.

10 MR. YOUNG: The same one that is in the record.

11 THE COURT: Well, I mean, I am not going to grant a
12 continuance on that basis.

13 MR. YOUNG: Yes, sir. One other housekeeping matter,
14 Your Honor. This is what has been marked as Court's
15 exhibit number 65 with the State and the Defense handed up
16 South Carolina law on Capital voir dire, memorandum of law
17 on voir dire issues. I just want to make sure this is
18 part of the record.

19 THE COURT: Yes sir, it will be. So that is 65.

20 (Whereupon, Court's Exhibit 65 was marked for
21 identification only.)

22 MR. YOUNG: Your Honor, the Defense spent some time
23 this weekend putting together what I thought was a
24 comprehensive witness list because I knew the jurors were
25 going to have to review it and marked it as Court's 63.

1 The State has given--

2 THE COURT: No, 63, is that not the, no, that is 62.
3 You are correct. 62 is the transcript and audio recording
4 of all of that chat room stuff. This is 63?

5 MR. YOUNG: Yes, sir.

6 THE COURT: Okay.

7 MR. YOUNG: The State has given me another copy of a
8 witness list, I don't know what their additional witness
9 is on there, obviously we would object to additional
10 witnesses being disclosed today. I will go back and look
11 at that and see if there is anybody on there, we will
12 address that in the morning. The State has asked to make
13 a list of just the Defense's that aren't already included
14 on--

15 THE COURT: So is 63 the State's and the Defense
16 combined?

17 MR. YOUNG: Yes, sir. What it was, when it was
18 turned over to us with 173 names on it from the State we
19 added ours.

20 MR. HUBBARD: Your Honor, I haven't seen what he just
21 handed up so I can't verify that. I know this, last time
22 we talked he said we had until Tuesday to give you a
23 complete witness list. So I don't know if we have turned
24 one over yet. We have turned one over to the Defense, we
25 haven't given one to Your Honor.

1 THE COURT: Okay.

2 MR. HUBBARD: This motion that we add a name now
3 somehow has to be struck. I am not sure where that come
4 from.

5 THE COURT: We need potential witnesses, not called
6 witnesses.

7 MR. HUBBARD: Right.

8 THE COURT: All right. But the exhibit 63 is the
9 State's list from Tuesday.

10 MR. YOUNG: No, sir. That is the combination list we
11 put together this weekend.

12 THE COURT: And the combination list. That is what I
13 was going to say.

14 MR. HUBBARD: And I have seen it to go over and see
15 if that is a complete list representing people that we
16 have on our list.

17 THE COURT: Well, y'all double check. Would that not
18 be the most efficient to give the potential jurors, one
19 list with all the witnesses, both sides. I mean if that
20 is right, tell me right now, tell me in the morning.

21 MR. HUBBARD: If I can tell you in the morning so we
22 can go over it that way we won't miss anybody while we are
23 trying to handle others.

24 THE COURT: Sure and I would hope that this list, the
25 comprehensive witness list?

1 MR. YOUNG: Yes, sir.

2 THE COURT: Or combined. What else you got?

3 MR. YOUNG: Your Honor, my notes indicate that Your
4 Honor has withheld rulings on motion number 70 and 71. 70
5 was the procedure to engage in the post-challenge
6 questioning of jurors where one party felt that a Juror
7 was struck for cause and made the challenge. What we are
8 going to do as far as, we are going to send the jury out,
9 Juror out and have an argument and determine whether or
10 not the Court felt that Your Honor's clarification on the
11 point and then bring the Juror back in to allow
12 clarification on a particular point. But the, about
13 rebuttal and everybody where you have jurors who will just
14 answer the question, like, yeah, you know what, I think I
15 am open minded when you are asking me questions and how
16 Your Honor should deal with those types of jurors. We
17 think the appropriate procedure would be not to allow each
18 side to continue to get up and be questioned but to make
19 the challenge, determine whether or not the Court felt
20 further clarification is necessary.

21 THE COURT: Okay, I understand. So what you are
22 saying is that one the Court determines there has been
23 sufficient questioning back and forth, we stop if there is
24 going to be a question on or a challenge made, the Juror
25 to be excused and let the lawyers argue about it, let the

1 Court make a decision, up or down but not continually go
2 back, forth, back and forth until you finally get the
3 answer you are hoping for.

4 MR. YOUNG: Here is the issue, Judge. It is not the
5 last person talking to the Juror that gets them to say a
6 response that should be determinative by Your Honor about
7 whether or not they are or not substantially impaired in
8 their ability to follow and apply the law.

9 THE COURT: I agree with that.

10 MR. YOUNG: It is not a one question determination
11 and I think the State in some of the cases that they have
12 handed up, one in particular was Bennett where they said.
13 the magic question, can you put that aside, does not cure
14 a biased response and that is part of motion number 71 to
15 restrict rehabilitation in that asking jurors, if a Juror
16 says I am biased. You know what, I think death is the
17 only appropriate punishment for somebody who has been
18 convicted of murder. To try and talk to the Juror out of
19 a biased view is improper and to ask jurors, can you put
20 aside your biased is not an inappropriate determination of
21 the Court. The Court has to determine whether or not they
22 are biased. And under South Carolina law any Juror who is
23 impartial in the matter shall be set aside. To put this
24 question to a Juror, the Juror says, you know what, I have
25 heard a lot about this case and I have read a lot about

1 this case and pretty much formed an opinion about this
2 case. Well, can't you put that aside. Well, when Your
3 Honor ask a Juror, can you put that aside they are going
4 to say yes. But is that really how they feel and that is
5 why that that question shouldn't be asked. Your Honor
6 asked questions to try and determine what their biases are
7 and how they really feel, not can you put it aside which
8 is what the State is typically arguing is the only
9 necessary question for voir dire, well, everybody has
10 biases, can you put it aside and be fair. And if the
11 Juror says yes to that they are somehow qualified. But as
12 they noted, that is not the standard. The standard is are
13 they biased, did they give a response that makes clear
14 their biased and any Juror who is impartial should be set
15 aside.

16 THE COURT: I understand your motion. Let me hear
17 briefly from Solicitor Hubbard.

18 MR. HUBBARD: Your Honor, I believe you have complete
19 control over voir dire processes. I would suggest the
20 cookie cutter approach saying we can't ask follow-up
21 questions because in some cases follow-up will help
22 clarify things for Your Honor. You are the one we are
23 trying to assist in the process. So you are the one that
24 says, you know when you have had enough. Attorneys,
25 please be quiet. Other times you can say, y'all can dip a

1 little bit more, I need to know a little bit more without
2 you having to get involved and do it for us. So I think
3 that discretion to stay with you without adopting a
4 hardset rule right now. Now, as far as Bennett, sure,
5 there are times when somebody is going to say something,
6 they are biased and they can't be unbiased. Well, I think
7 Your Honor knows when that is the case. Your Honor is
8 going to say, attorneys, I am satisfied with that. There
9 are going to be other times when they are going to say, I
10 heard a lot of things, whether they might have a
11 conception of what the law or how things go. And we will
12 ask, can you set that aside because that is the proper
13 question and can you listen to the Judge as he gives the
14 law. Can you accept the Court's law, not what you see on
15 TV. Can you accept the facts in the courtroom, can you
16 set aside everything that you heard prior to coming in
17 here, that is completely proper. We only air when we are
18 talking about a clear bias and you are the Judge of that.

19 THE COURT: I don't want to, I do think delving into
20 it and it is going to be depending on the jurors, but
21 jurors are novices of the court system, I think they are.
22 And their answer to the question early on, I am always
23 going to do it this way or that way. Perhaps they just
24 don't understand fully all the law. It seems to me that a
25 reasonable amount of questions from either side and if a

1 jury exhibits that they are more firmly entrenched than
2 one side or the other, once I hear enough that I think I
3 can make the determination of biased or not, if it is
4 going to be a challenge I will ask if there is a
5 challenge. And say, yes, we will excuse the Juror and I
6 will hear both sides, explain what they think the Juror
7 said. The Juror testified to this, this and this and the
8 follow-up question said that, that and that. I think he
9 is fair. You or whoever, whichever is arguing, Judge, he
10 was convinced here, here and here and here and here. I
11 will make a ruling with outside the juror's presence on
12 that and we will move on. All right.

13 MR. YOUNG: Yes, sir.

14 THE COURT: I am not doing, I am going to use
15 Solicitor Hubbard's cookie cutter approach. Once I have
16 heard enough and I think I can make a determination, say,
17 okay, challenge or not, we will go forward. If it is a
18 challenge excuse the Juror, we will hear it.

19 MR. YOUNG: Okay. I need to perfect the record on a
20 couple of motions that we have heard and request final
21 rulings on these motions. Motion number 53, prevent death
22 qualification where we said, jurors shouldn't be asked
23 about the death penalty. We have a trial on the merits
24 phase of the case and then if that merits phase of the
25 case is found guilty then we death qualify the jury to

1 hear the punishment phase of the case. That motion was
2 denied on April 25th and I just need to renew my motion
3 and get a final ruling on that.

4 THE COURT: My ruling has not changed. We are going
5 to go forward with one jury for both sides, for both
6 portions, guilt or innocence and punishment phase.

7 MR. YOUNG: Yes, sir. It is still denied?

8 THE COURT: It is still denied, yes sir.

9 MR. YOUNG: Your Honor, we also argue motion number
10 80, I titled Hobby Lobby and jurors who came in with the
11 religious objection to the death penalty should be allowed
12 to serve despite their religious objection to the death
13 penalty.

14 THE COURT: I denied that motion also.

15 MR. YOUNG: Yes, sir. Is that your final ruling?

16 THE COURT: I am going to deny it again, final
17 ruling.

18 MR. YOUNG: Thank you, Your Honor. We have asked,
19 motion number 69, I think you heard it at the same time
20 which was to strike jurors as they were qualified rather
21 than putting together a full, once a Juror is qualified
22 but not struck for cause the State would go first and then
23 the Defense would move to strike as you go. That motion
24 was denied at the time and Your Honor ruled we were going
25 to put together a panel and then strike from the panel.

1 THE COURT: Your suggestion was we strike as we went
2 and once we accumulated enough jurors we are done.

3 MR. YOUNG: Yes, sir.

4 THE COURT: I am more comfortable with having a panel
5 and having sufficient jurors to conduct a full strike.
6 And so I am going to consistently rule that's my ruling on
7 that. Now, in that light it occurred to me last night or
8 this morning when I was reading over stuff, the number of
9 alternates we were shooting for, potential alternates,
10 hopefully more than three, we are looking for six, I
11 believe alternates. Is that y'all's recollection?

12 MR. YOUNG: I believe the Court had said six.

13 THE COURT: If we don't get six, we are short of my
14 goal, the statute requires we get a certain number of
15 alternates and if we go above that we have to have a
16 waiver or something signed. Am I wrong on that.

17 MR. YOUNG: I have no idea.

18 MR. HUBBARD: I have no idea either, Your Honor.

19 THE COURT: I think there is a requirement to be put
20 in light of, that we agree, the Defendant agrees that we
21 have more than the statutory limit on, I want to look that
22 up. But it occurred to me this morning or last night, it
23 seems like there is a case out there that says, wait a
24 minute, you went with extra jurors, did y'all agree to it
25 or did the Court just make the determination of that. And

1 the case I am recollecting it was of determination, it was
2 a determination by the Court that the Judge wanted three
3 alternates and that was larger than the number allowed by
4 the statute. And I am using three, I don't know.

5 MR. YOUNG: I have never heard of the statutory
6 limitation on the number of alternates.

7 THE COURT: We are going to shoot for potentially
8 six. Now do we need a waiver--

9 MR. HUBBARD: If they are not objecting or if that is
10 what they want too we are willing to enter into that and
11 put it on the record.

12 THE COURT: Okay. What if we only get four.

13 MR. HUBBARD: Judge, I think, I know Mr. Young and
14 his attorneys and our office have been talking. We have
15 always thought it would be prudent to have more than the
16 general two that you have in so many of these cases. So I
17 would say four to six would be great. If we only get four
18 I think that is a good, safety net.

19 THE COURT: What do you think, Mr. Young. Similar
20 opinion?

21 MR. YOUNG: I have never had to dive into the
22 alternates. So I have never had that to happen.

23 THE COURT: The trials you have been dealt with, all
24 twelve remain?

25 MR. YOUNG: Yes, sir.

1 MR. HUBBARD: I have had one where we pulled an
2 alternate. We had a woman who had a medical condition in
3 this courtroom way back when.

4 THE COURT: Okay. Is there going to be an issue or
5 does anyone know of any rule whatsoever that my suggestion
6 that we pick the jurors and whether it is 15 or 18, they
7 are the jurors and they listen to the trial and then at
8 the end then they are notified. So I guess they have to
9 be told at the end of the first phase, okay, the first
10 twelve here you go.

11 MR. YOUNG: We filed a motion that Your Honor granted
12 in that respect, that the alternates not be identified as
13 alternates until they go out for deliberations on merits.

14 THE COURT: I like that, that everyone pays attention
15 and no one feels like they are sitting in the alternate's
16 chair which to me, I have been in courtrooms, alternate
17 one, alternate two is written on the chair.

18 MR. YOUNG: Right or they get shuffled to the back.

19 THE COURT: I want them to be a group called the
20 jury.

21 MR. YOUNG: Yes, sir.

22 MR. HUBBARD: But we are still going to stick to the
23 order.

24 THE COURT: Yes, they are drawn, we keep it, we know
25 who they are, the first twelve, they don't know who they

1 are. They just know they are one of fifteen or sixteen
2 and then at the very end, all right, y'all are about to go
3 to deliberate. I give my instruction and i will call the
4 alternates out when y'all start your deliberation and then
5 they find out who the alternates are when they are called
6 out of the courtroom by the bailiff at the start of
7 deliberations. That is my intent.

8 MR. YOUNG: One thing that, this happens in every
9 Capital trial that I have done voir dire in and that is,
10 well, we create the list, the panels are back there, the
11 jurors start coming out. But some Juror will be late so
12 we will go ahead and take a Juror that is in panel one
13 that will be, the seventh Juror in panel one will get voir
14 dired first and the second Juror in panel one will get
15 voir dired second. And I think it would be prudent to
16 just make the determination, are we going to strike them
17 in order that they are qualified and voir dired in or are
18 we going to strike them in order that they are on the
19 Clerk's list despite when they come in and both sides, I
20 mean, you will figure it out in the first couple, well, I
21 don't like that Juror, if I can move them down on my
22 strikes or move them up on my strikes. So I think it
23 would be, for the Court to say, we are going to strike
24 them in the order that they are qualified in which is the
25 order they come in the courtroom in.

1 THE COURT: You mean, so they are struck
2 qualification wise off this list which starts with Juror
3 97 and then Juror 174. So if 97 is qualified and 174 is
4 not and then 256 is, those are the first two coming down
5 the pipe at you.

6 MR. YOUNG: Despite what order they come into court
7 on.

8 MR. HUBBARD: I agree, we stick to the list that the
9 Clerk has drawn and the order the Clerk has drawn. Those
10 that have fallen out, that is fine, we go onto the next
11 person. Even if we take them out of order--

12 THE COURT: In voir dire, they still stay with this
13 list.

14 MR. HUBBARD: Yes, sir.

15 THE COURT: I like that.

16 MR. YOUNG: Whichever way y'all want to do it. I am
17 happy to stay with the list. I just want everybody to
18 agree now.

19 THE COURT: So, for instance. If I get a call from a
20 member of panel seven and he wants to change and get
21 qualified in panel nine because it is a different day and
22 he has got something, a tooth to get filled.

23 MR. YOUNG: Sure.

24 THE COURT: He still stays on his respective place on
25 Ms. Frick's list.

1 MR. HUBBARD: Yes, sir.

2 THE COURT: Yes, I like that.

3 CLERK OF COURT: They would be marked qualified but
4 they would still stay in that--

5 THE COURT: So if we qualified a member of panel
6 twenty first he still stays at the bottom of the list.

7 MR. HUBBARD: Yes, sir.

8 THE COURT: I got ya, y'all are both agreeing to
9 that. We stick with the list. Okay, that makes sense to
10 me.

11 MR. YOUNG: Your Honor, I know I had another copy of
12 this and the State has a copy, this would be Defense
13 motion number 98, part two where, I know the Court has
14 some concerns about some language in that motion as being
15 commenting on the facts. We have redrafted and changed
16 the motion for the instruction to the jury and we have
17 removed what we believe to be the language that the Court
18 indicated was commenting on the facts. And I know the
19 Court wanted to hear from us later on on that. Mr.
20 McGuire will address it, further if the Court has any
21 further questions about it.

22 THE COURT: Solicitor, you want a few minutes to
23 review the modification?

24 MR. HUBBARD: Yes sir, I just got it.

25 THE COURT: Okay. Is this a, the Court's pretrial

1 remarks to the jury after they have been selected or is
2 this to be utilized before the voir dire of the Juror.

3 MR. YOUNG: Before the voir dire.

4 THE COURT: I thought that was the question.

5 MR. YOUNG: Yes, sir.

6 MR. HUBBARD: Judge, I am kind of confused. I know
7 we had markings on ours so I was assuming that was
8 markings they made but apparently it is markings we made.

9 THE COURT: Since they are proposing, give me your
10 comments first and then I will let Bill comment
11 afterwards. Go ahead.

12 MR. HUBBARD: First of all, we have not seen your
13 standard charge that you propose giving. So I don't even
14 know what we are judging this against. But I am just
15 saying, my brief reading over of motion 98, part two, I
16 know at the bottom of the page, as a Defendant is usually
17 presumed innocent, obviously he has always been presumed
18 innocent. Almost all of the next page is problematic.
19 They start talking about insanity that is, you are getting
20 on the facts at this point about what they are pleading.
21 And then on the merits phase, guilt, mental phase, talks
22 about the verdict forms. Judge, I have never seen an
23 opening where you do that. The following page talks about
24 guilty but mentally ill. Then also on the second
25 paragraph of their third page, last sentence it says,

1 while jurors must be unanimous of the existence of an
2 aggravating circumstances, existing of a mitigating
3 circumstance can only be found by a single Juror.
4 Basically it is the Juror holdout issue that we have had
5 problems with in the past. And then the last sentence,
6 the jurors are unable to decide unanimously for a penalty
7 then a sentence of imprisonment of life without the
8 possibility of parole will be imposed. I don't know, we
9 have always told jurors what their authority is, they can
10 sentence to life, they can sentence to death. But we have
11 never talked about the consequences of what happens if
12 they can't reach a decision because that is your step.
13 And to me it coaches that single Juror to say, I am not
14 going to listen to my eleven colleagues here, I want to
15 dig my heels in and hold out knowing that I can sabotage
16 this whole case, I don't need to listen. So I think that
17 is the danger of talking about the consequences of a
18 deadlocked jury because it just encourages that. The
19 final page, the whole last bit about, if you are in favor
20 of the death penalty say so. Many people might find death
21 is the only appropriate penalty for a sane man who
22 intentionally and with a wicked heart killed his five
23 small children. You are talking facts. That whole
24 paragraph goes on, it is just completely inappropriate.
25 Anyway, Judge, I think, I don't know what you are

1 proposing as your standard. Perhaps it will help both
2 sides if we had an idea because I am implying if it is
3 based on what has been done in the past we can stick with
4 that.

5 THE COURT: All right.

6 MR. MCGUIRE: Thank you, Judge. Sort of to tie this
7 all up with what happened this morning. And part of our
8 opening is going to relate back to is, the fact that the
9 prosecution requested that the Court take a in-camera
10 pleading from Mr. Jones. It was in a small courtroom
11 behind this one and it was in secret and he plead not
12 guilty by reason of insanity. It was not an open
13 courtroom and the Prosecutor requested that the Court not
14 inform the panel that that was, in fact, Mr. Jones plea,
15 not guilty by reason of insanity. And there must be some
16 advantage that the State is seeking by hiding this from
17 the jury because what happened was, he did plead not
18 guilty by reason of insanity, it is a plea, it is not a
19 fact, it is not a comment on the facts. The State is
20 seeking an advantage by keeping and hiding this fact from
21 the jury.

22 MR. HUBBARD: Your Honor, I am going to object right
23 now. I know this is a motion hearing but it is also a
24 motion hearing with the media. So he is not just talking
25 to you, he is talking to the press and characterizing our

1 motives which are absolutely wrong and Your Honor ruled,
2 hearing both sides. So I am going to object, if he has
3 got a motion he can make it but he doesn't have to be so
4 disrespectful and attribute motives to us that don't
5 exist. We are simply trying to do our jobs.

6 MR. MCGUIRE: Let me be perfectly clear. What did
7 happen was the State requested that Mr. Jones not be
8 allowed to have a formal plea--

9 MR. HUBBARD: No, sir.

10 MR. MCGUIRE: --in public in front of the jury panel
11 and the Court granted that request, took a plea from Mr.
12 Jones in the small courtroom behind this courtroom where
13 he entered a plea of not guilty by reason of insanity.
14 This Court then came out here in front of the panel and
15 informed the panel twice that Mr. Jones had requested a
16 jury trial when, in fact, he has entered a plea of not
17 guilty by reason of insanity. He didn't just request a
18 jury trial, he has formerly entered his plea of not guilty
19 by reason of insanity.

20 THE COURT: Okay. That is accurate. What the
21 Solicitor didn't like was the reason that they made their
22 motion. There may be a legal reason.

23 MR. MCGUIRE: It was their request, it must be some
24 advantage they are seeking.

25 MR. HUBBARD: Your Honor, and they must be seeking

1 some advantage by wanting to do it in front of the jury.

2 I mean, let's get away from that.

3 THE COURT: Both sides have a reason behind their
4 request.

5 MR. MCGUIRE: Sure but the State is trying to secure
6 their advantage by asking us to be not honest to the jury
7 and to withhold truthful information--

8 MR. HUBBARD: That is what I object to.

9 MR. MCGUIRE: Well, it's the truth.

10 MR. HUBBARD: Dishonesty. Judge, if he has got a
11 matter he can just make to Your Honor without continually
12 calling us dishonest, they were trying to get an unfair
13 advantage. I am just trying to get a fair trial.

14 THE COURT: I understand and we are going to do that.
15 Let's not comment on their motives, just what, where we
16 are and why you want this.

17 MR. MCGUIRE: Okay. So we can agree that the facts
18 that I laid out are, in fact, accurate. The reason we are
19 asking for these proposed comments is that it informs the
20 jury in panels of eight that Mr. Jones has, in fact,
21 entered a plea of not guilty by reason of insanity and it
22 explains the law with regard to that. I redacted and I
23 edited these comments so it is absolutely not comments on
24 the facts. The word, usually, presumed innocent must be a
25 typo on my part, I apologize for that. But everything

1 else in there is perfectly accurate, it is perfectly
2 truthful, it is honest, it is accurate and I want to get
3 on track to be honest and truthful with the jury, with the
4 potential jurors and not hiding things from them. There
5 is always comments from the Court about how this procedure
6 works, the guilt phase, the merits phase, the penalty
7 phase. And this case has very rare, extremely rare
8 circumstances of having a not guilty by reason of insanity
9 plea but I think the Court needs to explain that as well.

10 THE COURT: I think you are right.

11 MR. HUBBARD: Judge, I have a proposal that we talked
12 about in the back room. In other trials what they have
13 done, at least with aggravating and mitigating
14 circumstances, the Judge has always given what the
15 aggravating circumstances are because the State has to
16 allege those. So that is laid out. What the Court's have
17 been doing is giving a list of mitigating circumstances
18 and going through them so you are not targeting and
19 staking out jurors. I would say you can do the exact same
20 thing with defense. And, Your Honor, I have a list, right
21 here, you can do the same with potential defenses which
22 would include accident. I have a feeling that is going to
23 come up in this case, it certainly came up in some
24 discovery we turned over to them. But, anyway, it
25 includes self-defense, it includes insanity, GBMI, there

1 is a number of these, Your Honor. Identification, some
2 won't apply, some will apply. But you have one, two,
3 three, four, five, six, seven, eight, nine, ten, eleven,
4 twelve or so that you could list. If Your Honor just
5 said, here is a list of defenses, one or more of these may
6 come out during this trial. That keeps Your Honor from
7 commenting on facts. Then your question is, can you
8 listen to the law on each of these defenses and if you
9 find they apply can you apply it based on the law as I
10 give it. That protects you. That way Your Honor is not,
11 what they are asking Your Honor to do is comment on facts,
12 comment on the Defense's, specific defense that they want
13 to allege. That is, Judge, I think that is just not
14 proven. I think that is why it wasn't done in Blackwell,
15 it wasn't done in Stanko. And then they can follow up
16 with a question. They can ask, if one of these causes,
17 one of those defenses, is there one that you would find
18 problematic that you, in your heart and in your mind you
19 don't think you could give or you can listen to or one
20 that you don't think is, you know, you don't believe in
21 one of these defenses. I think they could follow up with
22 questions. That is what I would suggest, Your Honor, that
23 way we are treating it like the other Courts have treated
24 aggravating and mitigating but you protect yourself by not
25 commenting on facts.

1 THE COURT: All right. I have got to obviously have
2 some sort of preliminary instruction. I am going to work
3 on that, look at that in the morning and we can talk about
4 it further because I think we are going to be a learning
5 process either way.

6 MR. HUBBARD: Your Honor, while we are talking too, I
7 just want the record to reflect to, what we did this
8 morning wasn't a plea.

9 THE COURT: It was an arraignment.

10 MR. HUBBARD: It was an arraignment and generally you
11 come in and you are either guilty or you say you are not
12 guilty and you demand a trial which put onus on us, just
13 to clarify for the record.

14 THE COURT: Can we, just so we are clear on your
15 motion. Did I read it wrong, this is indictment 188, 189,
16 190, 191 and 195?

17 MR. HUBBARD: Yes, sir.

18 THE COURT: And not 192?

19 MR. HUBBARD: Yes, sir.

20 THE COURT: Are you okay if we correct that?

21 MR. MCGUIRE: Sure.

22 THE COURT: I thought there was a three indictment
23 skipped.

24 MR. HUBBARD: I think the one on Nahtahn is 195.

25 THE COURT: I think that is correct. All right. I

1 will pair this down to come up with my preliminary
2 instruction and I will have it ready to give everyone in
3 the morning before we get started with the first person.
4 All right and we can argue, argue will be heard further.

5 MR. HUBBARD: May I pass up what we marked as far as
6 their's as well?

7 THE COURT: Sure.

8 MR. HUBBARD: And, again, I have no idea what, if you
9 worked up a preliminary charge of instructions or
10 preliminary instructions. Of course, anything that has
11 been used in the past and not come back, that is always
12 safe. What we will do is we will type up a list of
13 potential defenses. But, Your Honor, I believe if we ask
14 it that way they can still follow up with questions.

15 THE COURT: All right, as far as aggravating factors
16 go, can you enumerate some of them what you believe are
17 present, so I don't have to open the file back up.

18 MR. HUBBARD: I think we have two. Child under
19 eleven and two or more murders.

20 THE COURT: And likewise the Defense has provided
21 some mitigation factors they intend to show?

22 MR. HUBBARD: Judge, I haven't seen a list but I am
23 fine, basically what I think we need to do is go over all
24 of them because as the facts come out there may be others
25 that they want to draw from.

1 THE COURT: Could be.

2 MR. HUBBARD: And I would like to provide Your Honor
3 with a potential list of defenses so we can handle that
4 matter the same way.

5 THE COURT: And I thought you went over four a moment
6 ago.

7 MR. HUBBARD: Yes, sir. And there are others, there
8 is like identification, necessity, defense of habitation.
9 There is a number of things that just may clearly not
10 apply but I think the jury is going to understand that as
11 we go through this.

12 THE COURT: But the one that has been plead at
13 arraignment was not guilty by reason of insanity.

14 MR. HUBBARD: Right. There is also GBMI.

15 THE COURT: I have got that down.

16 MR. HUBBARD: An accident, as I said, can easily be
17 mentioned. Frankly the mention of self-defense will even
18 come out. There is the issue of potentially duress. And
19 to follow the rationale defense as we get into the facts
20 and he can potentially even say if it is a fear, a fear
21 motive, that he is defending his habitation as well.

22 THE COURT: Any comments on that, Mr. McGuire?

23 MR. MCGUIRE: Sure. I think it is just going to
24 muddy the waters and we just list all the possible
25 defenses available to any Defendant in South Carolina, for

1 instance self-defense, I think it is a bit absurd if we
2 are talking about a self-defense case against five
3 children, all very young. It sounds crazy.

4 MR. HUBBARD: Actually he was asked when he was being
5 interviewed and then he said he did it because he said he
6 was afraid his kids were going to kill him. So that is,
7 in fact, you know, it becomes relevant. It sounds crazy,
8 I admit, it is absurd--

9 THE COURT: He said crazy.

10 MR. HUBBARD: Crazy.

11 MR. MCGUIRE: Towards evidence of insanity--

12 THE COURT: I was thinking three, the accident,
13 guilty but mental ill, not guilty by reason of insanity.
14 Those three seem to be appropriate in this case.

15 MR. MCGUIRE: If we are doing these other things that
16 don't really apply, I mean entrapment would be in there as
17 well. I don't know why we would want to waste time with
18 that, muddy the water, when we get to this voir dire, we
19 are going to have to get through this issue of not guilty
20 by reason of insanity. It is going to come up, it is
21 going to be offered sua sponte by potential jurors. They
22 are going to talk it, it is going to be publicity. We
23 have to address it, let's be honest with the jurors, let's
24 give comments that actually make sense--

25 MR. HUBBARD: Your Honor, this is trying to avoid

1 statements on facts. That is the problem so it is not
2 that we are trying to lie to the jury, we want to make
3 sure that the Court is not speaking as to facts and then
4 we are not allowing either side to speak on facts.

5 THE COURT: And I agree with you but if I say some
6 potential defenses are under the statute, accident, guilty
7 but mentally ill, not guilty by reason of insanity and
8 perhaps others may be shown through the testimony, then
9 that gets us a little quicker past the self-defense
10 suggestion. But, you know, y'all have to admit, it was
11 there. There has been a comment made and I don't think it
12 would, I don't think it would sell very well either way.

13 MR. MCGUIRE: We are not going to ask for
14 self-defense.

15 THE COURT: Okay, I thought so. I am going to work
16 on this and hand it to y'all early in the morning. What
17 else have we got.

18 MR. YOUNG: Your Honor, I believe we have motion
19 number 100 which is a motion to inform the jury of the
20 consequences of not guilty by reason of insanity verdict.
21 Your Honor said you had a copy of the one that Judge
22 Mullen had used.

23 THE COURT: Yes, I have got that. I have got a flash
24 drive with just about everything she used, from her.

25 MR. YOUNG: I don't think it was, I think it was not

1 what the State handed up. I am trying to find it.

2 THE COURT: Do y'all want to see it.

3 MR. HUBBARD: I am sorry, what is he--

4 THE COURT: He was asking about the, it was the Daise
5 case, I think it is how you pronounce it. I was reviewing
6 something Judge Mullen had used, yes, I have been and I
7 got on a flash drive a lot of things from her. You are
8 talking about the types of jurors?

9 MR. YOUNG: Yes, sir.

10 THE COURT: Here is what she used. I am going to
11 read, the first type of Juror. One who would always, no
12 matter what, vote for the death penalty. If you would
13 always vote for death over life in prison you are the
14 first type of Juror. Those two sentences.

15 The second type of Juror is now given the choice
16 between voting for the death penalty or life in prison
17 would always, no matter what, vote for life imprisonment.

18 The third and final type of Juror would decide
19 whether to vote for life in prison or death on a case by
20 case basis. This Juror listens to the facts and the
21 entirety of the circumstances and then votes.

22 That is what she handed out. So it is a little
23 briefer than the State's but it is a little, has a little
24 more explanation than the Defense has proposed.

25 MR. YOUNG: What was in the questionnaire that the

1 jurors filled out in the case of Daise was, type one. For
2 any reason whether a matter of moral or religious,
3 philosophical belief, matter of conscious or personal
4 belief or any other reason, can you say that you would
5 always vote to impose the death penalty when the Defendant
6 has been convicted of murder.

7 Type two, for any reason, whether a matter of moral,
8 religious, philosophical belief matter of conscious or
9 personal belief or for any other reason, you say you would
10 never vote to impose the death penalty when the Defendant
11 has been convicted of murder.

12 Type three,--

13 THE COURT: That is just convoluted.

14 MR. HUBBARD: It is.

15 THE COURT: I have got the questionnaire too but I
16 find that to be very convoluted. I can understand it if I
17 read it three or four times.

18 MR. YOUNG: That is why I think that the version that
19 the Defense has handed up today is the most simple and
20 used upon.

21 THE COURT: On her questionnaire, there is a
22 difference in the voir dire handout.

23 MR. HUBBARD: I think that short questionnaire is to
24 the point. I think the only thing that differs from what
25 we handed up is that there is, we added a little bit of

1 opportunity for a witness to go, well, you know what, if
2 there is other facts maybe I should, maybe I am not that
3 person. See, you make them think which is what you want
4 but it is always couched to the word, with the words,
5 always. And that is what the Defense's proposal does not
6 have, just feels it is appropriate.

7 MR. YOUNG: It says the Juror feels it is most
8 appropriate.

9 MR. HUBBARD: I have got, I fill that life without
10 parole is the appropriate penalty when the Defendant has
11 been convicted beyond a reasonable doubt of aggravated
12 murder. I am not sure what aggravated murder, I mean it
13 is, this is convoluted to me and I feel that the death
14 penalty is appropriate. Your Honor, you need those sharp
15 terms like you just read and like in South and like what
16 we presented in our proposal.

17 THE COURT: Do you like Judge Mullen's, not the
18 questionnaire version but the voir dire version, do you
19 like that any better than the State's?

20 MR. YOUNG: Give a choice, yes sir, I like it better
21 than the State's. I don't think it misstates the law as
22 much as the one that the State submitted.

23 THE COURT: Well, aggravated murder, if they were
24 proposing it you would say that is not an accurate
25 statement of the law. What is that, there is not really a

1 statute that says aggravated murder, wouldn't you? I
2 would.

3 MR. YOUNG: Murder plus aggravation.

4 THE COURT: I can go with that. Aggravated murder is
5 not really a defined term. I am going to find something I
6 am comfortable with based on, I will look at that also. I
7 am working first on my statement for the jurors and then I
8 am going to work secondary on the three types of jurors to
9 hand out tomorrow and we will go over that before we give
10 them to the jurors. All right. Anything else?

11 MR. HUBBARD: No, sir.

12 MR. YOUNG: Judge, we have motion number 100. The
13 motion informing the jury about the consequences of a not
14 guilty by reason of insanity verdict.

15 THE COURT: Y'all keep dreaming, I mean, I thought we
16 answered that.

17 MR. HUBBARD: I thought we did too, your Honor.

18 THE COURT: I feel like I keep answering the same
19 question over and over and over.

20 MR. YOUNG: Your Honor, I think it was motion number
21 96 and then there was a subsequent memo of motion number
22 100. It has never been heard or addressed by the Court.

23 THE COURT: All right. Have we got to address it
24 before the voir dire?

25 MR. YOUNG: Yes, sir.

1 THE COURT: Why?

2 MR. YOUNG: Because the jurors need to be told if you
3 find him not guilty by reason of insanity it doesn't mean
4 that he walks out of the courtroom.

5 THE COURT: I know, but can't that be done during the
6 trial?

7 MR. YOUNG: I am sorry?

8 THE COURT: Can't that be done during the trial, why
9 I have got to tell them during that, have I got to fully
10 instruct them on all aspects of the law during the
11 qualification process?

12 MR. YOUNG: No sir, you don't. But if you are going
13 to ask a Juror, can you fairly consider a verdict of not
14 guilty by reason of insanity for someone who is charged
15 with the murder of five children and the Juror says, no,
16 not if nothing happens to them, not if there is no
17 punishment, not if they just go home, no. That is not
18 what happens. What happens is they are committed to a
19 State facility. And the jurors need to be told, when you
20 find somebody not guilty by reason of insanity it doesn't
21 mean that they go home, they go to a State hospital where
22 they are treated. There is a possibility that they may,
23 one day, be released, but that would be only per the Court
24 and the medical providers.

25 MR. HUBBARD: Your Honor, I don't even know how you

1 begin to do that. How long do they stay. You don't know.
2 No one would know. They could let them out in two months.
3 They say, you know, he is doing fine now, what he has to
4 do is be outpatient a while. We don't want to keep him
5 inpatient. He is perfectly fine on his meds. Judge, you
6 don't know and why would a jury need to know, why. They
7 need to know if it is life, what that means. They are not
8 choosing death because there is a, they are afraid he is
9 going to get out in 15, 20, 30 years. That is clear, the
10 Court has ruled on that but on guilty but mentally ill, I
11 mean, not reason, not guilty by reason of insanity, why
12 they need to know. They just need to know he is insane
13 and therefore he cannot be held guilty so, State, your
14 evidence fails. Why do they need to know that and how in
15 the world would you even begin to tell what the
16 consequences are because you don't know, Your Honor. We
17 know what the consequences are, if he got found guilty and
18 sentenced to life, he dies in prison. We know that. That
19 is set. If he is given the death sentence, that jury is
20 told, that is not just a suggestion, it is going to
21 happen. Now it may not depending on appeals but we never
22 discuss appeals, we don't discuss what happens beyond this
23 courtroom other than life and death, that is what we have
24 always done, not always. There is a time when we haggled
25 over what life meant. But the Court cleared those up,

1 said those get two options. And the Court was very clear
2 to give a guidance to our Circuit Judges, what do we mean
3 by life, what do we mean by death, what do you tell the
4 jury.

5 THE COURT: What do you propose, Mr. Young, I would
6 tell the Juror, if he is found not guilty by reason of
7 insanity then he will be referred to the State Mental
8 Health folks to be held for some indeterminate time, to be
9 determined by them. What am I telling them. That is not
10 really like the sentence to be imposed by the Court
11 because, what do I say.

12 MR. YOUNG: Your Honor, do you mind hearing from Mr.
13 Secor with regard to this.

14 THE COURT: I don't mind, what do I say?

15 MR. SECOR: Your Honor, in the supplements in motion
16 number 96, which is, filed motion number 100, at the
17 bottom, second to the last page there is a proposed
18 instruction from the Court that we would ask for, to
19 individual voir dire and states as follows. In this case
20 we would be asked to consider four possible verdicts. Not
21 guilty, not guilty by reason of insanity, guilty but
22 mentally ill--

23 THE COURT: All right, you are killing Joy. I want
24 to know what do I tell the jury. Skip and get to the good
25 stuff.

1 MR. SECOR: If the jury unanimously finds the
2 Defendant not guilty by reason of insanity the trial will
3 end and I will commit the Defendant to the South Carolina
4 State hospital where he will remain for a period of up to
5 120 days during which time a determination will be made
6 regarding the need for further hospitalization. The law
7 provides that the period of further hospitalization could
8 be the remainder of the Defendant's natural life. If the
9 jury finds unanimously that the Defendant is either guilty
10 or guilty but mentally ill the case will proceed to a
11 penalty phase where the jury will determine whether the
12 Defendant is sentenced to life imprisonment without the
13 possibility of parole or to death. That would essentially
14 just be, Your Honor, verbatim of what the statute is
15 regarding confinement of a person found not guilty by
16 reason of insanity. And the argument that we are making
17 is akin to the arguments that had to be made regarding the
18 instruction of life imprisonment versus life imprisonment
19 without the possibility of parole which it took three
20 times for the United States Supreme Court to be resolved
21 in this State before we finally got to the point that we
22 said that jurors need to be told the truth about what the
23 statute says regarding sentencing which is life
24 imprisonment means without parole until death of the
25 Defendant. I recognize that or rather we recognize that

1 Poindexter, the South Carolina Supreme Court case, 314 SC
2 490 from 1993 states that the consequences of a conviction
3 need not be brought to the jury's attention unless the
4 jury has a statutory right to fix or recommend punishment.
5 And we would, we would argue that in the case of NGRI the
6 jury absolutely does fix punishment because there is
7 absolutely no discretion allowed from the Judge in the
8 case where the jury finds the Defendant NGRI. The statute
9 requires confinement to the Department of Mental Health
10 for a period that is described in the proposed
11 instructions.

12 THE COURT: How does the jury find that, it is 120
13 days, that is not the jury describing that, that is the
14 statute.

15 MR. SECOR: I am sorry.

16 THE COURT: You said that, if a jury can impose
17 punishment, some of those State's which is not South
18 Carolina.

19 MR. SECOR: Yes, sir.

20 THE COURT: NGRI means 120 days referral and then
21 give a report and decide whether for further
22 hospitalization is necessary and treatment is necessary.
23 The jury doesn't decide that 120 days, the statute
24 dictates the 120 days, does it not?

25 MR. SECOR: Well, it is up to 120 days, that is what

1 is dictated by the statute, yes sir. And then after that
2 is dictated by the Department of Mental Health.

3 THE COURT: But I can't offer the jury, please
4 indicate if you find him not guilty but mentally ill, not
5 guilty by reason of insanity, how long you think he should
6 be hospitalized. And they would say ten years, whatever.

7 MR. SECOR: No, absolutely not.

8 THE COURT: It can't happen. So why am I following
9 that line of thinking if the jury is not making
10 suggestions.

11 MR. SECOR: The primary concern as it was brought up
12 in the case of Simmons versus South Carolina and Shafer
13 versus South Carolina and Kelly versus South Carolina all
14 discussing the concept of whether life actually means life
15 is that without the information of how their verdict plays
16 out, jurors are forced into false dilemmas when they are
17 confronted by the various verdicts that they are
18 considering. In attached to motion number 96 is an
19 article that was published by Dr. Frierson where he tried
20 to determine the extent of knowledge, members of the South
21 Carolina Bar, we practice in the field of criminal defense
22 involving cases that have been, that have involved mental
23 health defenses. And the data that he gathered in coming
24 to his conclusions in that article show that, at the time
25 of the articles's publication which I believe it was 2015,

1 twenty-four percent of South Carolina Lawyers who practice
2 criminal law could not properly identify the legal
3 definition of NGRI; forty-two percent could not properly
4 identify the legal definition of GBMI; twelve percent
5 could not properly identify the dispositional outcome of
6 an NGRI verdict, eighty-six percent could not properly
7 identify the dispositional outcome of a GBMI verdict and
8 ninety-five percent of Judges in South Carolina found that
9 GBMI could not be sentenced to death. Which shows a
10 profound lack of understanding of people who practice in
11 this field, people with expertise and education in this
12 field fundamentally misunderstand these concepts. And so
13 the question would be, if Judges and Lawyers who practice
14 in this field don't understand I think it would be an
15 absurdity to suggest that jurors off the street would
16 understand the same concepts.

17 MR. HUBBARD: Judge, if I can jump in just real
18 quick. The big difference is that jurors have been told
19 what their sentences are. They only have two choices in
20 sentencing, life or death. That is why the Court has
21 said, we are going to let the jury know what life means,
22 we are going to let them know that when they say death
23 that exactly what it means, it is not just a suggestion,
24 that is what it means. NGRI is not a sentence, it is not
25 a sentence imposed by the jury. The only case law out

1 there talking about what you need to inform a jury about
2 is what is on their plate, what they can sentence somebody
3 to which is life and death. NGRI, finding somebody not
4 guilty by reason of insanity is not a sentence on Mr.
5 Jones. At that point they have no authority and this
6 Court doesn't have any authority over what happens to Mr.
7 Jones. There is a statute that kicks in. There is one
8 sentence so you will be telling the jury the consequence
9 of something that they have no authority over and all the
10 case law is about what do they have authority, that is
11 what you inform them on, life and death.

12 MR. SECOR: Your Honor, if I just may, an argument
13 regarding the standards of decency that is articulated
14 what I have identified is Defense motion 100. In 1994
15 United States Supreme Court found a jury instruction
16 regarding consequence of an NGRI verdict was not necessary
17 under a Federal statute or as a matter of Federal
18 practice. And that case was Shannon versus United States,
19 512 US 573 from 1994. Twenty-five years later which is
20 now, there are 30 jurisdictions that allow a jury
21 instruction regarding the consequences of an NGRI verdict.
22 And I am going to list them all but I would point out that
23 Louisiana is one of them and Louisiana didn't require
24 unanimous jury verdict until last year. There is another
25 article that is attached, number 100 which, again, was

1 published or was the work of Dr. Frierson that was a study
2 of qualified jurors in Richland County regarding their
3 acknowledgment of this information and that study found
4 that 4.2 percent of jurors correctly identified the
5 definitions and dispositional outcomes of both NGRI and
6 GBMI verdicts. 13.5 percent of the respondents who
7 correctly identified the definition of NGRI believe the
8 dispositional outcome was that the Defendant would be sent
9 home without being required to spend any time in a
10 psychiatric hospital or prison which is one of the primary
11 points of this motion, is that if jurors believe that a
12 person is going to be just set free upon conviction or
13 upon rather acquittal based on NGRI there are jurors, as
14 pointed out in Dr. Frierson's article, who are going to be
15 swayed by that fear or concern or misperception and they
16 will fail to follow the Court's instruction regarding NGRI
17 because they believe it means that Mr. Jones is going to
18 be released. And it is particularly problematic in a case
19 where the State is going to present evidence, audio
20 recorded evidence of Mr. Jones admitting to the killings
21 and then being asked to render a verdict for the jury, may
22 believe means he is going to go home. And I would point
23 out with regards to the State saying--

24 THE COURT: In the big scheme of things, 120 days
25 hospitalization plus some extra hospitalization, in a lot

1 of folks eyes it means you go home. The other two options
2 is no going home.

3 MR. SECOR: Yes, sir. I mean, in light of, vouch
4 your life versus 120 days, who wouldn't take the 120 days
5 every time. Oh, yes, of course. But the jury is not
6 going to know that, it is 120 days, unless we tell them
7 and they are also not going to know that it comes--

8 THE COURT: I thought that is what you were asking,
9 is to tell them exactly that.

10 MR. SECOR: That plus the fact that it could mean up
11 until the day he dies because he could be kept there,
12 according to the statute, for no longer than the maximum
13 sentence that he could have received if he were convicted
14 which in this case would be five counts of life without
15 parole.

16 THE COURT: All right. If I provide an instruction
17 during the voir dire that a verdict of not guilty by
18 reason of insanity has consequences, guilty but mentally
19 ill treatment, that is what you want.

20 MR. SECOR: Yes, sir.

21 THE COURT: It is certainly not something that I can
22 invoke, the statute does what the statute says, I don't
23 have any impact on a sentence because it is not a
24 sentence. I believe the Solicitor, consequences or
25 mandated treatment.

1 MR. SECOR: It is, Your Honor. If you look at the
2 Columbia Regional Care Center Patient Handbook that is
3 attached to motion number 100, it is clearly a
4 correctional facility. And the suggestion that a person
5 that is being sent there is not being punished or is not
6 to be incarcerated, I think is just simply untrue. There
7 are a number of points in motion number 100 that lay out
8 the similarity between the Columbia Regional Care Center
9 and another correctional facility. One of which is that
10 patients that are at the Columbia Regional Center,
11 according to the handbook are, "not allowed to communicate
12 with anyone in another correctional facility." That is
13 how the Columbia Regional Care facility states it. They
14 can't communicate with somebody in another correctional
15 facility meaning that the Columbia Regional Care Center is
16 a correctional facility. There is no contact visitation
17 with patients, family members; there are count times, six
18 or seven times a day; patients can't have pictures in
19 their rooms.

20 THE COURT: I don't need all of that, I mean I
21 appreciate you giving me some background on it. I just
22 don't know that I can get into that in jury
23 qualifications.

24 MR. HUBBARD: Your Honor, I don't think frankly can
25 be gone into it at any point because frankly Your Honor

1 would have discretion on, say you send him off and he
2 comes back. It is all therapeutic, there is nothing
3 punitive but ultimately there is another institution out
4 there that is going to determine what care is needed, when
5 he gets out. So if you were the sentencing Judge you
6 wouldn't even know, in this case we have jurors coming in
7 off the street who have no clue and they are going to be
8 told about consequences to a process that Your Honor is
9 going to even trouble graffling what and telling them what
10 can happen. We are going to confuse the heck out of this
11 jury, that is why I think under our statute, they have,
12 the only statutory right when it comes to consequences,
13 consequences of a life sentence and of a death sentence
14 because that is something that is firm and it has to do
15 with sentencing. NGRI is not a sentence, it is a verdict
16 and so some how qualify what their verdict of not guilty
17 is, consequences of not guilty, Judge, you are going down
18 a slippery road, you can't even begin to figure that out.

19 THE COURT: Well, I understand why they are
20 advocating this is because it gives them some middle
21 ground.

22 MR. HUBBARD: I know but, Judge, what middle ground
23 would you give them.

24 THE COURT: I don't know. I know why they are asking
25 for it.

1 MR. HUBBARD: Sure, I know why they are asking for it
2 too but Your Honor, when we talk about being truthful with
3 the jury, truth is no one in this courtroom knows what
4 would happen if he got an NGRI, no one. And the honest to
5 God answer would be, ladies and gentlemen, we have no idea
6 what would happen, how long they will get him. We have no
7 idea. They might let him out, sooner than later, might
8 give him therapeutic treatment but the bottom line is
9 this, they are going to know he is not guilty, the State
10 failed because we could not overcome the burden we have to
11 carry to show that he was sane at the time he committed
12 this crime. And that is the beginning and ending of their
13 authority.

14 MR. SECOR: Your Honor, I am not entirely sure that
15 the Court and Solicitor Hubbard seem to have agreed the
16 reason that we are asking, the reason that we are asking
17 for this.

18 THE COURT: It is the same reason they made--

19 MR. SECOR: No, no, I want to make clear, the reason
20 is if we do not tell jurors about the consequences of an
21 NGRI verdict they will--

22 THE COURT: Assume he is getting off scott free and
23 impose a higher penalty.

24 MR. SECOR: Or just disregard the evidence of NGRI.
25 To not tell them anything is to assume that they will not

1 assume anything about what happens to somebody who is
2 found NGRI, that that will not play a role in their minds.
3 And I think that Simmons and Shafer and Kelly made clear
4 in situations where legal concepts are not likely to be
5 understood we have to give jurors information to make sure
6 that they are not making decisions that are misinformed or
7 based on misperceptions about what happens to somebody
8 after they are convicted or found NGRI.

9 MR. HUBBARD: I think the only way you can begin to
10 get close to being honest would be able to say that the
11 Department of Mental Health will determine what happens at
12 that time and nothing else. Not 120 days, not 10 years,
13 not life because no one here knows, no one knows and that
14 is the honest to God answer. We are talking about
15 honesty, I was getting battered for trying to--

16 THE COURT: Well, now, would that be something the
17 State would be suggesting, if we are going to show a
18 consequence and then, a verdict of that is found it is up
19 to the Department of Mental Health what happens to him.

20 MR. HUBBARD: Yes, sir. And then what happens at
21 that point is up to them. And I think that it has got to
22 end there because we are looking at a crystal ball and we
23 can't see a darn thing right now.

24 THE COURT: Are you saying that would be okay if I
25 said the consequences are the Department of Mental Health

1 deals with him, something along those lines. Are you
2 suggesting that's okay. I am not sure that I heard that.

3 MR. HUBBARD: What is that, Your Honor.

4 THE COURT: What I don't know is this, if the comment
5 is going to be made which I don't know, I don't understand
6 why this is required in voir dire, why I need to go over
7 the consequences a verdict of that form. Later on if
8 y'all want to comment on it what are you going to comment
9 and what are you going to say, if there are consequences
10 to a verdict of not guilty by reason of insanity. You are
11 wanting to do that at least in your closing arguments, I
12 am presuming. And is it going to be allowable to say that
13 the Department of Mental Health then administers treatment
14 of Mr. Jones or something like that, is that what you are
15 asking.

16 MR. SECOR: I think it needs, I think the important,
17 the important part is do it on the front in voir dire to
18 insure that jurors don't have a biased or prejudiced
19 against being able to consider that verdict in a case such
20 as this because that is sort of the crucial inquiry is
21 whether or not, whether or not they can be qualified based
22 on whether or not they have ability to consider an NGRI
23 verdict. And if they think that the consequences of an
24 NGRI verdict are that he is going to go home and therefore
25 they will fail to consider it then they are not qualified

1 but we wouldn't know that unless we ask them on the front
2 end. I mean, we tell them, as Solicitor said, we tell
3 them about life without parole means life without parole
4 until he dies, a death penalty means he will be strapped
5 to a gurney and killed. This is just a suggestion that we
6 tell them also about the consequences of NGRI to ensure
7 that they will comply with Your Honor's instructions as
8 well as their oaths as jurors.

9 MR. HUBBARD: Your Honor, I think if we do that at
10 this point it will be, I think that would be staking-out.

11 THE COURT: I am concerned about staking too because
12 my proposal would be some defenses, aggravating factors,
13 all mitigating factors, depending on what is shown at
14 trial any of these, you can consider mitigating factors as
15 well as aggravating factors and defense if they are proven
16 or shown to you by the evidence. Could you then follow
17 the instruction of the law, that is kind of what I
18 envision getting to the jurors. I think that is right on
19 it but the staking is what everybody is concerned about.
20 The Defense don't want the State to stake-out, death
21 penalty only folks and the Defense--

22 MR. HUBBARD: I think Your Honor's ruling would be
23 consistent with Savors and Poindexter, 431 SC 2nd 254 '93
24 case, that voir dire is not to be used as a means of
25 pre-educating or indoctrinating a Juror as to means of

1 impaneling a jury, that is also in Stanko, it is cited in
2 Stanko as well.

3 THE COURT: I think I want to remain general and
4 follow the broader brush track of defenses, aggravating
5 factors, mitigation factors and not get into consequence
6 of a NGRI conviction. I think it would, it seems to me
7 the proper question would be, if it was proven to you
8 that, thus and so, could you follow the facts and the law
9 and find the verdict consistent to that. I think that is
10 fair, I think that is not staking-out, but that is kind of
11 where y'all want to go, something along those lines, don't
12 you?

13 MR. SECOR: Your Honor, I would point out, from
14 Justice Pleicones' dissent, in Stanko where it says, a
15 insanity defense is entitled to voir dire the jurors
16 whether they entertain any bias against such a defense.
17 In fact, this Court has already recognized the
18 appropriateness of such inquiry.

19 THE COURT: All right, but the bias against that
20 would not be consequences of it, do you think?

21 MR. SECOR: I think if they were to consider an NGRI
22 verdict because they misunderstand the consequences of
23 it--

24 THE COURT: Like everybody else.

25 MR. SECOR: Yes.

1 THE COURT: There is nobody that understands it.

2 MR. SECOR: Well, according to Dr. Frierson, 4.2
3 percent of eligible jurors.

4 THE COURT: And very few Judges and lawyers.

5 MR. SECOR: Yes. Which I think, it further poses a
6 problem and further encourages just the truthful
7 dissemination of information to jurors. And that is what,
8 it took three times for the United States Supreme Court,
9 for South Carolina to get right, you have to tell jurors--

10 THE COURT: You said United States Supreme Court
11 earlier.

12 MR. SECOR: I am sorry?

13 THE COURT: You said United States Supreme Court
14 earlier.

15 MR. SECOR: I meant United States, Simmons, Shafer
16 and Kelly, it took three trips for us to figure out to
17 tell the jurors that life in prison means life
18 imprisonment without the possibility of parole which is, I
19 would argue is essentially the same argument regarding,
20 what is the reason for not telling them what the
21 consequences of an NGRI verdict is when you know from Dr.
22 Frierson's studies that people misunderstand it. It is
23 not even close, there is a profound misunderstanding what
24 these things mean. And leading it up to arguments of
25 counsel, closing arguments, that is not evidence, this is

1 information that jurors need to know on the front end and
2 need to voir dire them to determine their eligibility and
3 qualification and they needed to hear it from Your Honor
4 in order to have, it is important that they must consider
5 if they are going to serve on this jury, comply with their
6 oath.

7 THE COURT: I am going to go with the broad brush of
8 the factors, I don't know how we are going to deal with
9 this specifically like you are asking. I don't know.

10 What is the last one, y'all got one more motion, what it
11 is because I want to put that one to the side, I am going
12 to have to sleep on that. I am sorry we couldn't have
13 this hearing last Friday but that was not anyone's fault,
14 we didn't have a Court Reporter, that's not anybody's
15 fault, I was told we were at the back of the line as far
16 as getting a Court Reporter so quit asking.

17 MR. YOUNG: Mr. Madsen, Your Honor, motion number
18 1010.

19 MR. MADSEN: Judge, motion 101 was a motion to
20 exclude evidence and/or grant a continuance. Obviously,
21 Judge, since April 1st of 2019 we have received no less
22 than ten new additional emails, packets of discovery from
23 the State, I believe we have received even three or four
24 new ones since the filing of this motion. Obviously, Your
25 Honor, this is not stuff that has just popped up, in other

1 words, a witness has come out of the bushes. This is
2 stuff that the State had access to for the last two, three
3 or four years and all of a sudden we are getting it here,
4 you know, on the eve of trial, a month before. Obviously,
5 basically the dribbling of the information to us affects
6 our ability to develop a comprehensive trial strategy and
7 therefore denies Mr. Jones' due process rights, his right
8 to present a defense. We ask that that information, that
9 discovery be suppressed, in the alternate we ask for a
10 continuance. Like I said, I think there were ten or
11 eleven items that we have received in the last month and
12 then since filing this I think we have received three or
13 four more additional items of discovery from the State.

14 MR. HUBBARD: Your Honor, again, it is beating a dead
15 horse, it is this theory that the State has discovery, one
16 big pile and that we handed out and this where it has
17 dribbled. As Your Honor knows, as we prepare a case we
18 talk to witnesses, we do summaries even if it is
19 discoverable or not. We turn stuff over we don't even
20 have to. We do summaries of everybody we talk to. Ms.
21 Jones, for instance. That conversation in preparation for
22 court, do we use her, do we not. We talked to her, we
23 turn that over. What they would be asking is that we just
24 stop prepping, that we stop which would be ridiculous.
25 And then also our duty as Prosecutors is that if we find

1 something new we have to turn it over even if it is
2 judging a trial or after a trial. That duty stays with
3 me. So it is really, Your Honor, an absurd argument, it
4 is based on the assumption that we have all of this
5 evidence sitting in a back room and we are just handing it
6 out, piecemeal. What is happening is, we are prepping our
7 case, we are talking to people, some people for the first
8 time, some people for the fifth time, we are turning it
9 over letting them know what we are doing. In fact it
10 doesn't prejudice them at all, it helps them, they see
11 what we are up to, where we are going, what we are looking
12 at. And as far as discovery, Your Honor, I know we have a
13 duty to turn stuff over, we just got a report from them
14 this weekend, you know, they are going to put an expert
15 and their expert does a report, they have to turn it over,
16 we got it this week.

17 THE COURT: We got Amber on the video.

18 MR. HUBBARD: Right. That happens. But we move
19 forward. Your Honor, if something pops up and they need
20 more time they can always ask Your Honor and say, hey, on
21 this particular issue we need some more time.

22 THE COURT: And that is kind of my general practice
23 as presiding Judge is, if something was given over late in
24 preparation of trial, we delay the trial five days and
25 would be five more days in preparation and five more days

1 of this and another opportunity for Ms. Jones to get on
2 the camera. If y'all can identify something that is
3 hugely prejudicial because the State just dropped on you,
4 that is something I can consider. If this is new or
5 additional information or witness statements and we get a
6 witness and y'all find out or the Defense is aware, this
7 is totally new, we didn't know it and the State just gave
8 it. You know, certainly we will allow time on that
9 because of this. But I think it needs to be, I think you
10 are correct that April 1st is a good time to mark, this is
11 where we believe most discovery had been provided, we have
12 gotten some since. The some since, April 1st, if
13 something comes up and y'all need extra time to look into
14 it, to investigate it, I think we can deal with that if it
15 comes up. But if you can't identify something hugely
16 prejudicial because the State has surprised you with a new
17 expert or something, I am just making an example. I don't
18 know what the eleven emails, packets of information is.

19 MR. MADSEN: Judge, I do have one thing, can we
20 approach?

21 THE COURT: Yes.

22 (Whereupon, a bench conference was held.)

23 THE COURT: To the extent there is any other
24 information, Mr. Madsen, if you need additional time to
25 investigate it the Court will consider that request if you

1 need it.

2 MR. MADSEN: Yes, sir.

3 THE COURT: All right, Mr. Young, you are about to
4 stand up again.

5 MR. YOUNG: Yes, sir. I think that is all the
6 motions that we need to take care of, Your Honor, at this
7 point and time. And just, then somewhat concerned that
8 the State keeps characterizing, not guilty by reason of
9 insanity, is the State's failure to meet the burden.
10 While the law in South Carolina that the Defense has the
11 burden to provide evidence to establish and my
12 understanding is that the jury charge would be, if the
13 Defense establishes by the preponderance of the evidence
14 you should find him not guilty by reason of insanity.

15 THE COURT: I think Mr. Hubbard was talking in
16 general terms, if that is the verdict then the jury didn't
17 go along with their, the State's failure to meet its
18 burden of proving guilt. I think that is what he was,
19 just in general terms.

20 MR. YOUNG: Or the Defense has been successful in
21 establishing by a preponderance of the evidence that he--

22 THE COURT: That is what we are going to argue and
23 tell the jury at the appropriate time. And I agree with
24 you, that is your burden by a preponderance, not the
25 State's. I think he was speaking in general terms, if the

1 jury comes back with a verdict then the State's proof has
2 failed to prove guilt, I guess.

3 MR. YOUNG: Thank you, I just had some concerns. I
4 don't necessarily agree with the statute but that is the
5 way it is.

6 THE COURT: And that is not for us to agree or
7 disagree with the statute.

8 MR. YOUNG: I certainly have made arguments that the
9 Court should find certain statutes to be in violation of
10 the Constitution.

11 THE COURT: And I have heard some of those arguments
12 from lawyers over the years myself.

13 MR. YOUNG: They have been consistently denied and
14 so, we are going to follow South Carolina law.

15 THE COURT: All right. We are going to reconvene
16 tomorrow at 9:00. I am going to do my best to be here
17 before then to give y'all these things I am working on
18 tonight, the two things I am working on. All right.

19 MR. YOUNG: Yes, sir.

20 THE COURT: The Clerk of Court and I are going over
21 to the Court House to talk about the cameras and Joy is
22 going to go over and put her equipment in. So we will go
23 over there.

24

25 April 30, 2019.

1 THE COURT: How is everybody today?

2 MR. HUBBARD: Pretty good, Judge.

3 THE COURT: Sorry for my tardiness. I have been back
4 working trying to get some sort of colloquy to give to the
5 jurors. And it is a moving target.

6 MR. YOUNG: You can just use the one I gave.

7 THE COURT: I like the way I write better.

8 MR. YOUNG: All right.

9 THE COURT: Now, I understand that I made a
10 suggestion of types of different jurors and y'all reviewed
11 it and then my Law Clerk and y'all hammered out pretty
12 close to an agreement except for maybe the last sentence.
13 Is that fair?

14 MR. YOUNG: That is fair.

15 THE COURT: Mr. Young, would you like to be heard on
16 the last sentence before we go further?

17 MR. YOUNG: Your Honor, the last sentence and I don't
18 know what the version is but something can consider either
19 punishment based on the facts, circumstances presented.

20 THE COURT: During the, depending on facts presented.

21 MR. YOUNG: No facts are required for a Juror to
22 return a life sentence, it is any reason or no reason at
23 all. If you just end it without the last sentence, it
24 says, this Juror can give life or death after a conviction
25 for aggravated murder, period. If you say, depending on

1 the facts presented you are putting a burden on the
2 defense that doesn't exist in the law and that could be
3 misinterpreted by the jurors.

4 MR. HUBBARD: Judge, I believe should always listen
5 to the facts, should always base a decision on the facts.
6 And as far as their right and authority to give a verdict
7 of life for no reason at all, I don't have any problem
8 with the Defense wants to ask each and every one of them
9 that, no problem at all. In fact, I might say you don't
10 even have to have a reason if you want to give life, you
11 can give him life for no reason at, whatsoever if you
12 think that is appropriate where a father has killed five
13 children.

14 THE COURT: I agree with you on the instructions of
15 the law that is not required. I like the way I have got
16 this written because what I am asking is, depending on the
17 facts of the case and listen to everything, that is what I
18 am trying to convey, not as a burden on the Defense to
19 prove this or prove that. It is not a specific
20 instruction, it is more of a general comment, there is
21 facts presented in the trial and depending on those is
22 what I will make my decision--

23 MR. YOUNG: But it is coming from Your Honor and Your
24 Honor is certainly the authority figure for the jurors.
25 And if they say, depending on the facts presented, that

1 puts in the juror's mind that there is some kind of
2 requirement on the Defense and it doesn't add anything--

3 THE COURT: I don't read it that way, I read it
4 exactly opposite. It says, y'all are going to consider
5 facts presented, mostly by the State.

6 MR. YOUNG: The Court understands my opinion to do
7 the right thing and our objection to it.

8 THE COURT: And we will make it the next Court's
9 exhibit, what is our next Court's exhibit.

10 COURT REPORTER: It will be 66.

11 MR. YOUNG: Your Honor, can we cite Illinois versus
12 Morgan for the proposition that extra language in there
13 should be removed.

14 THE COURT: You are so protected. And that is
15 exhibit 64 for your record that I am using, your argument
16 is relevant and related to, 66. 66 is the questionnaire,
17 I mean the three types of jurors.

18 MR. YOUNG: Yes, sir.

19 (Whereupon, Court's Exhibit 66 was marked for
20 identification only.)

21 THE COURT: Y'all have agreed on the witness list
22 combined.

23 MR. HUBBARD: We, it was hard for us, we never gave
24 them a witness list so we weren't sure what was combined
25 so we ended up doing a list, just taking the header off.

1 I figured that would be a little better, easier way to do
2 it.

3 THE COURT: Which one is it.

4 MR. HUBBARD: I think you will have two lists but
5 they will probably bleed into one another.

6 THE COURT: You want to use both of them?

7 MR. HUBBARD: Sure. We do have one other thing
8 before we start. The Defense have these boards, I
9 absolutely object to using of this stuff. Judge, whatever
10 lists are read need to come from you, needs to be to your
11 language. I think it is going to be time consuming. And,
12 Judge, this is like closing argument, we are going to be
13 in here for a long time as opposed to a good five, ten
14 minutes, hey, can you do this job or not. They don't need
15 to see the indictments, they don't need to see pictures of
16 victims, how does that determine whether they would be a
17 fair Juror considering mitigation and aggravating
18 circumstances. This chart with options in the flow of the
19 case doesn't have not guilty. I don't believe it is
20 accurate.

21 MR. YOUNG: I thought you said not guilty and not
22 guilty by reason of insanity were the same thing.

23 THE COURT: No, you said that.

24 MR. HUBBARD: I think sentencing principles, Judge,
25 it needs to come from you.

1 THE COURT: How do you intend to use this if you are
2 allowed to use it?

3 MR. HUBBARD: It is highly prejudicial.

4 MR. YOUNG: It is not prejudicial to me. The
5 indictments with the pictures of them are to ask the
6 jurors about publicity. A lot of jurors, when we asked
7 their names may not recognize the case but will recognize
8 the pictures. These are the pictures that have run across
9 the State newspaper, WIS, Channel 19 and Fox and the
10 internet since 2014. The sentencing principle is the
11 principles that we go through with every Juror, those are
12 the same principles that we went through with all the
13 jurors in Blackwell, that is the law, it is an accurate
14 statement of the law. We need to make sure that each
15 Juror is able to understand what the principle of law is
16 that applies to sentencing and can follow it. The not is
17 all the defenses that the State wanted listed. Murder is
18 not self-defense, murder is not defense of others, murder
19 is not heat of passion, murder is not duress, murder is
20 not somebody who is insane, murder is not somebody who is
21 intellectually disabled, who is so drunk or high they
22 couldn't form an intent, it is not an accident, it is not
23 the wrong guy. Murder is an intent of the killing of an
24 innocent victim with malice aforethought. When we talk
25 about the death penalty for somebody who has been

1 convicted of murder plus aggravation this is what we are
2 talking about. We are not talking about homicide.

3 MR. HUBBARD: You don't talk about pretrial publicity
4 by showing more pictures, so if they haven't seen them you
5 are showing them now. So, all right, ladies and
6 gentlemen, I want to know if you have been corrupted by
7 pretrial publicity. So by the way, here is some.

8 Secondly, these are pictures of the victims, the minute
9 they see that this case gets reversed. Even if it stands
10 because the Defense says, well, we agreed to it, it is
11 going to be a PCR. Guilt phase you cannot bring pictures
12 in unless there is evidence to support the pictures of the
13 children, the victims. This chart, highly misleading and
14 convoluted and my gosh, are we going through a flowchart
15 and doesn't even have not guilty. Indictment, it is a
16 notice document. Why in the world do you want an
17 indictment, you read the indictments, you published them.
18 There is no reason they need to go through these again.
19 It is because it has a formal Solicitor's name at the
20 bottom, sentencing principles. I contest a number of
21 these just the way it is written. Individual moral
22 decision, not a group factual decision. Fine but you go
23 on, it is almost like you are staking them out to be,
24 look, hold your own verdict against the crowd. This one,
25 drunk or high, that is not a defense. That is absolutely

1 inaccurate. Drunk or high, there is going to be drugs in
2 this case. Judge, it is all misleading. We are going to
3 pull the case right out of the gate.

4 THE COURT: How, in the other cases did y'all have
5 boards like this, showing jurors as they were being
6 questioned or did you just ask the questions that deal
7 with these topics, so to speak?

8 MR. YOUNG: I have done it both ways, Judge.

9 MR. HUBBARD: I would assert that we do it the way
10 that it hasn't been done. In the 29 years I have been
11 practicing we have never done this. All we are doing is
12 not educating a jury under Poindexter. That is not the
13 goal of voir dire, it is simply to determine, can they
14 consider evidence, can they consider aggravating and
15 mitigating circumstances, they can give either life or
16 death. This is misleading, it is trying to educate the
17 jury to their position. I think it is also trying to
18 inflame the jury and, Judge, frankly is poison right
19 before we get started.

20 THE COURT: I am uncomfortable with this, I am
21 uncomfortable with you asking questions that you are
22 suggesting that you are going to ask, most of them. But
23 having this sit down here.

24 MR. YOUNG: It just saves times.

25 THE COURT: I don't know that it saves time or slows

1 us down. How does it save time when you have to go pick
2 up, have you seen this child, have you seen this, pretrial
3 publicity--

4 MR. YOUNG: No, I just say, here is the picture of
5 the kids and the indictment. Does that refresh your
6 recollection about recalling any publicity. If not that
7 is great, let's move on. Surely the State has refreshed
8 people's recollections by showing them, hey, you said you
9 didn't remember this. Well, here is this.

10 MR. HUBBARD: Why would I want to refresh their
11 memory on something I am asking to set aside. So they
12 base their opinion here in the courtroom--

13 MR. YOUNG: Because you don't want to wait until they
14 are in the jury box, oh, you know what. Now I remember
15 and then they said, oh, Judge, I told you I didn't know
16 anything, now I do.

17 THE COURT: Here is what I think would be proper. If
18 somebody came in and says, you know, I think I have seen
19 publicity but I can't remember what they look like, recall
20 their names, there was five children. That is probably
21 the common response you are going to get is, I remember
22 five children, the flash on the news was not up there very
23 long so you don't commit to memory because they are just
24 five children, young, in age they are younger children.
25 That is going to be the gist of many of the answers of the

1 pretrial publicity but can you identify that is, Gabriel,
2 I don't think they need to do that.

3 MR. YOUNG: They don't.

4 MR. HUBBARD: Judge, I don't think they need the
5 picture at all. I think the picture itself is going to be
6 problematic. I think it will be reversible right out of
7 the gate. I do.

8 MR. YOUNG: Appellate defense is sitting right there
9 and I am telling you it is not reversible. It is a
10 tactical, strategic, whatever decision I need to make. You
11 understand, the State can't appeal.

12 THE COURT: I understand.

13 MR. YOUNG: And for them to say, well, you have got
14 to protect yourself, protect yourself. The Solicitor
15 talks about in my 29 years I have never done it. His
16 reversal rate is over sixty percent on all of his Capital
17 cases.

18 MR. HUBBARD: Most of which are PCR's which what I am
19 trying to prevent.

20 MR. YOUNG: My reversal rate is zero.

21 MR. HUBBARD: Most of our cases were reversed by PCR.
22 Here is the thing, you can say it is strategy to try to
23 inflame a particular Juror to say they can't be fair.
24 That is what this is. That is not genuine strategy.

25 MR. YOUNG: It is not strategy. If a Juror says,

1 sir, you know what, I can't be fair. That is their honest
2 opinion, it is not like I tricked them into saying, I
3 can't make a Juror say I can't be fair. The Juror would
4 already have that--

5 THE COURT: I don't like the indictments and photos,
6 I don't think that is fair.

7 MR. YOUNG: We can do the photos by themselves on a
8 blank board.

9 THE COURT: I don't, I mean, I think it depends on
10 the answers that the jurors give you. But to say you have
11 heard pretrial publicity, seen pretrial publicity and they
12 say yes. And what have you seen, would that affect your
13 ability. Somebody is connected close enough that would
14 know the name of these children is not going to be
15 qualified as a Juror because they are too close. These
16 are five children that appeared in the news. I don't see
17 how seeing their picture is refreshing their memory as to
18 exactly which child was which.

19 MR. YOUNG: I am not doing that, Judge, and I just
20 think that there is a lot of people who wouldn't know the
21 names when we read them. Here are the pictures that were
22 on the news, does that refresh your recollection, do you
23 remember seeing this. And if you say, no, that's fine, it
24 is over, it is done, move on.

25 THE COURT: I don't think the indictments or

1 photographs are necessary to do that.

2 MR. HUBBARD: And, Judge, I don't think you want to
3 refresh their memory about something you are asking them
4 to set aside. So if they don't have memory, great, they
5 are exactly where you want them.

6 MR. YOUNG: First you have to ask them what their
7 memories are and by the, if they are in the jury box, by
8 the time they say, oh, yeah, that is a problem.

9 THE COURT: Well most of the time you refresh
10 someone's memory with something that they are familiar
11 with or just have forgotten. There has never been a
12 document created with an indictment with a picture until
13 y'all created it. This is not something that refreshes
14 anybody's memory. This is your creation.

15 MR. YOUNG: Well, I put the pictures from the media
16 on the corresponding indictment.

17 THE COURT: I don't like that. I think that is
18 unfair, I think it creates issues that we have not even
19 dreamt up, like unintended consequences. I don't like it.
20 You can ask them if they have seen pretrial publicity,
21 what was it, can you set that aside. You can ask them all
22 of that but seeing pictures on indictments, that is not
23 going to help. I don't see how that helps, I can see how
24 it potentially hurts us getting a fair jury. So I don't
25 like the indictments and photographs.

1 MR. YOUNG: I am happy to take the photographs off
2 the indictments, they come off.

3 MR. HUBBARD: The indictments would be improper as
4 well. It is a notice document.

5 THE COURT: Yes, I don't see how picking a jury needs
6 to include that.

7 MR. YOUNG: I can just take these off and have the
8 pictures on one and say these were the pictures in the
9 media, does that refresh your recollection, do you
10 remember seeing that. Yes, no.

11 THE COURT: Again, why, if the question is asked,
12 have you seen pretrial publicity because about half the
13 venire stood up and we took down their numbers and you
14 asked those, have you seen pretrial publicity, yes, to
15 what extent, whatever your follow-up question is. If they
16 say, no, is that when you say, well, you didn't see these
17 five children on the news media. I mean, how does it
18 refresh, I don't understand how you are going to use it
19 because if they say, yes, are you, you are going the wrong
20 way with it.

21 MR. YOUNG: Like here are the pictures, do you recall
22 seeing them.

23 THE COURT: No, no. If they say, no, I haven't seen
24 media then they have got no recollection. But if they say
25 yes, do you recall seeing pictures of the kids on the

1 news, they answer. If they say, no, what are you going to
2 do. Well didn't the news media show you that.

3 MR. YOUNG: No, I don't recall seeing it on the
4 media. I then say, here are the pictures that were all
5 over the news, does that refresh your recollection, do you
6 remember seeing these. If they say, no,--

7 THE COURT: Then what about the problem Solicitor
8 Hubbard says, now that we are talking about that can you
9 set that aside, the publicity that you saw and now you
10 have revisited it for a third time or fourth time.

11 MR. YOUNG: The question about, can you set that
12 aside is not the appropriate question. The question for
13 Your Honor is, has it, have they formed a biased. Not
14 like, oh, I can put that out of my mind, it is not a real
15 thing. It is just, all right, now you have seen it, tell
16 me what you thought, what did you feel, did you form an
17 opinion, did you not form an opinion. What was your
18 opinion and how strong was your opinion. Those are the
19 questions that Your Honor needs to ask in order to
20 determine whether or not the person should be excused.

21 MR. HUBBARD: Your Honor, Court's have always asked
22 jurors, whatever you may have heard, may have heard, can
23 you be fair and set that aside and base your opinion on
24 what you hear here.

25 THE COURT: I said it a few times yesterday.

1 MR. YOUNG: Morgan says that question is improper and
2 that jurors always say yes to the question and it
3 shouldn't be given any weight.

4 MR. HUBBARD: Obviously, that hopefully is what Your
5 Honor is looking for, can they come in here and base their
6 opinion on what they hear in the courtroom. Judge, I just
7 object and I think it is problematic.

8 THE COURT: I mean, I see us asking these jurors that
9 we are going to be discussing the deaths of these five
10 kids, have they heard about it on the news media, is the
11 discussion about that subject matter going to be difficult
12 to you to hear, listen and apply the law as I instruct.
13 The question of that sort. How are the pictures relevant
14 of what has been shown to the media, how is that going to
15 help me or hurt me to pick a fair jury.

16 MR. YOUNG: Because may not remember the names, I
17 mean may not, if when you just say, do you remember the
18 Jones kids and they may say, no. If you show them the
19 picture, oh, those are the Jones kids, yes.

20 MR. HUBBARD: Judge, here is the bottom line, they
21 don't have to remember their names. They are going to get
22 introduced to these kids slowly but surely in this trial.
23 Every murder we try and most jurors that come in here they
24 have never heard it. That doesn't mean that the victim or
25 the Defendant isn't getting a fair trial. It is just,

1 ensures that what decisions are made on what they hear
2 right here. Why are we bringing in the outside that we
3 have been working so hard to keep out and using that to
4 qualify a jury.

5 THE COURT: I don't understand it either. I guess we
6 can wait until we get there but the indictments with the
7 pictures on it, I am not going to allow that but if you
8 want to show pictures and a Juror answers a question that
9 you think you need it I think then I can maybe make an
10 opinion. But I don't see, I don't see how it is, I don't
11 get it. I understand, I don't understand why you want to
12 do that. Five children are five children, pretrial
13 publicity.

14 MR. HUBBARD: Your Honor, I guess I am just concerned
15 about, I just don't envision, what I don't want is, all
16 right, I think it is necessary now, I have got to object
17 in front of the jury and they are like, what is the
18 Solicitor now wanting me to see. I don't want that. If I
19 can just come out and ask it, if Your Honor can just say,
20 we are not going to use this stuff and let's just go back
21 to what we have been talking about since we have first
22 initiated the conversation on voir dire. Let's do what is
23 predominantly done, not just here in the Eleventh Circuit
24 and do just a general voir dire and let's just get this
25 going.

1 THE COURT: That is kind of what I was prepared for
2 when I walked in and then I get all of this.

3 MR. HUBBARD: Your Honor, I just object to it and
4 here is the problem. If Your Honor even leaves a crack in
5 the door I am going to end up having to object in front of
6 a Juror. It puts me in a very unfair position because
7 then that Juror is going to be going, what is the
8 Solicitor trying to hide. That might be the tactical or
9 strategic motive behind this, that is fine. And I
10 understand we are going to disagree on a lot of things
11 but, Judge, that is unfair to the State.

12 MR. YOUNG: The State doesn't get killed at the end
13 of the trial.

14 MR. HUBBARD: Well, and the State didn't kill five
15 babies. We just want a fair trial.

16 THE COURT: Solicitor, you said don't leave a crack
17 in the door, I am going to leave a crack in the door. I
18 don't know what circumstances, do you need to see these
19 pictures so you can understand what we are talking about.
20 I can't envision that somebody will say, oh, yeah, I am
21 kind of familiar with it but they don't need to be shown
22 the pictures. They are kind of familiar with it, that is
23 enough. I mean, I don't understand where you are going to
24 get in your questioning and I don't want to be the one
25 doing it because I am not going to show the pictures.

1 Don't put that on me because you want me to go into that.

2 That is going to be y'all's doing.

3 MR. YOUNG: Yes, sir.

4 MR. HUBBARD: Can we do this to protect me. That if
5 he thinks he has got a crack that he wants to exploit, can
6 we stop but absolutely prohibit any of this stuff coming
7 before a Juror before you rule.

8 THE COURT: That is what I was going to say. You
9 beat me to the punch. When you think you need to use it,
10 Judge, I want to put something on the record, a legal
11 issue, we will get the Juror out and we will deal with it
12 right then. I will say up or down. That is how I would
13 like to handle it. The indictments, I can't fathom a
14 reason, you would want to show that to a Juror. I have
15 read it to them, it is a piece of paper, I don't
16 understand that, the relevance of selecting a jury. And
17 aren't these defenses and sentencing principles, aren't
18 those part of the general instructions, summary, I am
19 trying to give these jurors?

20 MR. YOUNG: I hope so, yes sir.

21 MR. HUBBARD: And it should come from you but in your
22 language because I have got a problem.

23 THE COURT: I do too, I mean I am not going to read
24 from that because it looks, I was working on some stuff
25 last night and this morning early and again when I got

1 here. A lot of things are written the way I talk and the
2 way I present things, not the way it is written in some of
3 the instruction books. That is just not my style.

4 MR. YOUNG: I understand.

5 MR. HUBBARD: And, Your Honor, here is a list of
6 potential defenses and statutory mitigation in the extent
7 to assist Your Honor.

8 THE COURT: Thank you.

9 MR. HUBBARD: And Your Honor may already have all of
10 that which is fine.

11 MR. YOUNG: I would object to most of the statutory
12 mitigators. They are actually included in the defenses so
13 you can't say they are defenses and then also mitigating.
14 Because if they were found that would be not guilty.

15 THE COURT: Let's talk about my statement real quick.
16 All right, y'all comment on this, I work off of another
17 Judge's summary, a little briefer. This one has, this
18 case has more facts. My comments would be, I will just
19 hand them to you in writing, that will be easier and then
20 I will comment on them then. Let me do that. I will send
21 you a copy of this.

22 (Whereupon, a bench conference was held.)

23 THE COURT: Put this on the record, Joy. I am going
24 to talk to the media while y'all are looking over that.
25 Once we get into the voir dire selection, just talking to

1 the audio/video folks, there is going to be no filming
2 pictures of any of the potential jurors. You can listen
3 in, take notes, do whatever but I don't want any actual
4 recording of the questions and answers to be published. I
5 don't want any photography of the potential jurors. If a
6 Juror comes up and says, I have got something a little
7 more sensitive, I may have a sidebar for that. But other
8 than that you can listen, take notes, whatever you want to
9 use but I am not going to allow filming of the jury and we
10 discussed that I think at the meeting and we were clear on
11 that. Is that consistent?

12 MR. MONK: Will we be able to shoot a still photo for
13 atmosphere.

14 THE COURT: Yes, as long as we don't get a Juror,
15 sure, you can do that.

16 MR. MONK: Thank you.

17 THE COURT: Is that consistent with our discussion at
18 the sidebar?

19 MR. HUBBARD: Yes, sir.

20 THE COURT: Okay, we are good.

21 (Whereupon, a bench conference was held with the
22 media and the attorneys.)

23 THE COURT: Mr. Young, are you ready?

24 MR. YOUNG: Yes.

25 THE COURT: Are you ready, Solicitor?

1 MR. HUBBARD: We are ready, ready to discuss.

2 MR. YOUNG: Can we take five minutes.

3 THE COURT: Do y'all want to do that off the record
4 or do you want to do it on the record?

5 MR. HUBBARD: We can do it in-chambers if you want or
6 however you want to do it.

7 THE COURT: We will do it right there. I am going to
8 step out, they asked for five minutes. We are down for
9 five minutes. We will be kind of sitting at ease.

10 (Whereupon, a short break was taken.)

11 THE COURT: Let's make a record of this, just out of
12 an abundance of caution I want to make a record of it. I
13 handed out to both sides a rough draft of the summary of
14 the law and facts. I am going to allow the State to
15 comment and then the Defense to comment on it to see if we
16 come up with a consensus. Mr. Graham, it is going to be
17 you? You want to put it on the record or not?

18 MR. HUBBARD: It is up to you, Judge.

19 THE COURT: Y'all don't want it on the record?

20 MR. YOUNG: Yes.

21 THE COURT: Okay.

22 MR. YOUNG: Or we can go in-chambers and figure out
23 where the real disagreement is.

24 THE COURT: Let's do that because I don't want to
25 make this a Court's exhibit because it is a very rough

1 draft. Let's go back in-chambers and discuss it and if we
2 have got some big issues we will come back here and put
3 those on the record. That suits me fine.

4 (Whereupon, an in-chambers meeting was conducted to
5 discuss questions for jurors.)

6 (Whereupon, the panel of jurors were sent to lunch at
7 10:45 a.m. to 1:15 p.m.)

8 (Whereupon, a lunch break was taken after in-chambers
9 meeting.)

10 THE COURT: Solicitor, what have you got.

11 MR. HUBBARD: Your Honor, before we start, I want to
12 make sure we start on the right foot. I see we have got
13 boards up here again. Judge, I know we are going to
14 second, I just don't want to be put in a position that the
15 Defense uses one of these boards and I am objecting in
16 front of a Juror. My understanding is no boards unless
17 you at some point think it is okay.

18 THE COURT: That is my understanding, we had a
19 sidebar, we did not put that on the record. That is kind
20 of what we discussed. What is that, Mr. Young, do you
21 know.

22 MR. YOUNG: Let's say we could use the indictments
23 with pictures on them, if it became necessary I could use
24 the pictures. Of course, after telling the Court I was
25 going to show the pictures these are the processes about

1 how this case works. This is the chart that assists me in
2 talking jurors through, here is where we have a trial for
3 murder, guilty but mentally ill. We then get to consider
4 statutory aggravating circumstances, you find not guilty
5 or not guilty by reason of insanity you stop. If you find
6 no statutory aggravating circumstances you stop. If they
7 are found unanimously beyond a reasonable doubt you
8 consider mitigating circumstances, other aggravating
9 circumstances. Each Juror uses their individual moral
10 judgment to what their appropriate punishment is and if it
11 is twelve votes for life, it is life penalty. If it is
12 twelve votes for death it is a death penalty. If it is
13 not unanimous it is life--

14 THE COURT: Why have I spent all of this time working
15 up that summary that y'all agreed to. That is what it was
16 for, I am going through all of that without the benefit of
17 a board.

18 MR. YOUNG: I would love Your Honor to use the board
19 and flow chart, it would go much quicker.

20 MR. HUBBARD: We will object to the board even if
21 Your Honor used it because it is not correct. One, it
22 only has, doesn't even have not guilty on there. Two, it
23 gets into what we have been arguing against the whole time
24 about what happens when one Juror wants to scuttle the
25 entire process and say I am not going to vote for death

1 and they get to single out that Juror and basically get
2 that Juror to, basically control what the eleven other
3 jurors are doing. It is improper. Judge, it is not
4 needed, this is voir dire and as Poindexter says, this
5 isn't about educating them, this is just seeing if they
6 can be a fair Juror. This is teaching them the whole
7 process. This is absolutely inappropriate.

8 MR. YOUNG: I have to know that they can follow the
9 law throughout the whole process.

10 THE COURT: I have to know that.

11 MR. YOUNG: Yes sir, you have to know that.

12 THE COURT: I am hopeful that my summary of what I
13 have written and drafted and y'all have commented on,
14 y'all have edited, y'all have assisted me in editing is
15 going to be sufficient to do that. I am not comfortable
16 with that.

17 MR. HUBBARD: Judge, I have got the same objection
18 with these.

19 THE COURT: Oh, no, I don't like those at all.

20 MR. HUBBARD: All right.

21 THE COURT: I have looked at those when I came down a
22 little bit, I am not comfortable with that.

23 MR. HUBBARD: And then we have got the indictments
24 again.

25 THE COURT: No, he had them over there, he brought

1 them over to show me.

2 MR. HUBBARD: And then pictures of the children, my
3 God--

4 THE COURT: We are still on the same as he is going
5 to tell me if he wants to try to use the pictures,
6 correct?

7 MR. YOUNG: Yes, sir.

8 MR. HUBBARD: Judge, here is the problem. It would
9 be easy if we could just make it through the first panel
10 and see if it is even necessary. Just band it right now,
11 just have ruling not now because, Judge, I can't even
12 begin to fathom why showing them pretrial publicity and
13 then saying, trying to cure them from it, we are throwing
14 poison in the tank and then saying now we are going to
15 take the poison out. I just, Judge, it just scuttles the
16 process.

17 THE COURT: I don't want to use those boards, I think
18 that is what my summary does and the questions that we
19 have discussed at great length. Certainly if I were to
20 use I would be asking for them but I don't think so, I
21 don't think you are entitled to that.

22 MR. YOUNG: So you are saying I am barred using the
23 flow chart?

24 THE COURT: In the voir dire. You might want to use
25 it later, I am not ruling whether you can or can't later.

1 MR. YOUNG: I can't use it in voir dire.

2 THE COURT: I don't like that in voir dire, no sir.

3 MR. YOUNG: And I can't go through murder is not and
4 strip out the defenses.

5 THE COURT: No, I am going to give the defenses in
6 the actual statutory language.

7 MR. YOUNG: Okay. So I can't, so the ruling from the
8 Court is and this, for the record, this is a board, it
9 says, murder is not and then under the not it says
10 self-defense, murder is not a defense of others, murder is
11 not heat of passion, murder is not duress--

12 THE COURT: Yes. You want to make copies of them and
13 make them a Court's exhibit for the purposes of the record
14 you may.

15 MR. YOUNG: I was just going to read it into the
16 record.

17 THE COURT: Okay.

18 MR. YOUNG: Murder is not insane, murder is not
19 intellectually disabled, murder is not drunk or high,
20 murder is not accident, murder is not mistake, murder is
21 not wrong guy.

22 MR. HUBBARD: And, Your Honor, just on that, drunk or
23 high, that is not a defense.

24 MR. YOUNG: I understand that, Your Honor.

25 THE COURT: Well, and it doesn't say murder is not,

1 it says not with big capital letters and underlined.

2 Murder is not on the board at all.

3 MR. YOUNG: Yes, sir. It is just to help me go
4 through with jurors when we are talking about murder, what
5 we are not talking about are these things.

6 THE COURT: I think I would rather talk about what we
7 are talking about.

8 MR. YOUNG: Sure. And I have a board entitled
9 sentencing principles. These are all principles of law
10 which we would ask the jurors about, to go through just to
11 make sure they can understand it. It would be faster just
12 to go through it with the board. I understand the Court
13 is saying we can't use the board, it would be no jurors
14 ever required to sentence someone to death. Number two--

15 THE COURT: I want a copy of that, I want to go
16 through it, just make a copy of it. You are reading too
17 fast and you are going to wear Joy down. Make a copy of
18 it and put it in the record as an exhibit and your record
19 is protected.

20 MR. YOUNG: Sure.

21 THE COURT: All three of them.

22 MR. HUBBARD: Judge, just so I know so that I am not
23 jumping up and be like a bad guy in front of a Juror,
24 frankly that is often strategy as well. And I don't want
25 to be in that position because I cannot fathom a reason

1 you would show five children who were murdered or killed.

2 THE COURT: He is not going to show the pictures
3 unless he gives me, Judge, I am at the legal issue and
4 then we excuse the Juror. That is when he has got to do
5 it. I assume, Mr. Young, you will be the one doing the
6 voir dire.

7 MR. YOUNG: Yes, sir.

8 THE COURT: Okay.

9 MR. YOUNG: Your Honor, if I may, just make a record
10 real quick on the voir dire restrictions. The Sixth and
11 Fourteenth Amendments of the United States Constitution
12 guarantee a Capital Defendant the right to a fair trial,
13 the panel of impartial and indifferent jurors under Morgan
14 versus Illinois, 504 US 719; Ross versus Oklahoma, 487 US
15 81; Duncan versus Louisiana, 391 US 145; Turner versus
16 Louisiana, 397 US 466; Irvin versus Dowd, 366 US 717. In
17 Capital cases the right to, embraces the right to an
18 impartial jury drawn from a venire that has not been
19 tilted in favor of Capital punishment under Uttecht versus
20 Brown, 551 US 1. Citing Witherspoon versus Illinois, 391
21 US 510. The essential demands in fairness require that
22 criminal Defendants be given the opportunity to assure
23 themselves of the right through voir dire directed to
24 uncover a biased. Aldridge versus United States, 283 US
25 308. Holding summarily dismissing Defense Counsel's

1 request for supplemental voir dire on an issue of biased.
2 The trial Court violated the Defendant's right to due
3 process. Voir dire plays a critical function in assuring
4 the criminal Defendant that his Sixth Amendment right to
5 an impartial jury will be honored. *Rosales-Lopez versus*
6 *United States*, 451 US 182. The issue of a fair and
7 impartial jury becomes most grave when the issue is life
8 or death. *Aldridge*, 283 US at 314. Capital Defendants
9 have a greater, not a lessor right than others to insure
10 themselves of a fair and impartial jury. See *Turner*
11 *versus Murray*, 476 US 28. Holding that Capital Defendants
12 have a constitutional right to explore the issue of racial
13 biased even in the absence of such a right when lessor
14 penalties are at stake. The Supreme Court of South
15 Carolina has repeatedly held that Capital Defendant is
16 entitled to a trial before a panel of jurors whose ability
17 to protect, interpret and apply the law will not be
18 affected by their personal opinions about the death
19 penalty. See *State v. George*, 323 SC 496. *State v.*
20 *Davis*, 309 SC 326. In order to comply with the Sixth,
21 Eighth and Fourteenth amendments the Defendant must be
22 allowed to ask questions intended to root out biased, to
23 insure that the jury panel is not uncommonly willing to
24 condemn a man to die. *Witherspoon versus Illinois*, 391 US
25 510. Thank you, Your Honor.

1 THE COURT: Anything else?

2 MR. YOUNG: No, sir.

3 THE COURT: Do y'all mind, any of the attorneys, if I
4 stay up here more comfortable or come down there more
5 comfortable. I am not certain exactly where I want to
6 speak to these jurors, it may be here. Do y'all care?

7 MR. YOUNG: No, sir.

8 MR. HUBBARD: No, sir.

9 THE COURT: All right. The first Juror is 97.

10 (Whereupon, Juror number 97, Robert Cody, came into
11 the courtroom and was sworn.)

12 CLERK OF COURT: State your name and spell your last
13 name.

14 JUROR: Robert Cody. R-O-B-E-R-T C-O-D-Y.

15 EXAMINATION BY THE COURT

16 By The Court:

17 Q Mr. Cody, sorry for the delay. My name is Eugene
18 Griffith, I am the presiding Judge in this case. Now, the
19 purpose of bringing you in this afternoon is to remind you
20 you are under oath. When we left yesterday I gave y'all
21 instructions on not to communicate with anybody, not do
22 independent research. So I ask you today, you are under
23 oath at this hearing as a prospective Juror. And I remind
24 you I am looking for truthful answers, there is no right
25 or wrong answers, just truthful answers. Now, has anyone

1 attempted to contact you about this case in any way?

2 A No.

3 Q Have you contacted anyone or spoke to anybody about
4 this case since I have given you my instruction?

5 A I only mentioned to my parents that I was coming here
6 today, that is the only people.

7 Q And I noticed from your questionnaire you are only
8 19?

9 A I am 20 now.

10 Q Okay, fair enough. I don't remember whether you were
11 one of the one's that stood up and said you had seen any
12 of the media reports?

13 A I didn't.

14 Q You have not?

15 A No, sir.

16 Q Have you done any independent research about the
17 facts or circumstances of this case?

18 A No, sir.

19 Q Now, are you married?

20 A No, sir.

21 Q Now, you or any member of your immediate family a
22 member of any organization which advocates for victims
23 rights such as like MADD, SADD, CAVE, Troopers
24 Association, Sheriffs Association?

25 A No.

1 Q Now, before you came in I sent two documents to you,
2 I believe, a list of potential witnesses, rather lengthy.
3 Did you look for that list?

4 A Yes, sir.

5 Q Now, the Court requires, the Court rules requires
6 that any potential witnesses that may be called have to be
7 placed on a list by the parties who call witnesses. And
8 so it is not necessary they are going to call those but
9 potentially they could be called. Did you recognize these
10 names on that witness list?

11 A No, sir.

12 Q Are you related by blood or marriage, to your
13 knowledge, to any of those witnesses?

14 A No, sir.

15 Q Are you connected to any of those witnesses in any
16 way whatsoever whether it be a church connection or a
17 social connection, professional, business relationship?

18 A No, sir.

19 Q No connection whatsoever?

20 A No, sir.

21 Q I think I asked you if you were connected with any of
22 the lawyers in any fashion?

23 A Yes, you did but no, I am not.

24 Q Are you connected to the Jones' family in any way?

25 A No, sir.

1 Q Now, as I told you, we are looking for truthful
2 answers, not right or wrong. But I want to explain to you
3 some generalities on how the case is going to be, how it
4 is going to proceed and give you, basically an outline of
5 kind of what to expect if you are selected as a potential
6 Juror. In this case Mr. Jones is charged with five counts
7 of murder. In South Carolina is defined as the killing of
8 another person with malice aforethought. And malice is
9 defined as a person with a wickedness, a depraved heart,
10 intent on wrongdoing, hatred, ill-will or hostility. Now
11 the definition of murder excludes any just cause or excuse
12 for the killing. When the State alleges the offense of
13 murder combined with certain aggravating circumstances, in
14 those cases the State can seek the death penalty. Now,
15 before and during a trial, throughout the entire trial, a
16 person accused is always presumed innocent of each and
17 every element of the crime which he is accused of. Mr.
18 Jones is presumed innocent. Now the State must prove each
19 and every element of the crime charged to a standard of
20 proof called beyond a reasonable doubt. Now in most
21 criminal cases the Court, the Judge makes a determination
22 on what punishment is given if a person is convicted
23 during a trial. In a death penalty case it is slightly
24 different. A jury determines the punishment and so I want
25 to discuss that with you a little bit. So in a Capital

1 case such as this the trial is divided into two parts
2 potentially. There is the guilt or innocent phase and
3 then, if necessary, the punishment phase. In the first
4 portion of the case the State must prove the Defendant's
5 guilt of murder beyond a reasonable doubt. And so if a
6 jury finds an accused person guilty of murder it is only
7 then that the trial would proceed to the second phase. In
8 the second phase if the State proves an aggravating
9 circumstance beyond a reasonable doubt then a jury can
10 consider any aggravating and mitigating evidence in
11 deciding what punishment, either life without the
12 possibility of parole or the death penalty. Now, our law
13 in South Carolina does not allow the State to seek the
14 death penalty if a person is convicted solely of the
15 murder. The State must prove an aggravating factor and
16 the State must prove at least one statutory, the statute
17 is the books right here of the laws handed down by the
18 General Assembly, those are called statutes. Statutory
19 aggravating factors are listed in those books under the
20 particular code section I am referring to. And the State
21 must prove one of those factors beyond a reasonable doubt.
22 Now I am telling you, even if the State proves murder and
23 an aggravating circumstance jurors are required to
24 consider any mitigating evidence or circumstances. Okay.
25 Jurors must also consider any mitigating facts that would

1 support a sentence other than death even if there are not
2 mitigating circumstances shown, jurors are not required to
3 impose the death penalty. In order for a sentence of
4 death to be imposed the verdict must be signed by all
5 twelve jurors. If jurors unanimously decide to sentence a
6 Defendant to life without parole sentence then a sentence
7 of life without the possibility of parole will be imposed.
8 Now in this case the State has indicted Mr. Jones of five
9 counts of murder and is notified him that it intends to
10 seek the death penalty. Mr. Jones has entered a plea of
11 not guilty by reason of insanity. In this case you may
12 hear testimony and evidence showing many different things.
13 There is a wide variety of testimony that may be presented
14 to you in this trial. Now, I will at the appropriate time
15 instruct you as to how to consider and evaluate that
16 testimony and that evidence and whether the testimony be
17 defined as the evidence of an aggravating factor, evidence
18 of mitigation which will be possibly a reason to vote for
19 a sentence of life without parole, evidence of any
20 defenses, even evidence of affirmative defenses such as an
21 accident, guilty but mentally ill and not guilty by reason
22 of insanity. Now, until the testimony and evidence is
23 presented during the trial, I am not able yet to tell you
24 the exact instruction of the law I am going to give you.
25 But can you accept the oath to meaningfully consider all

1 the testimony and all the evidence which is presented to
2 you and apply it to the law as I will give you at the end
3 of the trial and consider all this evidence consistent
4 with my instructions. Can you do that?

5 A Yes.

6 Q Now, because of the plea in this case, it creates for
7 the jury on the first issue of guilt or innocence four
8 potential verdict forms, meaning four potential verdicts.
9 There is a potential verdict of guilty, guilty but
10 mentally ill, not guilty by reason of insanity and not
11 guilty at all. Now, if evidence is present, can you give
12 all the evidence meaningful consideration and apply the
13 law as I am instructing it to you then and reach any one
14 of these verdicts. Can you consider all four of those
15 potential verdicts?

16 A Yes.

17 Q Now, the statutes I have referred to over here, they
18 also provide a list of potential defenses persons have in
19 crimes. Potential defenses in criminal cases include
20 identification, accident, involuntary intoxication,
21 suicide, self-defense, necessity, insanity, guilty but
22 mentally ill, defense by habitation, entrapment, duress
23 and alibi. Now, if any such evidence is presented about
24 these defenses, presented in the case during the trial,
25 can you give those and that testimony meaningful

1 consideration and apply the law as I am instructing it to
2 you as to how to weigh and consider that evidence?

3 A Yes.

4 Q Now there is also mitigating factors which I
5 mentioned earlier and the statutes, again, provide a list
6 of mitigating factors. Potential testimony can go into
7 mitigating factors such as a Defendant has no significant
8 history of prior criminal convictions, conviction of
9 violence against other people, the murder was committed
10 while the Defendant was under the influence of mental or
11 emotional disturbance, the victim was a participant in the
12 Defendant's conduct, the Defendant was an accomplice in
13 the murder committed by another person, the Defendant
14 acted under duress or under the domination of another, the
15 capacity of the Defendant to appreciate his criminality of
16 his conduct or to conform his conduct to the requirements
17 of South Carolina law was substantially impaired, the age
18 or mentality of the Defendant at the time of the crime,
19 the Defendant was provoked by the victim committing the
20 murder, the Defendant was below the age of 18 as a
21 defense, the Defendant had mental retardation at the time
22 of the crime. Now, if any such evidence of any of these
23 defenses, I am sorry, mitigating factors are presented
24 during the case can you give each of those meaningful
25 consideration and also apply the law as required and

1 instructed by the Court?

2 A Yes.

3 Q Now, before you came in also there was given to you a
4 summary that I drafted up regarding the type of jurors who
5 are normally, general categories people fall into. Did
6 you review that sheet?

7 A Yes, sir.

8 Q Now, you see type one, did you read that?

9 A Yes.

10 Q And type two, did you read that?

11 A Yes, sir.

12 Q And type three, did you understand that?

13 A Yes, sir.

14 Q The explanation. You have an idea what type of Juror
15 you would be?

16 A I have never been on jury duty before but probably
17 type three.

18 Q Okay. And do you understand that the case may be
19 lengthy, do you have any other personal plans, travel, to
20 be gone for a while, anything like that over your upcoming
21 several weeks of schedule that you know of?

22 A I start school in, on the 1st of May.

23 Q What school do you go to?

24 A Midlands Tech.

25 Q Midlands Tech, what are you taking?

1 A What kind of classes?

2 Q Yes?

3 A Computer, information system technology.

4 Q Computer technology related?

5 A Yes, sir.

6 Q The lawyers will have an opportunity to ask you some
7 questions. I want to be certain, you are my first Juror.

8 THE COURT: Are there any other questions that we
9 discussed that the Court should add.

10 MR. YOUNG: No, Your Honor, I think there is a couple
11 matters of law that we would like to take up with Your
12 Honor before I start questioning.

13 Q Okay. You are the first Juror, the legal issues of
14 discussing the questions, we are making a record that Ms.
15 Holston is taking down so I need to put a couple of more
16 things on the record. You haven't done anything wrong.
17 Okay. You step out and we will have you right back in
18 here.

19 (Whereupon, the Juror was excused from open court.)

20 MR. YOUNG: Is there a place for them to go?

21 THE COURT: I don't know. This is the first one, I
22 don't know.

23 MR. YOUNG: The Prosecution has a lot of stuff on the
24 table, have the Juror walk passed it.

25 THE COURT: Again, Ms. Comer and I discussed briefly

1 what she was going to try to do. And I have been dealing
2 with y'all so kind of left that to her. So we can do it
3 differently on the second one. That was not my intent.

4 MR. YOUNG: Is there a place right outside the door
5 right there where they can go.

6 THE COURT: We can put them right there at the corner
7 of the glass door.

8 MR. YOUNG: Sure.

9 THE COURT: Sure, I can do that.

10 MR. YOUNG: All right. I don't know which order Your
11 Honor, first off I guess I need to do, Mr. Cody says he
12 starts class back on May the 1st. And I know the Defense
13 and the State have talked about scheduling witnesses,
14 there are a number of witnesses who are not even available
15 to testify until May the 22nd. So I know that Dr.
16 Frierson is out of the Country until that time. So I
17 don't know who is going to deal with that, having issues
18 or what, I am asking the State, I guess.

19 MR. HUBBARD: Judge, I guess the question is, it is
20 really up to you whether he stays as a student or whether
21 he is willing to--

22 THE COURT: I think we ask him.

23 MR. YOUNG: Okay. And I am happy to talk to him
24 about it, that's fine.

25 THE COURT: Okay.

1 MR. YOUNG: With regard to Your Honor's first read
2 through of the charges that we hammered out and I am sure
3 this was just sort of an oversight or as Your Honor
4 explained, but you said that this is a death penalty case
5 and we would object to this being labeled as a death
6 penalty case. I think that is death processing language
7 indicating to the jurors that--

8 THE COURT: Why didn't y'all tell me that a long
9 time, I mean y'all are using all of these synonyms.

10 MR. YOUNG: In a Capital case--

11 THE COURT: It is in here, y'all have been using the
12 words. I am good with whatever y'all want but y'all set
13 me up on that.

14 MR. HUBBARD: Judge, as a practical matter, it is, it
15 is just a matter of whether one can be proven as guilt and
16 two, it is a Capital case.

17 THE COURT: All right, death penalty case, Capital
18 case, what do y'all want to use.

19 MR. HUBBARD: Most people don't understand what
20 Capital is so that is why we use death penalty because
21 they are, oh, I get that, I hear that. That is a colloquy
22 that I can understand. We are talking to people off the
23 street, we speak their language, we speak as lawyers, we
24 speak Capital. A lot of them are going to go, what is a
25 Capital case.

1 MR. YOUNG: A Capital case is a case in which life
2 penalty or death penalty may be sought.

3 MR. HUBBARD: Makes it a death penalty case, let's
4 just stick to death penalty.

5 MR. YOUNG: I'm just saying for the record we object
6 labeling it as a death penalty case.

7 THE COURT: I think that is semantics and so I don't
8 think it is any more prejudicial than saying death
9 penalty, Capital case, execution. Death penalty is
10 probably the one that is going to come out easiest for me.

11 MR. YOUNG: And I understand that, Your Honor. And
12 this is a part of Dr. Foglia's testimony pursuant to the
13 Capital jury project in that the Court must be very
14 careful not to use processing language because jurors
15 picked up on it in facts in their eventual verdict when
16 the remedy is so easy to the Defendant to just say Capital
17 case as opposed to death penalty case to avoid the
18 processing effect and the accumulative effect in the case
19 continually being labeled as a death penalty case.

20 THE COURT: All right, so when I say there are two
21 possible sentences or four possible sentences I say what?

22 MR. YOUNG: Four possible verdicts. The possible
23 sentences are death or life without the possibility of
24 parole. But that does not make this a death penalty case.
25 If you come out and say this is a death penalty case, we

1 want to talk to you about death penalty. This is, we want
2 to know about your feelings about the death penalty which
3 is all stuff that is going to happen and I am just asking
4 that we minimize the processing effect as much as possible
5 and not label it as a death penalty case.

6 THE COURT: All right. I will make every attempt to
7 call it a Capital case but I don't understand--

8 MR. HUBBARD: And I am afraid a lot of people aren't
9 going to understand. Judge, I even had a Judge one time
10 ask me what made a case Capital. They were questioning
11 what happens in that case. Judge, these are lay people,
12 they understand death penalty. I think the whole point of
13 voir dire is you as a Judge explaining the process. That
14 is how they know, they are not going to be prejudice.
15 They are not going to vote death because you use the term,
16 death penalty. He is going to understand, oh, this is a
17 serious case.

18 THE COURT: This is going to be hard to avoid. I
19 understand your request but I want to go back and see how
20 many times I said it.

21 MR. YOUNG: Once.

22 THE COURT: Once?

23 MR. YOUNG: Yes, sir.

24 THE COURT: Capital case?

25 MR. YOUNG: No once, you just said death penalty case

1 once.

2 MR. HUBBARD: That shows there is very little impact.
3 You have limited it to one time, one good colloquy term
4 that somebody on the street would know so where in the
5 world is the prejudice.

6 MR. YOUNG: Haven't asked to excuse the Juror.

7 THE COURT: Okay.

8 MR. YOUNG: Or dismiss the charges or anything. I am
9 just saying I want the Court to be aware, after hearing a
10 lot of testimony about the processing effect--

11 THE COURT: All right. You know when I said it?

12 MR. YOUNG: Very early on.

13 THE COURT: Notwithstanding the first paragraph and
14 the State alleges the offense of murder combined with
15 certain aggravating circumstances the State can seek the
16 death penalty. I read that.

17 MR. YOUNG: Labeling this as a death penalty case is
18 the issue.

19 MR. HUBBARD: Judge, there is nothing wrong with
20 that.

21 THE COURT: One time, I can go with one time, I can
22 go with that. I don't see any undue burden on me to say
23 Capital case the one time I have got to say it.

24 MR. HUBBARD: Except unless the Juror doesn't know
25 what you are talking about.

1 THE COURT: I have already said death penalty in
2 other parts so I am not changing those.

3 MR. HUBBARD: Okay.

4 THE COURT: I will give you that, Mr. Young.

5 MR. YOUNG: Thank you.

6 THE COURT: What else have you got.

7 MR. YOUNG: When Your Honor went through the list of
8 the statutory mitigators and we request that Your Honor
9 tell the jurors that this is not an exhaustive list and
10 that anything that the defense presents or anything that
11 they apply is reason to vote for life is mitigation and
12 that the statutory list, they are not limited in any way
13 to the statutory list. These are some things that are
14 listed by statute but you are entitled to consider
15 whatever you want.

16 THE COURT: So whatever the defense believes to be
17 consideration in mitigation. Something like that?

18 MR. YOUNG: Yes, sir.

19 THE COURT: All right. I can do that.

20 MR. HUBBARD: I think we had something we passed up
21 along that line.

22 THE COURT: It is, on the statutory things that the
23 State passed up, it is at the very bottom below the
24 statutes.

25 MR. YOUNG: Yes, sir.

1 THE COURT: Fair enough.

2 MR. YOUNG: We just need to say you are not limited
3 by that statutory list, whatever. And finally we would
4 ask that they also be instructed that they can consider
5 mercy as a reason to vote for life.

6 THE COURT: Where do you suggest that go?

7 MR. YOUNG: Right after you say they are not limited
8 to mitigation, you can even have no reason and we call
9 that a mercy verdict.

10 MR. HUBBARD: Tell you what, Judge, if you do that
11 why don't you give me death penalty back. Let's just,
12 dear Lord, we sat back there forever working on this
13 thing.

14 MR. YOUNG: I don't know how many times you have to
15 have a ruling from the Court and then the State reargue it
16 but my understanding of Rule 18 is that one the Court
17 rules, unless the Court ask for further argument that we
18 are not suppose to do that. So that is what I tried to
19 do, the State has not tried to do that. I would ask that
20 we start--

21 MR. HUBBARD: So I won't use like billboards and
22 things like that and I won't reargue it every time and I
23 won't try to slip those in even though you have ruled.

24 MR. YOUNG: Is the State making an objection or are
25 they just making a comment.

1 MR. HUBBARD: I am commenting.

2 THE COURT: What did you say about anything the
3 Defense believes can be considered mitigation.

4 MR. YOUNG: Or you can have no reason which is mercy
5 alone.

6 THE COURT: No reason is not a mitigation factor.

7 MR. YOUNG: No sir, that is mercy. Mercy alone can
8 be, you can have no reason or mercy alone can be--

9 THE COURT: I think that goes in my closing
10 instructions, I don't think that goes in the statutory
11 mitigating factors.

12 MR. YOUNG: I think Rosemond versus Cato, 383 SC 320
13 says it is proper to instruct a jury in a Capital
14 sentencing phase that it may recommend a life sentence for
15 any reason or no reason at all including as an act of
16 mercy. And that is what we would just request.

17 THE COURT: That sounds like a very improper
18 instruction. What else.

19 MR. YOUNG: Your Honor, given the fact that Mr. Cody
20 has indicated that he is not aware of any pretrial
21 publicity the Defense would request to show him the
22 pictures that have been in the media to see if it
23 refreshes his recollection as to hearing anything about
24 the case. We are doing this while Mr. Cody is out of the
25 room and let the Court know that when a Juror says I don't

1 know anything about it it would be my intention to say,
2 here is pictures that have been in the media, does this
3 refresh recollection about hearing about it. If he says,
4 no, that is fine. If he says, oh yes, I remember it, we
5 will talk about it.

6 MR. HUBBARD: Judge, we will be trying this case
7 again.

8 THE COURT: I don't think that is a fair way to use
9 those pictures and he said no and I think we will leave it
10 there. I do not think that is a proper way to, everything
11 I have read and all the cases y'all have handed up about
12 voir dire, I have not seen that done or heard that
13 question in these records. Y'all can tell me when it was
14 done, I don't think so.

15 MR. YOUNG: Your Honor, my position would be a Juror
16 is just like any other witness. Say, I don't remember
17 that and then they see something and say, oh yeah, you
18 know what, I do remember that. It refreshes the
19 recollection.

20 THE COURT: No, not allowed.

21 MR. YOUNG: Thank you, Your Honor.

22 THE COURT: Okay. Do I need to reask him anything?

23 MR. YOUNG: I request that the Court just clarify
24 that the mitigating factors are not limited to--

25 THE COURT: You want to do that when he comes in?

1 MR. YOUNG: Yes, sir.

2 THE COURT: I don't mind if you ask him the question.

3 MR. YOUNG: That is fine, I am happy to do it,
4 whatever.

5 THE COURT: That's fine. Bring Mr. Cody back in.

6 (Whereupon, Mr. Cody entered the courtroom.)

7 THE COURT: I will remind you you are still under
8 oath. This is Mr. Young and he will ask you a few
9 questions.

10 EXAMINATION BY MR. YOUNG

11 By Mr. Young:

12 Q Good afternoon, Mr. Cody, how are you?

13 A Good, how are you?

14 Q I am doing well. So I wanted to talk to you a little
15 bit about right before you left you talked about your
16 school was starting back and you are at Tech and y'all
17 start classes back on May 21st?

18 A Yes, sir.

19 Q And how many hours are you taking?

20 A Twelve.

21 Q A full class load?

22 A Yes.

23 Q And have you already paid for next semester or the
24 summer semester?

25 A Not yet.

1 Q Because my understanding that the trial will probably
2 go past May the 22nd. Would you be able to miss the first
3 week or so of classes?

4 A I am not sure.

5 Q Are you in night school or daytime classes?

6 A Daytime.

7 Q Okay. So if you had to be here from 9:00 to 5:00
8 Monday through Friday for possibly until the first week of
9 June, would that interfere with your ability to go to
10 class?

11 A Yes.

12 Q Okay. Would you rather go to class or do you want to
13 stay here, now is the time, you just got to let us know.

14 A If I go to class do I get transferred to a
15 different--

16 Q Yes, as a student, if you are not available like the
17 Judge talked about yesterday, if you are a student you
18 would have the option of transferring your jury service.
19 Actually you probably wouldn't have to transfer because
20 you made it this far but that would be up to the Judge.

21 A Can I do that?

22 MR. HUBBARD: Your Honor, I think Mr. Cody needs to
23 go to school.

24 THE COURT: I do too. We are going to transfer you
25 to another term. Sorry for making you wait so long.

1 A It's okay.

2 THE COURT: Mr. Cody is free to go, thank you and you
3 do not come back.

4 A Thank you.

5 (Whereupon, Mr. Cody was excused from the trial of
6 this case.)

7 THE COURT: Now, y'all tell me the first line, do
8 y'all want more or less.

9 MR. YOUNG: I think what you are doing is fine.

10 MR. HUBBARD: Fine, Your Honor.

11 MR. YOUNG: One thing that was pointed out to me, I
12 think Your Honor misspoke when you said mitigating factors
13 are possibly a reason as opposed to any reason to vote for
14 a life sentence.

15 THE COURT: Y'all can't nickel and dime me like that.
16 I am trying.

17 MR. YOUNG: I know.

18 THE COURT: I am not going to read it verbatim. I
19 can't read that well, I can speak better than I can read.
20 If I am missing any, I am sorry.

21 MR. YOUNG: I just got to protect the record and let
22 the Court know that we are looking for any--

23 THE COURT: I apologize, I am doing my best.

24 MR. YOUNG: I understand.

25 THE COURT: If y'all are going to hold me to that

1 standard I need to do something different. Who have we
2 got next.

3 CLERK OF COURT: Juror 174, Kenneth Hall.

4 (Whereupon, Juror Kenneth Hall entered the
5 courtroom.)

6 KENNETH HALL, being
7 first duly sworn, testified as follows:

8 MADAME CLERK: If you'll have a seat over there,
9 please. If you'll state your name and if you'll spell
10 your first and last name for the record.

11 MR. HALL: Kenneth Hall, K-e-n-n-e-t-h, H-a-l-l.

12 EXAMINATION BY THE COURT

13 By The Court:

14 Q All right. Mr. Hall, good afternoon. Sorry for the
15 delay. You're the second Juror of panel number one. My
16 name is Eugene Griffith. I introduced myself yesterday to
17 y'all as a big group. Now, I need to get to know you and
18 explain some things to you and ask you a few questions
19 about your eligibility to serve as a Juror. First and
20 foremost, scheduling and personal obligations you may
21 have, I am very aware, these lawyers are very aware to
22 serve as a Juror is a big imposition but it is a public
23 responsibility every citizen has to do. So do you have
24 any vacations or obligations the Court needs to be made
25 aware of. Potentially, this case could go to June. Now,

1 we don't know because until it starts, once it starts it
2 finishes. So we're going on a roller coaster ride. We
3 buckle in. We ride until it stops. Any obligations or
4 vacations such as that between now or June?

5 A I have a vacation in two weeks, but it's nothing --
6 it's nothing --

7 THE COURT REPORTER: Okay. We can't hear him, Judge.

8 THE COURT: Ms. Holston, the lady right here, she's
9 taking everything you say down.

10 A Okay. I've got a vacation in two weeks. It's not,
11 it's just me and my wife going on vacation.

12 Q Okay. No big plans?

13 A No. Not even going out of State.

14 Q Okay. So if you were called to serve as a Juror in
15 this case you could meet those obligations and modify you
16 and your wife's plans?

17 A Yes, sir.

18 Q Okay. Now, you were placed under oath. What I'm
19 looking for is truthful answers. No right or wrong
20 answers. Just truthful answers. I asked the jurors
21 yesterday to accept and know that once you were responding
22 to becoming a potential Juror that you're not to have
23 contact with other people or have others having contact
24 with you about this case. Have you discussed this case
25 with anyone?

1 A No, sir.

2 Q Anyone tried to discuss this case with you?

3 A No, sir.

4 Q Now, there have been some media reports that I asked
5 about and I'm not aware whether you were the one that
6 stood up or not. Have you seen any of the media reports?

7 A I did before yesterday.

8 Q Did before yesterday?

9 A Yes.

10 Q Now, were they television news media, newspaper or
11 what?

12 A Television.

13 Q I explained several different times that what you
14 need to decide in the case will be provided in the
15 courtroom. The testimony, the evidence --

16 A Yes, sir.

17 Q -- and whatnot. How long ago did you see the media
18 reports? Has it been recently or a while back?

19 A I think it was this Saturday.

20 Q If I ask you to, I think the gist of the news report
21 was the trial is upcoming and the jury selection such as
22 that and some of the brief facts. If any of those facts
23 are different than the testimony you hear and the evidence
24 presented to you, do you understand you're going to
25 consider the testimony and evidence presented in the

1 courtroom in deciding what facts you believe, not the
2 reports you've heard last week?

3 A Yes, sir.

4 Q Can you do that?

5 A Yes, sir.

6 Q Now, are you or any member of your immediate family a
7 member of any types of organizations which would advocate
8 for victim's rights such as MADD, Mothers, SADD, Student's
9 Against Drunk Driving, Bikers Against Child Abuse, a
10 member of Troopers Association or Auxiliary or the
11 Sheriff's Association?

12 A No, sir.

13 Q Now, I asked you yesterday. Are you connected in any
14 way to any of the attorneys involved in the case?

15 A No, sir.

16 Q Ever been represented by any attorneys in the case?

17 A No, sir.

18 Q Are you connected, in any way, to the Jones family?

19 A No, sir.

20 Q You were provided, before you came in, a rather
21 lengthy list of potential witnesses and the Court rules
22 require that the parties who participate, they've got to
23 provide the Court, me, a list of potential witnesses. And
24 so, they've got to consider all aspects of when they come
25 to trial even though they might not intend to call each

1 and every witness. Potentially if a witness can be called,
2 they've got to share the information with the Court so
3 that, in the middle of the trial, if there's a potential
4 witness and they didn't alert the Court ahead of time and
5 I have a Juror or perhaps even me, the Court, wait a
6 minute, that witness is connected to a Juror or the Court
7 or my law clerk. Something like that. Are you connected,
8 did you review that list?

9 A Yes, sir.

10 Q Are you connected, any member of your immediate
11 family connected, in any way, to any of those witnesses?

12 A No, sir.

13 Q You're not related by blood or marriage, to your
14 knowledge, to any of those potential witnesses?

15 A No, sir.

16 Q Do you know of any social or business relationships
17 you may have with any of those potential witnesses?

18 A No, sir.

19 Q I'm going to give you kind of a preliminary summary
20 of the law and how trials proceed, a trial such as this.
21 So it's a little instruction on the law that's a little
22 bit about procedure and what's going to happen, and then
23 ask you questions of are you going to be, you know,
24 understand that and be able to follow the procedures that
25 will be coming in this case. Okay? All right. In this

1 case, Mr. Jones, he was introduced yesterday, he's charged
2 by the State with five counts of murder. In South
3 Carolina, murder is defined as the killing of another
4 person with malice aforethought. Malice is defined under
5 our laws as a person with a wicked or depraved heart, a
6 person intent on wrongdoing, a person with hatred,
7 ill-will or hostility. The definition of murder excludes
8 any just cause or excuse for the killing. When the State
9 alleges the offense of murder, combined with certain
10 aggravating circumstances, the State can then seek the
11 death penalty. Now, before, all the way up to the trial,
12 and all the way during the trial, a person accused of any
13 crime, murder is included, that person is presumed
14 innocent of each and every element of the crime which he's
15 accused of or charged with. Mr. Jones, he is presumed
16 innocent right now. The State must prove each and every
17 element of the crimes that are charged by a standard of
18 proof called beyond a reasonable doubt. I'll give a more
19 lengthy definition of that later. Now, in most criminal
20 cases Judges determine the punishment upon conviction.
21 But in a Capital case, the jury determines the punishment.
22 Any Capital case, the trial is divided into two parts,
23 potentially. There's the guilt or innocence phase and, if
24 necessary, the punishment phase. In the first portion of
25 the case, the State must prove a Defendant's guilt of

1 murder beyond a reasonable doubt. If the jury finds an
2 accused person guilty of murder, then the trial proceeds
3 to the second phase. Two parts. In the second phase, if
4 the State proves an aggravating circumstance beyond a
5 reasonable doubt, then the jury considers the aggravating
6 and mitigating evidence in deciding what punishment,
7 either life without the possibility of parole or the death
8 penalty. Now, our law here in South Carolina does not
9 allow the State to seek execution of a person if the
10 person is convicted solely of the murder. The State must
11 prove an aggravating factor. The State must prove at
12 least one statutory aggravating factor beyond a reasonable
13 doubt. The books I have, these blue ones are the State's
14 statutes handed down by the General Assembly and the
15 aggravating factors are listed under a particular code
16 section in, I think, Section 16. Now, even if the State
17 proves the murder and an aggravating circumstance, jurors
18 are required to consider any mitigating evidence or
19 circumstances. Jurors must consider any mitigating facts
20 that would support a sentence other than death. Now, I'll
21 tell you, even if no mitigating circumstances exist,
22 jurors are not required to impose the death penalty. In
23 order for a sentence of death to be imposed, the verdict
24 must be signed by all twelve jurors. If jurors
25 unanimously decide to sentence a Defendant to a life

1 without parole sentence, then that sentence of life
2 without possibility of parole will be imposed. In this
3 case, this particular case that we're here today for, the
4 State has indicted five counts of murder and has notified
5 Mr. Jones that it intends to seek the death penalty. Mr.
6 Jones has entered a plea of not guilty by reason of
7 insanity. In this case, you may hear testimony and
8 evidence showing many things. There will be a wide
9 variety of testimony which may be presented to you in this
10 trial. I will instruct you as to how to consider and
11 evaluate the testimony and evidence, whether it be defined
12 as evidence of an aggravating factor, evidence of
13 mitigation, which would be any reason to vote for a
14 sentence of life without parole, evidence of defenses,
15 evidence of affirmative defenses such as accident, guilty
16 but mentally ill, not guilty by reason of insanity. Thus,
17 until the testimony and evidence is presented during the
18 trial, I'm not able to tell you the exact instructions on
19 the law that I will give on which of these or any of
20 these. But can you accept an oath to meaningful consider
21 all the testimony and all the evidence and apply the law
22 as I instruct it and consider all the evidence consistent
23 with my instructions on the law? Can you do that?

24 A Yes.

25 Q Now, there are some recognized defenses, statutory

1 defenses which I mentioned earlier. Potential defenses
2 include, these are listed in the little blue and red books
3 behind you. Identification, accident, involuntary
4 intoxication, suicide, self-defense, necessity, insanity,
5 guilty but mentally ill, defense of habitation,
6 entrapment, duress and alibi. Now, until the facts are
7 presented, I'm not certain which of those apply, but those
8 are statutory defenses. So if evidence of these defenses
9 is presented in this case, can you give them meaningful
10 consideration and apply the law as I instruct it regarding
11 those defenses?

12 A Yes.

13 Q Now, I described some mitigating factors. There's
14 statutory mitigating factors that are listed in the same
15 books. Potential mitigating circumstances which you may
16 hear. The Defendant has no significant history of prior
17 criminal conviction or violence against other people,
18 murder was committed while the Defendant was under the
19 influence of mental or emotional disturbance. The victim
20 was a participant in the Defendant's conduct, consented to
21 the act. A Defendant was an accomplice in the murder
22 committed by another person and his participation was
23 minor. The Defendant acted under duress or under the
24 domination of another. The capacity of the Defendant to
25 appreciate the criminality of his conduct or to conform

1 his conduct to the requirements of the law was
2 substantially impaired. The age or mentality of the
3 Defendant at the time of the crime. The Defendant was
4 provoked by the victim into committing the act. The
5 Defendant was below the age of 18 at the time of the
6 crime. The Defendant had mental retardation at the time
7 of the crime. Those are the statutory factors. The
8 Defense may present other factors which could be
9 considered in mitigation. Now, depending on how the
10 testimony goes and whether those mitigating factors apply
11 or not would be part of my instructions to consider those.
12 If any such evidence of mitigating factors is presented in
13 this case, can you give each of those meaningful
14 consideration and apply the law as I instruct it to you?

15 A Yes.

16 Q Now, because of the plea entered in this case and
17 depending on the evidence presented there may be up to
18 four potential verdicts in this case; guilty, guilty but
19 mentally ill, not guilty by reason of insanity and not
20 guilty. Four potential verdicts. If such evidence is
21 presented could you give meaningful consideration of each
22 and every one of those verdicts, any of those four, and
23 apply the law as I instruct you and reach one of those
24 verdicts?

25 A Yes.

1 Q All right. Both of the attorneys, one from each side
2 has an opportunity to ask you a few questions. Remember,
3 truthful answers. Nothing's right or wrong. Can you
4 answer their questions?

5 MR. HUBBARD: Your Honor, I don't know that you did
6 the types.

7 THE COURT: Oh, I did not. You are correct. You
8 were given a sheet of paper to review three types of
9 potential jurors which Courts have seen over time. Did
10 you have a chance to review that, three types of jurors
11 sheet?

12 A Yes, sir.

13 Q Now, generally, there are those three types. You
14 read those. Can you describe yourself or find yourself in
15 any one of those three types?

16 A I'm type three.

17 Q Type three?

18 A Yes, sir.

19 Q You like to listen to everything?

20 A Yes, sir.

21 Q And then determine?

22 A Yes.

23 THE COURT: All right. Mr. Young.

24 EXAMINATION BY MR. YOUNG

25 By Mr. Young:

1 Q Good afternoon, Mr. Hall.

2 A How you doing?

3 Q I'm doing all right. We apologize. I know you were
4 here all morning while we were working and we apologize
5 for keeping you waiting. I just need you to speak up into
6 the microphone just a little bit. Okay?

7 A All right.

8 Q And like the Judge said, we're just going to have a
9 conversation about your opinions about some stuff. Okay?

10 A Okay.

11 Q Do you mind sharing those with me for any reason?

12 A Not at all.

13 Q If there's anything that I ask you about that you
14 feel like you want to do outside of the presence of
15 everybody else, just let the Judge know and we'll do it
16 outside the presence of everybody else. Okay? Fair
17 enough?

18 A Yes, sir.

19 Q All right. I know that you had talked to the Judge a
20 little bit about that you had seen this case in the media
21 on Saturday.

22 A Yes, sir.

23 Q Can you tell me, can you tell me what it is that you
24 saw?

25 A They was talking about a jury was going to be picked

1 for this case starting this week.

2 Q Okay.

3 A That's pretty much what it said.

4 Q And you knew that you were coming in on Monday?

5 A Yes, I did.

6 Q Okay. So you were like, I guess that's good. I'm
7 going to get picked on --

8 A I was like, maybe this is something else that I'm
9 being called in for, but I figured that's what it was.

10 Q Crossed your fingers, maybe, but probably it?

11 A Yes, sir.

12 Q Can you tell me like how you, how did you feel about
13 what you had seen, what the allegations were?

14 A I had pretty much forgot about it happened, when it
15 happened.

16 Q Four years ago?

17 A Yes, sir. And that just, you know, brought back
18 memories, because I work out in this area and everything.
19 And when I heard about it Saturday, about the jury being
20 picked and everything, it just brought back, you know,
21 when it happened, you know, and everything when it was in
22 the news and stuff.

23 Q What did you think when it first happened?

24 A I was mad. I was mad. I was mad that the children
25 lost their life.

1 Q Right. At the hands of their father?

2 A Yes, sir.

3 Q And did you form an opinion about the case at that
4 point in time?

5 A No. Just mad. I was mad at the time that the
6 children lost their life.

7 Q Are you still mad?

8 A No. I want to hear, I want to hear both sides. I
9 want to hear, you know, what caused this --

10 Q Sure.

11 A -- to happen.

12 Q Got it. And the Judge talked to you a little bit
13 about the presumption of innocence --

14 A Yes.

15 Q -- right?

16 A Yes.

17 Q I mean, do you presume Mr. Jones to be innocent, that
18 he didn't do it? Is that --

19 MR. HUBBARD: Your Honor --

20 Q -- what your presumption is?

21 MR. HUBBARD: That's a legal question.

22 THE COURT: Rephrase that question.

23 MR. YOUNG: Sure.

24 Q Based on what you saw and feelings you had and you
25 being mad about it, can you presume him to be innocent?

1 MR. HUBBARD: Your Honor, I don't mean to interrupt,
2 again. You charge on that issue as a matter of law. So
3 you've asked can he follow the law. So if there's an
4 issue, the question needs to be if the Judge charges you
5 to presume somebody innocent, can you.

6 MR. YOUNG: Your Honor, I object to the speaking
7 objection and if Mr. Hubbard wants to be heard then we'd
8 have to ask Mr. Hall to step out, please.

9 THE COURT: All right. Let's be heard. Can you step
10 out real quick and let me hear the lawyers discuss this
11 and we'll have you right back in here.

12 THE JUROR: Okay.

13 (Whereupon, the Juror exited the courtroom.)

14 MR. HUBBARD: Your Honor, my objection is we're
15 asking the Juror, and I understand what the Defense is
16 trying to do but we're asking the Juror about law. Can
17 you presume somebody innocent? You're going to read the
18 charge on the law and you're going to ask this jury,
19 you're going to tell them, in fact, that you must presume
20 he is innocent. That is, that is a non-negotiable matter,
21 and you're going to ask them and you have asked them can
22 you follow the law as I give it. You've done that. But
23 to come in and say, all right, just pick something out of
24 the blue. Part of your charges say can you follow that.
25 Judge, you're asking him about the law of that. I think

1 it just needs to be rephrased. If the Judge charges you
2 that you must presume this man innocent, can you do that?
3 I think that's how it needs to be phrased as opposed to
4 what do you think about that.

5 MR. YOUNG: Isn't that what, I'm not going to --

6 MR. HUBBARD: My objection is because the issue is
7 can he follow the law as you give it. So that's the
8 question. If the Judge says --

9 THE COURT: How about this? Mr. Young, can you go
10 with what the Judge said, because I did it, that Mr. Jones
11 is presumed innocent right now all the way through the
12 trial.

13 MR. YOUNG: He said he recalled seeing it, he was
14 mad, he was upset when he first saw it, it brought it up
15 again when he saw it on Saturday. I said, well, if you
16 were mad about it, can you really presume him to be
17 innocent. That's what I said. I don't understand what
18 the objection is.

19 THE COURT: I don't think that's exactly what you
20 said.

21 MR. HUBBARD: What I think the correct follow-up is,
22 now, you heard the Judge say he's going to charge the law,
23 you said you could follow the law. If the Judge tells
24 you, you must presume this man innocent until there's
25 sufficient evidence to convince you otherwise as you

1 deliberate, it's got to be along those lines. Otherwise,
2 it's really not fair to a Juror. They're coming in here,
3 they don't know --

4 THE COURT: How about this. How about you were mad
5 then. Can you set that aside and can you now listen?

6 MR. YOUNG: Judge, I had, first off, he is not
7 required to follow the law until he's a Juror. Juror's
8 are required to follow the law. We're just asking him his
9 personal opinions and his personal feelings about things
10 like the presumption of innocence and about things like
11 the death penalty. That's what I want to explore with him
12 is his biased and if he has any. If he doesn't have any,
13 great. But can you follow the law, will you follow the
14 law, those are not the appropriate questions. Those
15 questions are clearly delineated. Both the United States
16 Supreme Court and --

17 THE COURT: We got that.

18 MR. YOUNG: Okay.

19 THE COURT: But I'm not certain you were asking, give
20 me your proposed question now. Bring him back in here.
21 Do you want to go back to the issue of him being mad,
22 because they were child victims is kind of his answer.

23 MR. YOUNG: Given the feelings that you had at that
24 time and based on what you've seen, how can you presume
25 him to be innocent?

1 MR. HUBBARD: I don't think he can ask how can you
2 presume him to be innocent. The question is not that. It
3 is, will he listen to you and presume him innocent.
4 That's the question for the Court.

5 MR. YOUNG: The Court's already asked that question.

6 MR. HUBBARD: We're not sitting around at a cafeteria
7 talking about, hey, just how do, tell me your feelings.
8 Judge, there's a lot of laws I don't like but I follow
9 them and I have to and he's taken an oath or will take an
10 oath to follow the law. So that's the question. Not what
11 his feelings are.

12 MR. YOUNG: The question is about his feelings and
13 biases go to both whether or not he is impaired
14 substantially in his ability to follow the law or just
15 exercise a peremptory strike. We are not asking him can
16 you follow the law. Everybody says that they can follow
17 the law. Everybody says that they will follow the law
18 once it's given. But right now he's not on the jury and
19 I'm allowed to explore his biased and prejudice and
20 potential areas for both peremptory and cause challenges.
21 That's all I'm doing, Your Honor. I'm not trying to trick
22 this guy. I'm not doing anything improper. I'm asking
23 him, all right, well, you said you were really mad. Tell
24 me how you're going to set that anger aside. That anger
25 was something that was in you, it's real to you --

1 THE COURT: Well, maybe that's the question.

2 MR. YOUNG: -- And you brought it up.

3 THE COURT: Maybe that's your question.

4 MR. HUBBARD: Judge, I still have a problem with
5 that. Now, I think it goes like this. Now, you said you
6 were angry when you first heard these reports.

7 THE COURT: Right.

8 MR. HUBBARD: But as you sit here today and you're a
9 potential Juror, can you follow the Judge's instructions
10 when he says you must presume that man innocent? Can you
11 do that. Knowing how mad you are, can you do that? Can
12 you follow the Judge's instructions? That's how you ask
13 it. You don't go, well, tell me how it made you feel.
14 Judge, everything's about, for you, can this Juror do
15 their job, and when he cuts you out --

16 MR. YOUNG: Your Honor, State v. Sapp, 366 South
17 Carolina 283, a question from the Judge. "I understand,
18 and as I said, there are no correct answers to any of
19 these. It's merely how you feel." That's what we're
20 trying to ask.

21 MR. HUBBARD: It's one thing if it comes from you,
22 but the real question is can he be fair and impartial and
23 can he follow the law as you give it. That is the
24 question. Knowing how angry this made you a long time
25 ago, can you today, as a Juror, listen to the Judge and

1 follow the law and presume that man innocent? Can you do
2 that?

3 THE COURT: I think that my question, I'm trying to
4 -- didn't you ask him if he was still mad and he said no?
5 I think you did.

6 MR. YOUNG: I don't recall. If I did, my question
7 should have been why or why not.

8 THE COURT: I don't know how to get mad, I mean, can
9 you set your anger aside or can you mask your anger or
10 something. I don't know exactly where you want to go
11 because it's such an obscure question. What are you, what
12 are you, give me your question again because I think I've
13 gotten back to can you follow the Judge's instruction.
14 That's what Mr. Hubbard wants. I've asked him that and he
15 says he can. What's your next question regarding his
16 reconciliation of former anger --

17 MR. YOUNG: Sure.

18 THE COURT: -- or current anger? What are you going
19 to ask him?

20 MR. YOUNG: Given how angry, given your anger at the
21 time, how can you put that aside?

22 THE COURT: Or can you.

23 MR. YOUNG: Can you put that aside?

24 MR. HUBBARD: I think that's different as far as how
25 can you do it. Can you put that aside --

1 THE COURT: Yeah. I think that's -- I like that
2 better. Can you put that anger aside?

3 MR. YOUNG: Sure.

4 THE COURT: Okay.

5 MR. HUBBARD: And ultimately it's going to be can you
6 put it aside and follow the Judge's instructions.

7 THE COURT: And you--

8 MR. YOUNG: You know I disagree with that question.
9 It's an improper question. Under Morgan, it says, don't
10 ask that question.

11 THE COURT: Can you put it aside is where are you
12 going with it?

13 MR. YOUNG: Sure.

14 THE COURT: Okay.

15 MR. YOUNG: I'll do that.

16 THE COURT: Bring him back in.

17 MR. YOUNG: Did Your Honor want to see Sapp where it
18 says --

19 THE COURT: I've got it in my notebook.

20 MR. YOUNG: Sapp. Yes, sir.

21 THE COURT: It's Sapp or South?

22 MR. YOUNG: Sapp.

23 THE COURT: We wrote down South.

24 (Whereupon, the Juror entered the courtroom).

25 Q Hey, Mr. Hall. You doing all right still?

1 A Yes.

2 Q Okay. And I'm not putting any words in your mouth.
3 This is your opportunity to tell me what you're thinking.
4 Okay?

5 A Okay.

6 Q You had talked to me about that you were angry when
7 you first heard about these children being murdered?

8 A Yes.

9 Q And my question, and I started asking you about the
10 presumption of innocence, right?

11 A Yes.

12 Q Tell me. Can you put aside the anger that you felt
13 at the time that you first heard about it?

14 A I can. I think everybody deserves a fair trial.

15 Q Sure. I noticed that you have a couple of children
16 of your own.

17 A Yes.

18 Q And some people say, in a case involving kids, having
19 had kids and been a parent, that that's not a case for me,
20 that I can't be a fair Juror in that type of case. Do you
21 understand that?

22 A Yes, sir.

23 Q You know people like that?

24 A Yes, sir.

25 Q Especially given the nature of the harm related to

1 the kids, right?

2 A Yes, sir.

3 Q And my question to you, is that you or does that
4 resonate with you or is that not you? You just need to
5 tell me.

6 A Like I said, I think everybody, I want to hear the
7 facts. I want to hear, you know, all the facts and, you
8 know, determine that way. Not what I've heard through the
9 media, not because I'm a father of two.

10 Q Sure.

11 A I want to hear, you know, the facts of the case and
12 give my judgment then.

13 Q Okay. Fair enough. And the Court has told you about
14 this, that Tim has plead not guilty by reason of insanity.
15 Do you understand that?

16 A Yes, sir.

17 Q And we haven't really instructed you on what all that
18 means yet, right?

19 A Yes, sir.

20 Q So some people say, you know what, not guilty by
21 reason of insanity is not a verdict that's on the table
22 for me in a case involving the murder of children. Do you
23 understand that?

24 A Yes.

25 Q And can you tell me, is that something that you can

1 give realistic consideration to in a case like this?

2 MR. HUBBARD: Your Honor, again, we're back to what
3 we were talking about.

4 THE COURT: We are.

5 MR. HUBBARD: I rely on Stanko.

6 THE COURT: Yeah. All right. You all come right
7 here a minute.

8 (Whereupon, a bench conference was held).

9 MR. YOUNG: Mr. Hall, we apologize. We're just
10 working out some kinks.

11 THE COURT: Before I ask you my first question, I am
12 going to put you in the back, put something else on the
13 record and get you right back in here.

14 THE JUROR: Okay.

15 (Whereupon, the Juror was excused from the
16 courtroom).

17 MR. HUBBARD: Your Honor, my objection is going right
18 back to what we've been talking about for some time and
19 I'm relying on State versus Stanko.

20 THE COURT: Yeah. I read it. You don't have to go
21 back through it. Why do you get to ask that question?

22 MR. YOUNG: Because some jurors --

23 THE COURT: On solely the one verdict out of the
24 four, and that's what the State's objecting to is you're
25 focusing on one of the four verdicts.

1 MR. YOUNG: Because jurors who say that they would
2 not give consideration to a not guilty by reason of
3 insanity verdict in a murder case are not qualified, and
4 they're substantially impaired in their ability to follow
5 the law. And the only way to find out if they're
6 substantially impaired in their ability to follow the law
7 is to ask them the question.

8 THE COURT: I don't, I mean, I don't know how that
9 question doesn't go to Stanko. I understand why you want
10 to ask it. My suggestion is can you, basically, reask the
11 question. The Court describes four verdicts. Are any of
12 those four potential verdicts not available to you. Go
13 with all four of them rather than not giving a reason of
14 insanity was his plea. All four verdicts, is anything off
15 the table for you? How about a question of that sort?

16 MR. YOUNG: No, sir. Because I need to be able to go
17 through each one of them.

18 THE COURT: I'm not going to let you do it. I'm very
19 afraid that is staking.

20 MR. YOUNG: The staking is--

21 THE COURT: I know. I know the staking to you is
22 this and staking to the State is that.

23 MR. YOUNG: Well, no sir. I mean, I've filed a brief
24 and a motion to the argument about what staking is and
25 we've gone through the case law. Staking is defined by

1 Courts as giving a Juror a set of facts and asking them to
2 commit to a particular vote. If I prove X, will you vote
3 Y. That's staking-out, that's prejudgment, that's not
4 allowed, we are not doing that.

5 THE COURT: The way you asked the question, I believe
6 that to be very close for a problem with staking. I know
7 you disapprove of that but it sounds like staking to me.
8 I'll allow the question, four verdicts. Are any of those
9 four verdict forms something you couldn't sign your name
10 to. I will suggest that question will be allowed.

11 MR. YOUNG: All right.

12 THE COURT: All right. Solicitor, that's what I'm
13 going to go with.

14 MR. HUBBARD: Yes, sir.

15 THE COURT: So bring him in.

16 MR. YOUNG: Your Honor, just for --

17 THE COURT: Hang on, Bob. Hang on, Bob.

18 MR. YOUNG: For the record, I object to not being
19 allowed to ask the question.

20 THE COURT: Yes. And all the cases are referenced in
21 your brief.

22 MR. YOUNG: Yes, sir.

23 THE COURT: Absolutely.

24 MR. YOUNG: Thank you.

25 THE COURT: Bring him in. That's all the biases and

1 whatnot argument. And if you want to put the number of
2 that motion on the record in a moment, we'll do that.

3 MR. YOUNG: Yes, sir.

4 THE COURT: Okay.

5 MR. YOUNG: Thank you very much.

6 THE COURT: You are protected.

7 (Whereupon, the Juror entered the courtroom).

8 Q Mr. Hall, I apologize and I wish I could promise you
9 you're not going to get anymore exercise but you probably
10 will. Okay?

11 A I need it anyway.

12 Q All right. And you don't hold it against me for
13 asking you questions, right?

14 A No, sir.

15 Q Okay. And you don't hold it against the State for
16 saying we've got to talk to the Judge some?

17 A No, sir.

18 Q All right. And you don't hold it against the Judge
19 because we take a few more minutes?

20 A No, sir.

21 Q All right. I was talking to you a little bit about
22 the plea of not guilty by reason of insanity. Okay. And
23 the Judge talked to you about how when somebody pleads not
24 guilty by reason of insanity there are four possible
25 verdicts that the jurors have to consider in the merits

1 phase, in the guilty, not guilty phase, there are four
2 possible verdicts for the jury.

3 A Yes.

4 Q Are you with me on that?

5 A Yes, sir.

6 Q Okay. So there's guilty, which is guilty beyond a
7 reasonable doubt, right?

8 A Yes, sir.

9 Q You understand that --

10 A Yes.

11 Q -- and you don't have any questions about that?

12 A No, sir.

13 Q There's guilty but mentally ill, which I'll sum it up
14 by saying they knew the difference between right and wrong
15 but couldn't conform their actions to the requirements of
16 the law. Okay, do you understand that? And guilty but
17 mentally ill, we go to a second trial without the penalty
18 phase. Okay, all right. And then there's two other
19 verdicts that are possible. Not guilty. You know what
20 that means, right?

21 A Yes, sir.

22 Q And not guilty by reason of insanity. And that means
23 that somebody didn't know the difference between right and
24 wrong, legal or moral right and wrong, at the time of the
25 act. Do you understand that?

1 A Yes.

2 Q Now, some people would say, you know, if you didn't
3 do it, that's fine, you didn't do it. But for me, that
4 not guilty by reason of insanity verdict --

5 MR. HUBBARD: Your Honor, I object, again. Same
6 thing. And I've been --

7 MR. YOUNG: I apologize. I apologize. I meant to
8 phrase it differently, Mr. Hall. Your Honor, can I
9 rephrase?

10 THE COURT: Yes. You may rephrase.

11 MR. YOUNG: Thank you, Your Honor.

12 Q Is any one of those four verdicts sort of off the
13 table for you in a murder case?

14 A It comes back to knowing the facts.

15 Q Okay.

16 A Hearing the testimonies and, you know, and getting
17 all the evidence that we can hear --

18 Q Sure.

19 A -- to determine.

20 Q And I understand, I think I understand where you're
21 coming from. So let's talk about that a little bit.

22 Okay. I'm going to talk to you a little bit about your
23 views about the death penalty or life without parole.

24 Okay. Are you with me on that?

25 A Yes, sir.

1 Q Now, we're sort of putting the cart before the horse
2 because, like you said, we haven't heard all of these
3 facts yet, right?

4 A That's right.

5 Q All right. But now is the only opportunity that I
6 have to talk to you about your views about the penalty,
7 okay. Would you agree with me not to presume that Mr.
8 Jones is guilty just because we have to have this penalty,
9 this talk about the appropriate penalty now?

10 A Yes.

11 Q Okay. Can you tell me a little bit about your
12 feelings about the death penalty?

13 A I believe in the death penalty.

14 Q Okay. If I used the phrase, an eye for an eye,
15 you've heard that phrase before? Is that something that
16 you believe in?

17 A I do. I do.

18 Q A life for a life?

19 A I do.

20 Q Does that mean, so in South Carolina, and I think the
21 Judge explained this to you a little bit. Murder is the
22 intentional killing of another with malice aforethought,
23 right?

24 A Yes, sir.

25 Q Right. And that's what the State would have to

1 prove, guilty beyond any and all reasonable doubt of
2 murder. Okay?

3 A Yes.

4 Q Are you with me on that?

5 A Yes, sir.

6 Q That means that it wasn't an accident, it wasn't
7 self-defense, the Defendant wasn't insane. It was
8 somebody who knew what they were doing and chose to kill
9 an innocent person. Are you with me on that?

10 A Yes, sir.

11 Q And in a case like this, what we're talking about is
12 a person who chose to kill an innocent child. Are you
13 with me on that?

14 A Yes, sir.

15 Q It sounds to me like you, based on who you are and
16 your life for a life views, that once the State has proven
17 to your satisfaction beyond any and all reasonable doubt,
18 they're guilty, guilty of murder, murder of children, that
19 for you --

20 MR. HUBBARD: Your Honor, I'm sorry to do this.

21 THE COURT: We discussed it could take a little bit.

22 (Whereupon, a bench conference was held).

23 THE COURT: Mr. Hall, we're going to send you back
24 out and get you some more exercise. We'll have you right
25 back in a moment.

1 THE JUROR: All right.

2 (Whereupon, the Juror was excused from the
3 courtroom).

4 THE COURT: All right. Solicitor?

5 MR. HUBBARD: Your Honor, I think the whole tenor of
6 these questions is improper. He's asking this man about
7 the facts in this case, facts that haven't been presented.
8 He's asking about law and he starts, the whole start of
9 the soliloquy begins, do you believe eye for eye, and
10 Judge, maybe I should --

11 THE COURT: He said life for life.

12 MR. HUBBARD: What's that?

13 THE COURT: Life for life, then he went eye for eye.

14 MR. HUBBARD: Yeah. And this potential Juror has
15 said he wants to hear both sides. He can consider either
16 life, death. He'd look at guilty, not guilty by reason of
17 insanity, guilty but mentally ill, all the four categories
18 that you've laid out. The Defense is now trying to use
19 their words and input them to him and this poor guy's
20 coming right off the street. And then they're talking
21 about specific facts in this case. Little children, in
22 this case, were killed. So your eye for eye, how do you
23 feel about that. That's wrong.

24 MR. YOUNG: I didn't understand the State's
25 objection, other than that's wrong.

1 THE COURT: Well, the objection in the sidebar was,
2 so after an eye for eye, so murder, taking the lives of
3 five small children, that's where you were going. That's
4 when he objected.

5 MR. HUBBARD: I guess, ultimately, since it's not
6 fair, it's a hypothetical in nature, but then also you're
7 pulling specific facts that -- this Juror doesn't know
8 what happened in this case. He knows it involves kids,
9 but you can't just say how do you feel about this, explain
10 this. He hasn't heard anything yet. And then, the second
11 issue is, by saying eye for an eye, life for a life, death
12 for death. And then trying to pin him down saying, all
13 right, now there's a bias, when he's been painfully clear
14 he wants to hear everything and he could vote either way.
15 I get it if this is a guy that said, you know, I lean to
16 death. I'm just going to tell you, I'm a number three,
17 but I lean to death. If that was his words, but it's the
18 Defense attorney's words. It's not fair to this guy.

19 THE COURT: Go ahead.

20 MR. YOUNG: May I respond?

21 THE COURT: Yeah.

22 MR. YOUNG: Your Honor, he said continually, based on
23 the facts, based on the facts. When I asked him if he --
24 if he was familiar with the phrase, eye for an eye and if
25 it was -- he described it and he said he did. And then, I

1 said, does that mean a life for a life. And he said, yes,
2 it does.

3 THE COURT: You said it the other way around. Life
4 for life was first, then eye for an eye as second. I'm
5 certain of that.

6 MR. YOUNG: Well, the record will be clear on that.

7 THE COURT: I'm certain I'm right.

8 MR. YOUNG: Okay. I don't think -- I'm hoping that
9 it doesn't matter.

10 THE COURT: I don't think it matters.

11 MR. YOUNG: Okay. When he says facts of
12 circumstance, he means guilty or not guilty. My position
13 is that he means, guilty or not guilty. But once he
14 decides that somebody is guilty, I believe his view is
15 that the only appropriate verdict, at that point in time,
16 would be death. That's what I'm trying to ask him about.

17 MR. HUBBARD: Then, let's ask it this way. Here's
18 what I propose.

19 THE COURT: He knows your argument.

20 MR. HUBBARD: Okay. All right.

21 THE COURT: Let him finish, then I'll let -- I'll
22 hear your suggestion.

23 MR. YOUNG: Mr. Hubbard is not going to dictate what
24 my questions are and it's not, can you follow the law and
25 I'm not staking him out. We already agreed that we were

1 going to do category specific voir dire as to the murders
2 of children in this case pursuant to the transcript that
3 the State and the Defense handed up in Blackwell. I don't
4 know why they're objecting when that is what we handed up
5 and --

6 THE COURT: You all agreed to that?

7 MR. HUBBARD: No, sir.

8 MR. YOUNG: Yes.

9 MR. HUBBARD: No, sir. We handed up Blackwell --

10 THE COURT: Hang on. I wasn't aware of that --

11 MR. YOUNG: Yes, sir.

12 THE COURT: -- that you all agreed to that. I did
13 not know that.

14 MR. HUBBARD: We --

15 MR. YOUNG: Your Honor asked me if we were good with
16 what happened in Blackwell and I said, yes. It's murder,
17 it's category specific murder. And then we go through the
18 other impairments regarding the mitigating factors and the
19 sentencing decisions.

20 THE COURT: I don't know. I mean, I remember this
21 conversation. But that, to me, does not tell me, getting
22 a script out of Blackwell, I wouldn't have done that. I
23 apologize. I apologize, I missed that.

24 MR. YOUNG: Obviously, we have to do some instances,
25 because this is a not guilty by reason of insanity case

1 and Blackwell was not. But the basic concepts of
2 Blackwell where we were voir diring on the murder of a
3 child as appropriate category specific voir dire to
4 determine jurors punishment views.

5 THE COURT: I am not -- I don't remember that being
6 asked. I remember, are you good with Blackwell. You all
7 said, yes. I don't remember saying, okay, let's see the
8 script. We'll go from there. That was not addressed, in
9 my opinion, by any of my rules. We discussed Blackwell.
10 Are you good with it, yes. I did not take two steps
11 further and pull the script what you're describing now. I
12 didn't do that. Now, I'm not saying I won't.

13 MR. YOUNG: Yes, sir.

14 THE COURT: Until right now, I did not know that, if
15 that's what you were asking.

16 MR. YOUNG: My understanding was that we were -- and
17 the State has consistently said it would be appropriate to
18 ask jurors about the category of mitigation -- I mean,
19 category of aggravation involving this case, which is the
20 murder -- multiple murder and murder of children. And
21 that that has consistently been their position is that,
22 yes, you have to ask about that. Yes, that's required to
23 be proven by the State, they have to find one of those
24 factors in order to be able to consider punishment and
25 it's appropriate to ask about.

1 THE COURT: So is there a portion of the Blackwell
2 transcript that you believe delineates this line of
3 questions?

4 MR. YOUNG: That we asked about the murder of
5 children?

6 THE COURT: Yeah.

7 MR. YOUNG: Yes, sir.

8 THE COURT: All right. Why hasn't anybody picked it
9 out of the, these are the general questions, would you
10 consider it. Why hasn't that been done?

11 MR. YOUNG: I apologize, Your Honor. I guess, I
12 didn't do it well.

13 THE COURT: What I understood was, Judge, here's
14 Blackwell. It was an arduous process getting through the
15 first poll and trying to work our way into a piece of
16 rhythm of voir diring the jurors.

17 MR. YOUNG: Yes, sir. We did.

18 THE COURT: We said that. That's what I thought
19 Blackwell was for.

20 MR. YOUNG: Okay.

21 THE COURT: And that's what I used it for.

22 MR. YOUNG: Yes, sir.

23 MR. HUBBARD: Judge, our purpose in making sure you
24 look at Blackwell but also Stanko, is when you go through
25 the voir dire you'll see a lot of the objectionable

1 questions that we were concerned that are going to be
2 raised today, hypothetical questions, staking out, all
3 those things are addressed and they come in different
4 guises and different forms to give you guidance. I'm not
5 saying it's just a template that whatever some defense
6 attorney asked in one of those cases is, therefore, okay
7 and we never made that agreement. We gave those to you to
8 enlighten Your Honor to see what you would be looking at
9 in this case. Stanko, because it was an NGRI case.
10 Blackwell, because it was one of the last cases that was
11 upheld and it was pretty hard fought over. That case
12 began with a battle over mental retardation. So there are
13 a lot of issues there.

14 THE COURT: Yeah.

15 MR. HUBBARD: They provided guidance. But as far as
16 an agreement, that we've agreed to something, that's news
17 to me, too. Your Honor, I think this. If there's a
18 question of in light of your response, do you still
19 consider yourself a type three Juror. Would you still
20 want to hear both sides, could you still give life or
21 death depending on the circumstances.

22 THE COURT: I think those are your questions.

23 MR. HUBBARD: But his questions, he's basically --
24 Your Honor, basically, what it comes down to, he's putting
25 words in the mouth of a Juror who doesn't know anything

1 about this process and the whole question is going to come
2 down to just what I asked. You can't sit him if he says
3 no.

4 MR. YOUNG: Judge, I think the Solicitor's argument
5 goes to how much weight you want -- this is -- obviously,
6 this is your call and your determination. And if you
7 think that my question is unfair and he says whatever he
8 says, you can say, well, I don't think that was a fair
9 question and you can ask it in a different way and the
10 Solicitor can ask it in a different way. I think I'm
11 entitled to ask the question that I'm trying to ask and
12 get his response and find out where we go from there.

13 MR. HUBBARD: Judge, I guess my ultimate objection
14 is, it doesn't clarify where this man stands. It muddy's
15 it because I think it's confusing to a Juror. I think
16 it's just patently unfair for a Juror that when you throw
17 out something like an eye for an eye or life for a life, a
18 lot of people can say, yeah, I believe that, that's why I
19 can believe in the death penalty, but it doesn't mean
20 that's why I'll always give it. So the ultimate question
21 for everybody here is, when you consider all the evidence,
22 are there some circumstances where you'd still give life
23 and maybe death.

24 THE COURT: All right. I tried to write it down. I
25 think it started out as, do you believe in the death

1 penalty. He said, I believe in the death penalty. And
2 then life for a life, eye for an eye.

3 MR. YOUNG: I think it's flip-flopped.

4 THE COURT: What was the question after that, because
5 the Solicitor stood up in the middle of that and I was
6 looking kind of to hear the rest of your question before
7 he objected. But what was your question after? It was
8 something to do with --

9 MR. YOUNG: Then I went through what the definition
10 of murder is.

11 THE COURT: Yeah.

12 MR. YOUNG: And then I said, you know, pursuant to
13 the transcript in, cited by the Supreme Court in
14 Dickerson, that means that murder is not an accident, not
15 self-defense, not heat of passion --

16 THE COURT: Yeah.

17 MR. YOUNG: -- whatever the defenses are.
18 Understanding that you found somebody guilty beyond a
19 reasonable doubt for murder, the murder of children, are
20 you somebody that thinks the death penalty is the only
21 appropriate punishment.

22 MR. HUBBARD: See, now, you're asking specifically
23 about this case, the murder of children, and that is
24 absolutely forbidden. You cannot ask that. He has not
25 heard one iota of evidence --

1 MR. YOUNG: There's nothing --

2 MR. HUBBARD: -- or bit of testimony -- it's my floor
3 now. That's why he cannot ask that. The question is, you
4 can't ask something about a case, we've just said, can you
5 set aside everything you heard in the media and now you're
6 drawing that back out and saying, all right, he killed his
7 kids, now let's, basically, interject these facts again.
8 You can't.

9 MR. YOUNG: Over fifty-seven percent of the jurors in
10 South Carolina who participated in the Capital Juror
11 project thought that the death penalty was the only
12 appropriate punishment for multiple murder.

13 THE COURT: Well, why can't you ask that? Do you
14 understand the Judge explained to you that there's more
15 than one option for sentencing, rather than saying --
16 giving a suggested answer.

17 MR. YOUNG: Because I'm an advocate and want to know,
18 if that's true, and I'll follow-up with it.

19 THE COURT: I think it's more appropriate for you to
20 say, if the murder's proven, do you understand that there
21 are two options for sentencing.

22 MR. YOUNG: Sure. And he understands that, but he
23 only has one. Understand, yes. There are two. The Judge
24 told me there are two, the law is two, I'll say that there
25 are two.

1 MR. HUBBARD: I haven't heard that there's just one
2 from this Juror. I think we're creating something that's
3 not there and that's why it's so wrong for this Juror. He
4 said he could consider both. He actually said he wanted
5 to hear both sides.

6 MR. YOUNG: He never said he could consider anything.

7 MR. HUBBARD: Yes.

8 MR. YOUNG: All he's ever said is, yes.

9 MR. HUBBARD: No.

10 MR. YOUNG: Will you follow the law, yes. Will you,
11 he said he could consider both and that he would want to
12 hear everything. When did he say --

13 MR. HUBBARD: He --

14 MR. YOUNG: Those are Mr. Hubbard's words. The only
15 thing that he said --

16 MR. HUBBARD: No. I'll go to the transcript.

17 THE COURT: No, no. Let's do this. Let's do this.
18 You all settle down. You all can sit down. Joy, can you
19 look that up real quick? That question, Mr. Young asked.

20 MR. HUBBARD: That part, Your Honor, or the -- that
21 he would want to hear everything? Because that was
22 important.

23 THE COURT: I'm trying to resolve this, because it's
24 going to --

25 COURT REPORTER: Judge, let's just take a break, if

1 we can.

2 THE COURT: Yeah. We'll stand for a few minutes.

3 (Whereupon, a brief recess was held. Audio of
4 testimony was played for the Court and the
5 Attorneys.)

6 MR. YOUNG: Your Honor, I don't dispute at all that
7 when we were talking about guilty or not guilty he said I
8 want to hear the facts and decide on the facts as
9 presented. We started talking about penalty, for somebody
10 that has been found guilty the facts are over for him.
11 That is what I am trying to ask. When he said facts that
12 means did they do it or not. That is what we were talking
13 about at the time that he said I want to hear the facts.
14 Okay, you have heard the facts, the person is guilty of
15 murder, let's talk about penalty. Where are you on
16 penalty.

17 MR. HUBBARD: The way it goes is the first line of
18 questions was the media.

19 THE COURT: What about where you were going. So far
20 we are okay with, it is the next couple. You still got
21 it--

22 (Whereupon, testimony was played for the Court and
23 the Attorneys.)

24 MR. YOUNG: A category of cases involving the murder
25 of children.

1 MR. HUBBARD: That is hypothetical and under South
2 that is objectionable.

3 MR. YOUNG: Your Honor, I hand up to the Court a copy
4 of the transcript to the first Juror from State versus
5 Daise in front of Judge Mullin which we have been talking
6 about a bunch and I think Your Honor has a copy of some of
7 it. But on page 447 Mr. McGuire's question after argument
8 with the Solicitor's office is but we have to have a
9 starting point and I want to make sure you still remember
10 and understand that we are talking about malice
11 aforethought murder, aggravators being two killed, shot
12 and killed and one being a child. And just in that
13 situation tell me your thoughts on the death penalty.
14 From Blackwell where we have all been dealing with the
15 Blackwell transcript. The question from the Solicitor's
16 office on page 578, an aggravator could be like in this
17 case or whatever, we have a couple of but one of them may
18 be involved in the death of a child. At the same time
19 they will present mitigation.

20 THE COURT: You didn't address anything about
21 mitigation in your question a moment ago that we just
22 relistened to.

23 MR. YOUNG: No, Your Honor.

24 THE COURT: That is kind of where we stopped.

25 MR. YOUNG: I haven't got to mitigation yet.

1 THE COURT: Okay.

2 MR. YOUNG: I need to get there.

3 MR. HUBBARD: That is why this line is unfair because
4 he is asking about a case about a man killing children so
5 now he is just saying what is a category of cases. South
6 deals directly with this. South is, State v. South at
7 331, SE 2nd, 775, this case was tried in Lexington many
8 years ago. South contends the trial Judge erred in
9 refusing to remit Defense Counsel to ask jurors
10 hypothetical questions concerning the death penalty which
11 is what this is. It is talking about a category of cases
12 with kids. Clearly the questions would have been improper
13 since the purpose of voir dire is to insure each Juror can
14 make a decision based on evidence presented rather than
15 hypothetical evidence. What he is doing is he is just
16 calling it a category of cases but that is exactly what
17 South is dealing with, Judge.

18 MR. YOUNG: No, sir.

19 MR. HUBBARD: And, Judge, just because Mr. McGuire
20 has been able to ask questions in another trial doesn't
21 make it right. That is not binding, this is a Supreme
22 Court case, it is binding. I don't think you get to
23 self-declare something as a category of cases. I have
24 never heard that before. We are getting to the facts of
25 this case in saying, can you give death in this case or

1 would you give death in this case and not life. That is
2 improper.

3 MR. YOUNG: Your Honor, we have given up the copy of
4 United States versus Johnson which is 366, F.supp 2d 822
5 which goes into great detail about whether or not there is
6 certain categories of cases that the defense must be
7 presented. Be allowed to voir dire on to determine
8 whether jurors are impaired. There are a lot of jurors
9 who say to me the only appropriate penalty for somebody
10 who is convicted of murder of a child is the death
11 penalty. We have to be allowed to ask that and ferret
12 that out. In Blackwell which is a case involving the
13 death of a child, we ask for you, does the death of a
14 child make you automatic death penalty. In Daise, the
15 case involving the death of a child we asked every Juror
16 for you, does the fact that a child was killed, does that
17 make you automatic death penalty. That is what I am
18 trying to ask.

19 THE COURT: You ask that, that sounds a whole lot
20 different than the question you asked. How do you propose
21 to ask that question. Reask it again.

22 MR. YOUNG: Understanding what murder is and the
23 Defendant would have to have been found guilty by a jury
24 beyond a reasonable doubt. Some people say in a murder
25 case involving child victims that the only punishment for

1 them is death penalty. Is that you.

2 MR. HUBBARD: Judge, what is not fair about that, is
3 it takes out the legal aspect. Now you are just talking
4 to the guy like you are sitting in a cafeteria saying,
5 where are you on this. And if you break it apart from the
6 duty that he has already said he would follow, you are not
7 being fair to the Juror. You are not getting an honest
8 answer. His feelings may be one thing but that is never
9 the question, come in here and say I am going to follow
10 the law.

11 THE COURT: I understand. Y'all are saying the same
12 thing over and over.

13 MR. YOUNG: The State is going to say, I understand
14 that is your feelings, will you put that aside and that is
15 going to be their voir dire. But I am entitled to explore
16 his feelings now and at the point of conviction for the
17 murder of children. How does he feel about the death
18 penalty. That is what I am asking to explore. There is
19 nothing wrong or forbidden about any of that. There is no
20 case that says you can't ask jurors about categories of
21 cases that they, cause them to be automatic death. As a
22 matter of fact, the one case, South is a case that
23 predates the United States Supreme Court case of Morgan
24 versus Illinois. And in Morgan, and I understand, nobody
25 reads much into dissents. But, Judge Scalia, when talking

1 about Morgan in his dissent says that he encourages the
2 Court to adopt views that jurors should be able to have
3 the view that certain categories of cases should be
4 appropriate for automatic death penalty. For instance,
5 rape and murder. He thinks a Juror who has thought that
6 anybody convicted of the rape and murder should be allowed
7 to sit, even if they thought the only appropriate
8 punishment was death for that category of case. And the
9 United States Supreme Court specifically objected that
10 rationale and said no. There are categories of cases
11 where jurors have these views and that Juror should not be
12 allowed to sit. And they can't sit, if they are biased
13 and if they can't fairly consider both punishment options
14 in a certain category of cases like the murder of children
15 they should not be allowed to serve.

16 THE COURT: Why wouldn't you, say you want to delve
17 into the biases and then, is the same question, different
18 worded. Do you think the only appropriate punishment is
19 death, the State proves the murder of children.

20 MR. YOUNG: I thought, that is what I am trying to
21 ask, Your Honor.

22 THE COURT: You have not used those words.

23 MR. YOUNG: I am happy to use those words.

24 THE COURT: Do you think the only appropriate
25 punishment is death, is the murder of children.

1 MR. HUBBARD: I would suggest this. Can you be fair
2 and impartial in a case involving the murder of a child.
3 Why not that.

4 MR. YOUNG: Because you are not talking about
5 penalty.

6 THE COURT: I like my question better.

7 MR. HUBBARD: How about this, can you consider life
8 or death in a case involving murder of a child. Can you
9 consider--

10 MR. YOUNG: I like the Court's question better.

11 MR. HUBBARD: That would not be objectionable to me.
12 Can you consider life or death in a case involving the
13 murder of a child.

14 MR. YOUNG: Your Honor, if I may.

15 THE COURT: Yes, sir.

16 MR. YOUNG: Morgan versus Illinois, 504, US 719.

17 THE COURT: I have got it.

18 MR. YOUNG: I am going to read a very short section.

19 THE COURT: Don't read fast.

20 MR. YOUNG: Starting at 735, or substantially
21 impairing their duties in accordance with their
22 instructions and oath. But such jurors, whether they be
23 unalterable in favor of, or opposed to the death penalty
24 in every case by definition are the ones that cannot
25 perform their duties in accordance with law. Their

1 protestations to the contrary notwithstanding. As to
2 general questions and fairness and impartiality such
3 jurors could in all truth and condor respond
4 affirmatively. Personally confident that such dogmatic
5 views are fair and impartial while leaving specific
6 concern unprobed. More importantly however the belief
7 that the death penalty should be imposed ipso facto upon
8 conviction of a Capital offense reflects directly on that
9 individual's inability to follow the law. Any Juror who
10 would impose death regardless of the facts and
11 circumstances of conviction cannot follow the dictates of
12 law.

13 See Turner versus Murray, 476, US at 34-35, 106
14 Supreme Court. It may be that a Juror could in good
15 conscience swear and uphold the law and yet be unaware of
16 maintaining such dogmatic beliefs about the death penalty
17 would prevent him or her from doing so. A Defendant on
18 trial for his life must be permitted to voir dire to
19 ascertain whether his prospective jurors function under
20 some misconception. The risk that such jurors may have
21 been impaneled in this case and infected petitioner's
22 Capital sentencing is unacceptable in light of ease of
23 which that risk could have been minimized.

24 THE COURT: That is hard to digest when I am still
25 focused on your question. Y'all keep reading cases. I

1 can read cases myself. I like the State's suggestion.
2 Can you consider both, life without parole and death as
3 punishment if the murder involved a child or children.
4 Let's bring the Juror back in. You may have a follow-up
5 question. So you believe that, the only appropriate
6 punishment is the murder of children. I think the leading
7 question, can you consider both, life or death when the
8 murder involves children. To be the better leading and
9 then the answer, may be entitled to a follow-up.

10 MR. HUBBARD: Judge, before he comes back in. I
11 agree with how you are suggesting that. There was
12 reference as a father of two. I don't think that he can
13 make that, he brought that up, the Defendant brought that
14 up.

15 THE COURT: I don't think Mr. Young's question say,
16 involve your children. He didn't say anything about that.

17 MR. HUBBARD: I may have misheard. I know the Juror
18 brought up he is a father of two. I just want to make
19 sure we don't have that embedded in the question.

20 THE COURT: I did not notice anything like that, your
21 two children, I didn't see any of that, kind of relating
22 to the Defendant, I mean the potential Juror himself.

23 MR. YOUNG: If it is all right with the Court, I am
24 going to back up a little bit. Let's talk about murder,
25 what murder is, how do you feel about the death penalty.

1 Then we have aggravation. These are aggravators, the
2 State has to prove beyond a reasonable doubt. How do you
3 feel about the punishment.

4 THE COURT: Take a shot at it.

5 MR. YOUNG: All right.

6 THE COURT: Bring him to me.

7 (Whereupon, the Juror enters the courtroom at 5:00
8 p.m.)

9 THE COURT: Mr. Young is still going to question you
10 a little bit.

11 By Mr. Young:

12 Q I was talking to you a little bit about the
13 definition of murder in South Carolina. You recall that?

14 A Yes, sir.

15 Q The intentional of murder of another with malice
16 aforethought?

17 A Yes, sir.

18 Q And the Judge explained to you what malice was,
19 hatred, ill-will, evil intent, right?

20 A Yes.

21 Q And you understood that you, in order to find
22 somebody guilty of murder, jurors would sit and they would
23 listen to all of the facts and circumstances involved in
24 the case, right?

25 A Yes.

1 Q And all the defenses involved in the case?

2 A Yes, sir.

3 Q And whether or not the defense wanted to say insanity
4 or whether the Defense wanted to say it was an accident or
5 the Defense wanted to say it was insane. The jurors would
6 have heard all of that evidence. Are you with me on that?

7 A Yes, sir.

8 Q And when they determine that somebody was guilty of
9 murder they would have rejected all of that evidence,
10 right?

11 A Yes, sir.

12 Q They would have said we are convinced beyond a
13 reasonable doubt that this person is guilty of murder.
14 Are you with me on that?

15 A Yes, sir.

16 Q And that means that they intentionally chose to kill
17 an innocent person. Are you with me on that?

18 A Yes, sir.

19 Q With malice aforethought, they meant to do it and
20 knew what they were doing, guilty, guilty. Are you with
21 me on that?

22 A Yes, sir.

23 Q My question to you is, for you, how do you feel about
24 the death penalty as being the only appropriate punishment
25 for that guilty murder?

1 A I don't think it should be the only. You know, I
2 support life in prison too. But I do believe in the death
3 penalty too.

4 Q Can you tell me some more about that, why do you
5 think that life should be on the table for that guilty
6 murder?

7 MR. HUBBARD: Your Honor, may we approach.

8 (Whereupon, a bench conference was held.)

9 Q There are no right or wrong answers. What would make
10 a difference to you between determining death or life
11 without parole as an appropriate punishment for a guilty
12 murder.

13 A I would think remorse.

14 Q If they are remorseful?

15 A Yes.

16 Q Anything else?

17 A Just remorse.

18 Q If that is all you can come up with that is fine.
19 The life penalty, life without the possibility of parole.
20 Do you think that is a serious penalty?

21 A Yes, you are locked up the rest of your life,
22 serious. It not as serious as the other. It is serious
23 because you are locked up the rest of your life.

24 Q It is a serious enough punishment for some, for a
25 guilty murder?

1 A I think it is if the person is remorseful and realize
2 what they have done and sorry for it and shows the passion
3 that they are sorry for it. Not taking, you know, saying,
4 it has got to be, they just have got to be remorseful,
5 they have got to be sorry for what they have done. Then
6 it is still murder but, you know, behind bars and stuff
7 the rest of your life.

8 Q I think I understand where you are coming from.
9 Thank you for sharing your thoughts with me. I am going
10 to add more thing to this guilty murder. Okay, you are
11 with me on guilty murder. Right. And then the State has
12 to prove to the satisfaction of all the jurors beyond a
13 reasonable doubt this thing called an aggravating factor.
14 Okay, are you with me on that?

15 A Yes, sir.

16 Q And that is, if the State proves an aggravating
17 factor then the jury is entitled to consider life without
18 parole or the death penalty. Now, in this case the State
19 has alleged aggravating factors, those being multiple
20 murders and the death of children. Do you understand
21 that?

22 A Yes, sir.

23 Q Now, my question to you, if the State proves beyond a
24 reasonable doubt the murder of children, multiple
25 children, does that make you think that the death penalty

1 is only appropriate punishment or not?

2 A It goes back to me supporting the death penalty.

3 Q Yes, sir.

4 A I can't change my beliefs.

5 Q No sir, I can't change your beliefs. Nobody is
6 trying to question--

7 A No reasonable doubt, all the evidence is there and it
8 is proved murder. I believe it should be the death
9 penalty.

10 Q Okay. That is just where you are coming from?

11 A Yes, sir.

12 Q I understand that and nobody is here to challenge
13 that or question that. Okay. It sounds to me like, in
14 that case, murder, no question, beyond a reasonable doubt
15 that you are more of a type one Juror where for you death
16 is the appropriate punishment.

17 A With all of the evidence they are saying.

18 Q That they are guilty?

19 A Yes.

20 Q Right.

21 A Without a reasonable doubt you are guilty. If there
22 is reasonable doubt in there that is going to change my
23 mind. I am not saying I am going in there saying, you
24 know, death penalty. I am not saying that. I am saying
25 if all the evidence is there then without a reasonable

1 doubt, boom, I support the death penalty.

2 Q I understand. And given that you would vote for the
3 death penalty?

4 A If all the evidence is there, yes sir.

5 Q Now, the Defense would present you stuff that the
6 Judge talked to you about, about mitigation.

7 A Yes, sir.

8 Q Any reason for a life penalty, right, what you
9 understood the Judge's definition, right?

10 A Yes, sir.

11 Q Things about how a person grew up, how they were
12 raised, what their circumstances in life were.

13 A Yes, sir.

14 Q That stype of stuff, it doesn't have anything to do
15 with did they do it, did they not do it, right?

16 A Yes.

17 Q That stuff is not going to take you from death
18 penalty to saying life because they had a bad childhood?

19 MR. HUBBARD: Your Honor, we have gone so far afield,
20 can we have another meeting.

21 THE COURT: I am going to put you back in the hall.

22 (Whereupon, the Juror was excused from the
23 courtroom.)

24 MR. HUBBARD: This is exactly what I am, was talking
25 about. You have got a man who said he wanted to hear

1 everything, he wants to hear both sides and you allow a
2 Juror to be asked a question about something he really has
3 no knowledge about, he has no knowledge of the law, he
4 hasn't heard any mitigating circumstances and now he says,
5 I am for the death penalty. And in this case, yes,
6 because now he is thinking about murder of kids and
7 nothing else. That is why it is unfair, that is why it is
8 just a bad line of questioning. Judge, he hasn't heard
9 anything about mitigating circumstances. He has been
10 asked about aggravating circumstances and then he was led
11 right down the primrose path. He knows nothing about this
12 law, nothing about this process. It is absolutely,
13 patently unfair to this Juror. He said repeatedly, I want
14 to be fair.

15 THE COURT: Mr. Young, when you got to the question
16 about mitigating factors, why is that a fair question?

17 MR. YOUNG: I think in addition to him being biased
18 in favor of the death penalty for somebody who has been
19 convicted of murder he may or may not be somebody who is
20 unable to give meaningful consideration to mitigating
21 factors as instructed by the Court.

22 THE COURT: I don't know this but I think he is mixed
23 up, reasonable doubt and mitigating factors in listening
24 to his answers.

25 MR. YOUNG: I think he is very clear that once he has

1 said, beyond a reasonable doubt, they are guilty of
2 murder, murder is what you said it is, it is the death
3 penalty for me all the time, that is what it is.

4 THE COURT: You are listening for that, I am
5 listening for, can I be fair. I am hearing one thing but
6 I understand what you are listening for.

7 MR. YOUNG: He said that is who I am. And he said
8 you don't have the words to change my opinion. I am in
9 favor of the death penalty.

10 THE COURT: How many times are you going to ask that.

11 MR. YOUNG: I didn't get to finish the question on
12 one.

13 MR. HUBBARD: That was the problem. Basically he
14 walked him in to, I am a number one unfairly. When this
15 guy is saying I want to hear both sides, I want to hear
16 everything. And he kept saying reasonable doubt. Judge,
17 he is not a lawyer.

18 THE COURT: He has not been instructed on the law.
19 He knows some words.

20 MR. YOUNG: He says once murder is proven to me
21 beyond a reasonable doubt the death penalty is the only
22 appropriate punishment.

23 THE COURT: Could you, would you follow up with
24 mitigating factors out there, consideration of those
25 factors.

1 MR. YOUNG: That was the question that I asked when
2 Mr. Hubbard stood up and started giving another speech.

3 MR. HUBBARD: I am going to object to that. I am
4 trying to make sure I get fair jurors too. Five dead
5 children deserve a fair trial too.

6 THE COURT: I agree.

7 MR. HUBBARD: If I get riled up about that I have got
8 a right to.

9 THE COURT: Y'all both do, you both are very zealous.

10 MR. HUBBARD: Judge, the problem was he focused on
11 murder and then aggravating circumstances and led him
12 right into--

13 MR. YOUNG: What else do you focus on when you are
14 asking somebody about their penalty views.

15 MR. HUBBARD: Judge, we have gone over this
16 repeatedly, the balance, the balance.

17 THE COURT: I want balanced, that wasn't very
18 balanced. Ask another question and please don't read me
19 case law. Tell me the case but don't read that back to
20 me. We need to move forward and explain the mitigating
21 factors to this gentleman. Mitigating factors may be
22 proven, would you give consideration to that. I think
23 that is how you need to go forward. I am not going to
24 suggest a question to you. That is all I can suggest to
25 you. How many times do you need to ask him and, a type

1 one, you did it twice. You get to the magic number four
2 and you then, you are going to say, Judge, he is not
3 qualified. I mean, I want you to explore it fully but let
4 him answer the question rather than you giving him a
5 leading question every time. And I know that is hard to
6 do.

7 MR. YOUNG: I will do my best.

8 THE COURT: Bring Mr. Hall back in.

9 (Whereupon, the Juror entered the courtroom.)

10 Q Like I have said in the past, there is nothing wrong
11 with anything that you say. Okay. I use wrong words
12 sometimes so you just got to tell me who you are about
13 these things. Okay. And I understood you to say somebody
14 prove beyond a reasonable doubt murder, guilty, guilty.
15 For you the appropriate punishment is the death penalty?

16 A Yes, sir.

17 Q Now, understanding that the defense will have an
18 opportunity to present to you what is called mitigation.
19 Now this is after somebody has been found guilty of
20 murder, right?

21 A Yes.

22 Q And the State has proven an aggravating circumstance
23 beyond a reasonable doubt. Okay?

24 A Okay.

25 Q Then the Defense will have an opportunity to present

1 mitigation. And that is stuff about a Defendant's
2 background and character. Does that stuff matter to you
3 in deciding what the punishment is?

4 A That is coming back from their childhood and stuff?

5 Q Yes, sir.

6 THE COURT: That is a good question.

7 A I am probably going to answer this wrong.

8 Q There is no wrong answer.

9 A I think everybody can better themselves from what
10 they grew up in no matter the circumstance. But by saying
11 that I think it can lead you in your adult life to make
12 bad decisions the way you were raised, your actions, your
13 attitude. I believe that because I am guilty of some of
14 things I was raised at and my adult life. So I think that
15 it makes, it would make a difference of my opinion, it is
16 according to what it is. But I still stick with, I think
17 you can better yourself through your life no matter what
18 you went through if it is with professional help or
19 whatever. I believe you can help yourself. It is
20 probably not what you wanted to hear.

21 Q It is exactly what I wanted to hear. I am just
22 asking you, does that get you off of death or not?

23 A It goes back to you can, I don't think it does. No,
24 sir.

25 Q Let's talk about how this whole process works. Okay?

1 A Okay.

2 Q We talked about aggravating factors being proven by
3 the State. Those factors have to be proven unanimously to
4 each Juror, to all jurors unanimously beyond a reasonable
5 doubt. Do you understand what I am talking about on that?

6 A Yes.

7 Q Mitigating factors are different. They don't have a
8 specific burden of proof. Are you with me on that?

9 A Yes, sir.

10 Q It is up to each Juror for himself or herself to
11 decide what is mitigating to them. And they are allowed
12 to give it whatever weight they want to. One Juror might
13 think a good relationship with his father. That is
14 mitigating to me and I want to give that mitigating factor
15 the weight of life, that is fine, that is perfectly
16 allowed under the law. Do you understand what I am
17 saying?

18 A Yes, sir.

19 Q And another Juror might say, I didn't see that but I
20 saw a different thing that matters to me and I want to
21 give that thing the weight of life. That is perfectly
22 okay. You have different reasons, they don't have to
23 agree, they don't all have to agree. Okay.

24 A Okay.

25 Q And some jurors might say, I don't have a reason, no

1 reason at all. I just feel like I want to give a life
2 penalty. The law is okay with that too. Do you
3 understand me on that?

4 A Yes, sir.

5 Q What we call this decision about whether or not a
6 person lives or dies, we call it an individual moral
7 judgment. Sort of a fancy word, do you understand what I
8 mean when I say individual moral judgment?

9 A I think so.

10 Q The best way I know to describe is and how it has
11 been described to me is like you have made choices about
12 your faith and your beliefs and how to raise your kids.
13 Those are personal moral decisions that you have made for
14 yourself. Is that correct?

15 A Yes.

16 Q And do you recognize and other people may have made
17 different moral decisions about that.

18 A Yes, sir.

19 Q And you respect their right to make a different
20 decision other than yours?

21 A They are allowed to have different opinions and make
22 different decisions.

23 Q And you respect them to respect your right, to your
24 own individual moral judgment.

25 A Sure.

1 Q And in this decision making about whether or not a
2 person lives or dies, if somebody arrives at their
3 individual judgment and they are bullying, yelled at or
4 told their opinion is stupid or they have to change it
5 would you stop that?

6 A Yes.

7 Q Because that would not be right.

8 A That would not be right.

9 Q The law is that these proceedings are suppose to be
10 conducted with decorum and decency. Right?

11 A Yes, sir.

12 Q And the decision about whether or not a person lives
13 or dies should be made that way?

14 A Yes.

15 Q You understand, if all twelve jurors making their
16 individual moral judgments, if twelve jurors arrive at
17 twelve votes for death penalty then death is going to be
18 the appropriate sentence?

19 A Yes.

20 Q And the death sentence would be carried out and Mr.
21 Jones would be executed?

22 A Yes.

23 Q Now if one Juror says--

24 MR. HUBBARD: Your Honor, this, we have gone over
25 this. I have let it go but you know what is coming next

1 and we already have discussed it, you have already ruled.

2 I hate to keep standing up.

3 THE COURT: I don't know the question he is about to
4 ask.

5 MR. HUBBARD: I can't even--

6 THE COURT: I don't know the question he is going to
7 ask but you are anticipating a question.

8 (Whereupon, a bench conference was held.)

9 THE COURT: If you can step out in the hall, please.

10 (Whereupon, the Juror was excused from the
11 courtroom.)

12 THE COURT: Mr. Young.

13 MR. YOUNG: Your Honor, it would be the Defense's
14 position that we are absolutely entitled to ask jurors or
15 explain to jurors what the meaning of, what the result of
16 a non-unanimous verdict is. It is totally appropriate to
17 ask them that, it is totally appropriate to ask them, do
18 they understand and can they respect that if one Juror
19 votes for life then the penalty will be life. I am happy
20 to do it the way that other Judges have ask that it be
21 done is that you have to say when they don't agree then
22 the Judge takes the case and sentences to life. That is
23 what the statute is, it is just telling the jurors the
24 truth about how sentencing works and that is what we are
25 entitled to do and explain to them and make sure that they

1 can follow the law in that regard.

2 MR. HUBBARD: Judge, absolutely not. You cannot put
3 a poison pill in the process and say, hold out and take
4 what eleven other people think. You cannot do that. It
5 is absolute inappropriate. You are educating them which
6 is contrary to Poindexter on trying to, basically you are
7 using this process to educate them on your position and
8 also to get them in your persuasion and trying to get him
9 off of this jury. This is a man who starts out, I want to
10 be fair--

11 THE COURT: We don't have to go back through the
12 testimony. I don't think you are allowed that question.

13 MR. YOUNG: The poison pill is allowing--

14 THE COURT: You have asked him, can you respect an
15 individual moral judgment of others. Yes. And you expect
16 them to respect yours also. Yes. I think it stops there.

17 MR. YOUNG: I think we need to go a little further
18 and that they need to understand that there is no such
19 thing as a hung jury.

20 THE COURT: He has explained to you what his answers
21 are. I don't think we need to get into hung jury right
22 now. I really don't.

23 MR. YOUNG: The poison pill is allowing jurors to
24 deliberate under the false belief that we, they don't
25 arrive at a unanimous decision that the case has to get

1 retried. And that is not true and they have to be told
2 that that is not true.

3 THE COURT: You ask him if he can respect moral
4 judgment of others. And he said, yes. I think it ends
5 there. You can give me a case that is different but let's
6 move on with him. I am getting close to the end of the
7 day. When we get done with him that will be the end of
8 the day. Let's get him back.

9 (Whereupon, the Juror came into the courtroom.)

10 Q We are talking about individual moral judgments,
11 about who lives and who dies. You recall our conversation
12 about that?

13 A Yes.

14 Q The question for you, can you respect another juror's
15 right to say, I don't know why it is right for me and it
16 is hung in a vote even if it is different than your vote?

17 A Absolutely.

18 Q At the end of the day in making moral decisions is it
19 okay to agree to disagree?

20 A Absolutely.

21 Q That's all the questions I have. I do apologize back
22 and forth.

23 CROSS-EXAMINATION

24 By Mr. Hubbard:

25 Q Mr. Hall, I am that guy that keeps jumping up and

1 every time I do you walk out of the room and I am sorry
2 too. I know it has been a long day for you.

3 A It's all right.

4 Q I want to follow-up on a few things. When you were
5 talking to the Judge and also the Defense Counsel, I think
6 I heard you say you want to hear all the facts?

7 A Yes, sir.

8 Q When it comes to determine whether somebody is guilty
9 or not you want to hear everything?

10 A Yes, sir.

11 Q You don't want to jump the gun and come in here with
12 your mind made up based on something you heard outside of
13 this courtroom. Is that correct?

14 A Yes, sir.

15 Q And you understand jurors have to base their decision
16 on what happens in this courtroom?

17 A Yes, sir.

18 Q It is unfair to ask you questions about what you
19 might do because you don't know the facts, do you?

20 A No sir.

21 Q You probably agree with me, you don't, you haven't
22 been given the law either?

23 A No, sir.

24 Q It is hard to ask you what you would do on a case?

25 A Yes, sir.

1 Q Bottom line is you want to hear everything?

2 A Yes, sir.

3 Q And you base your decision on the laws as the Judge
4 gives it?

5 A Yes, sir.

6 Q And now the Judge talked about three types of jurors
7 and you said you were that third type?

8 A Yes, sir.

9 Q The Juror that wanted to hear both sides and anything
10 in aggravation or mitigation in this case, you want to
11 hear that before you made a decision?

12 A Yes, sir.

13 Q And that you could consider life or death when it is
14 a murder case. Is that a fair statement?

15 A Yes, sir.

16 Q Is that still a fair statement to you, you can give
17 life or death based on what you hear?

18 A Yes, sir. It goes back to, I feel like for the
19 remorse, feeling sorry for what you have done.

20 Q Well, let's follow-up on that. Now, you were asked
21 about mitigation. I don't know, the Judge may have read
22 off some types of mitigation that could come up in a case.
23 Do you remember what he read or what he said to you at the
24 beginning. It has been a long day, hasn't it?

25 A Yes, sir.

1 Q So you would agree, it is kind of unfair to say
2 anything that might be helpful for the Defendant, we leave
3 that up to you to figure out what that is. That you have
4 got to figure out, okay, what are y'all talking about when
5 you talk about mitigation. Do you understand what I am
6 saying?

7 A Yes, sir.

8 Q Would you agree that when I talk about mitigation
9 evidence that you need the Judge's help on that?

10 A Absolutely.

11 Q Absolutely. Now, if I were to tell you evidence and
12 aggravation are things that make the murder seem worse.

13 MR. YOUNG: Objection, improper definition of
14 aggravation.

15 THE COURT: I will allow it.

16 Q And if I said mitigation might be things more
17 favorable to the Defendant in a murder case.

18 MR. YOUNG: Objection, improper definition of
19 mitigation.

20 THE COURT: Voir dire, I will allow it.

21 Q Do you understand that. Some things are good, some
22 things are more helpful to the Defense, some things may be
23 more helpful to the State.

24 A Yes.

25 Q Now, before you made a decision would you want to

1 hear all of those things?

2 A Yes, sir.

3 Q Would you want to consider all of those things?

4 A Yes.

5 Q You would agree, death is a huge decision to make, is
6 it not?

7 A Yes, sir.

8 Q So, in coming into a case where you don't know any
9 facts. You would want to hear everything about evidence
10 on guilt or whatever other verdict is possible, right?

11 A Yes.

12 Q And if this, you have a case and the verdict is
13 guilty of murder. Beginning of this questioning with the
14 Judge, I think you said you would want to hear from him
15 what aggravating and mitigating circumstance are? Is that
16 correct?

17 A Yes.

18 Q And you understand, for aggravating circumstances,
19 that is something that the State has to prove beyond a
20 reasonable doubt.

21 A Yes, sir.

22 Q That mitigation are things that may be helpful to the
23 other side in considering life after the murder
24 conviction. Do you understand that?

25 A Yes, sir.

1 Q You would want to hear that?

2 A Yes.

3 Q And I ask you that because you don't even know what
4 those are yet, do you?

5 A I want to hear both sides.

6 Q Sure, sure, sure. And that is going to come from
7 that side as well. And so you will hear evidence from the
8 State, you may hear things from the Defense and you are
9 going to want to hear those things.

10 A Yes.

11 Q And I believe you said, early on, everybody deserves
12 a fair trial?

13 A Yes.

14 Q And that you would want to hear everything before you
15 make, issued a verdict?

16 A Yes.

17 Q You would want to hear everything before you issued a
18 sentence?

19 A Yes.

20 Q I know it has been a long day and we are all kind of
21 tired but I know you have got to be from getting up and
22 walking out all of this time. But although you have
23 discussed with the Defense about this one issue of, I
24 believe you called it remorse. There may be other things
25 that you might want to hear that you didn't even think

1 about. Is that fair?

2 A Yes, sir.

3 Q So do you think it is possible that by listening to
4 the Judge you may go, you know what, there are some other
5 things I might need to consider on behalf of the
6 Defendant.

7 A Yes, sir.

8 Q Do you hold that possibility there?

9 A Yes, sir.

10 Q And if they are there would you consider those things
11 before you issue a verdict or sentence?

12 A I would.

13 Q Do you think that would be the fair thing to do?

14 A I think so.

15 Q And that is all we can ask. So no matter what, as we
16 go through this process is it your goal to hear both sides
17 and to be fair?

18 A Absolutely.

19 Q And if a man is convicted of murder you could
20 consider both, death and life?

21 MR. YOUNG: Objection, leading.

22 Q Could you consider both, death and life?

23 A Yes.

24 Q Okay.

25 THE COURT: The question is sustained and you

1 rephrased it. Your objection was sustained.

2 Q Mr. Hall, I think that is all we can ask you, to be a
3 fair Juror. Thank you.

4 THE COURT: Mr. Young.

5 EXAMINATION

6 By Mr. Young.

7 Q I am going to follow-up with you on one area. I just
8 want you to clarify for me where you are in your opinion.
9 Okay?

10 A Okay.

11 Q My understanding was for you, once you determined
12 that someone is guilty of murder, knew what they were
13 doing, guilty beyond a reasonable doubt, all the facts
14 show that they chose to kill an innocent person--

15 MR. HUBBARD: I am objecting on this, I really am.

16 MR. YOUNG: Your Honor, I object to him, if he has an
17 objection, he needs to speak the grounds. He is arguing
18 on his objections.

19 MR. HUBBARD: I am stating an objection so I don't
20 make a speaking objection.

21 THE COURT: I think it has been asked and answered
22 but I haven't heard the question quite yet. Let me hear
23 it.

24 Q My understanding from you was that your opinion was
25 that the appropriate punishment was, that the death

1 penalty was the appropriate punishment. Your response to
2 Mr. Hubbard was it can be death or life. Can you tell me
3 what is the difference?

4 A Because when he said about the other jurors, could I,
5 with the other jurors, have their opinion, we can discuss
6 and have our discussion as jurors and come to an agreement
7 because I value their opinion just like I would like for
8 them to value mine. So if we, as a jury, came to the
9 decision of life and not death, and this is something that
10 is not going to happen in two minutes, if we came to that
11 decision I respect their opinion. This isn't something
12 that will be, hey, I think it should be life. And I said,
13 okay, no, we are going to sit here and we are going to go
14 through this stuff and discuss it and then if we all agree
15 that, okay, life in prison. Just because I believe in the
16 death penalty don't mean, I am not saying that is my only,
17 it is not my only, I am just not saying, you know, die.

18 Q Sure. I understand. I need you to correct me if I
19 am wrong. I am not trying to put any words in your mouth
20 and I am not trying to lead you in any way. Okay.

21 A Okay.

22 Q Are you telling me your opinion, your personal
23 opinion would be that the death penalty would be the
24 appropriate penalty.

25 MR. HUBBARD: Asked and answered.

1 THE COURT: He has answered that. He can answer it
2 again.

3 A Yes.

4 Q Okay. And that other jurors might be able to talk
5 you out of that opinion or-

6 A Not talk me out of it. We can discuss it and look at
7 all the evidence. And if there is remorse or anything in
8 that that is going to come into play. If this person
9 feels sorry for what they did, yeah.

10 Q Are you saying you would give up your opinion to go
11 along with the other jurors?

12 MR. HUBBARD: Asked and answered. Asked and
13 answered.

14 THE COURT: I think that has been asked and answered.

15 MR. YOUNG: This is the Bennett question, Your Honor.

16 THE COURT: The what?

17 MR. YOUNG: The Bennett question.

18 MR. HUBBARD: And it has been asked and this Juror
19 has answered. Mr. Hall has answered it.

20 THE COURT: Rephrase and ask it.

21 Q I understand your opinion and I appreciate you
22 explaining to me how it would work with the jury. My
23 question to you is, would you give up your opinion to go
24 along with the other jurors to arrive at a verdict.

25 MR. HUBBARD: Asked and answered.

1 THE COURT: Let him answer it.

2 A We would discuss the facts and the evidence and then
3 come to an understanding of what everything is and then we
4 would discuss more. If it lead more to life in prison
5 without parole, as a group, we would discuss that and come
6 to a conclusion. I am not selling myself out, I am not
7 selling my beliefs or my opinion out. We are coming
8 together as a group.

9 Q You are open to changing your opinion?

10 A If the evidence is there and the remorse is there,
11 yes.

12 Q So you would start at death.

13 A I start nowhere, I am not starting nowhere because I
14 don't know none of the evidence so I am not starting
15 nowhere.

16 Q Okay. Thank you.

17 MR. HUBBARD: Mr. Hall, I have no further questions,
18 thank you so much.

19 THE COURT: Step in the hall and I will have you back
20 in here in a minute. Fair enough. All right.

21 (Whereupon, the Juror was excused from the
22 courtroom.)

23 THE COURT: Mr. Young.

24 MR. YOUNG: Your Honor, the Defense would move to
25 challenge Mr. Hall for cause. He repeatedly and in

1 response to non-leading questions says that in his opinion
2 the appropriate punishment for somebody convicted of
3 murder is the death penalty. The only time that he could
4 even consider a life penalty is if the Defense was able to
5 prove to him remorse which is not one of the statutory
6 mitigators. He says he can get together with other jurors
7 and maybe they will arrive at a decision for a life
8 penalty but he never said that his opinion wasn't that
9 after a conviction for an aggravating murder that
10 appropriate punishment was death. I said, is that who you
11 are and he said, I am just going to tell you who I am.
12 For me, if all the facts are there and they are guilty
13 beyond a reasonable doubt the appropriate penalty is
14 death. Now if they get remorseful I will give that
15 consideration. But to me other things, bad childhood, a
16 lot of people pull themselves up from bad childhoods and
17 that was not stuff that he was able to give meaningful
18 consideration to. Judge, Mr. Hall is not a close call.
19 And the only time he ever said he would even consider life
20 is in response to leading questions for the State. Every
21 time he was asked an open question about his opinion, his
22 opinion was that the death penalty was the appropriate
23 punishment. He is substantially impaired in his ability
24 to follow the law and he should be excluded under Morgan
25 and I will leave it there.

1 MR. HUBBARD: Your Honor, the totality of his entire
2 responses including the responses I gave Your Honor. He
3 came into this courtroom saying he was a type three
4 because he wanted to hear all the facts, all the
5 aggravating and mitigating circumstances. He didn't know
6 what those were but he wanted to hear everything. Your
7 Honor has heard, even when we played it back he wanted to
8 hear both sides. He wanted to hear all the facts. your
9 Honor, the danger of what happened with Mr. Hall is here
10 comes a man off the street trying to be a good citizen.
11 He has asked questions about stuff he has no knowledge
12 about and then he is trapped. When we talk about
13 mitigating factors, he didn't know what those were. So he
14 was left to come up with one on his own. What do you
15 think. And it is on the spot. How incredibly unfair is
16 that, took the Legislature forever to come up with a list
17 that we use. But on the spot this man is suppose to come
18 up with whatever that means with no instruction. And now,
19 by gosh, he stuck to it. Now, what he told me was that he
20 didn't know what else might be out there, there may be
21 something else that he would want to hear. But no matter
22 what he wanted to hear both sides. And, Judge, towards
23 the end, with these last questions he came right back to
24 where he had been when he started. The evidence has to be
25 there. Can you vote for life, yes, if the evidence is

1 there. And I am not starting anywhere, he is not starting
2 out for death. Judge, it is just patently unfair to this
3 Juror and any subsequent jurors who come in there to put
4 that line of questioning to them and then trap them. All
5 of the guys, we are just trying to feel out what they
6 feel, figure out what they feel. The totality of his
7 responses just shows he is trying to listen, he wants to
8 listen to both sides, he understands the gravity of this
9 situation and he is not someone who would always vote for
10 death. I think he is an appropriate Juror for this case.

11 MR. YOUNG: Your Honor, Mr. Hall was clear. The only
12 way he would consider life is to put the burden on the
13 Defense to prove remorse as a mitigating factor. And that
14 is the only time that, said he would be open to a life
15 penalty for somebody who had been found guilty beyond a
16 reasonable doubt of murder. That is a burden shift that
17 places the burden on the Defense that doesn't exist. And
18 for both of those reasons he should be excused. Your
19 Honor is aware even one Juror who is improperly is, causes
20 a case to get reversed and has to be retried. Mr. Hall is
21 not the close case. This is not something who waffled and
22 said, well, maybe life, maybe death. Mr. Hall, when asked
23 how he felt about the appropriate punishment for somebody
24 convicted of murder, said listen, I am just going to tell
25 you who I am and maybe I am telling you the wrong thing.

1 Maybe I am saying something I shouldn't say. I said, no,
2 just tell us how you feel. And he said, for me, if there
3 is guilty, guilty beyond a reasonable doubt the
4 appropriate punishment is death. That is just who I am.
5 And that is what he said over and over.

6 THE COURT: No, he didn't say over and over. I don't
7 think so. He said it but you kept going back and asking.
8 And he interrupted and I was trying to not let him answer
9 and he said, no, I don't. He said something to challenge
10 your question.

11 MR. YOUNG: He did, he did. He said it was his
12 personal feeling that he would talk and discuss it with
13 other jurors.

14 THE COURT: So you start with death penalty, no.

15 MR. YOUNG: He did say that.

16 THE COURT: He said that.

17 MR. YOUNG: But when asked about how he felt about
18 the appropriate punishment for somebody who is convicted
19 of murder he said, who I am is--

20 THE COURT: No, he also said something about who I am
21 and I am just going to tell you, you might not want to
22 hear it. He then went into that lengthy thing as people,
23 something happened in a childhood and how they are raised
24 and that can impact the decision he makes as an adult. He
25 went through something similar to that when that question

1 was asked also.

2 MR. YOUNG: He did. And it didn't change, and when
3 asked would that stuff change your opinion about death and
4 he said, and he thought very hard about it. He leaned
5 back, he took a moment, he closed his eyes and--

6 THE COURT: I don't need all of that.

7 MR. YOUNG: The record needs it, Your Honor, the
8 record does--

9 THE COURT: I didn't see him close his eyes.

10 MR. YOUNG: He leaned back, he thought about it and
11 he took a big pause and he said, no, it doesn't change who
12 I am. For me death is the appropriate punishment.

13 MR. HUBBARD: Your Honor, for the record, my
14 standpoint, I didn't see this big dramatic moment. He
15 thought about the question but he was thinking about his
16 answer when I was up there too. He was trying to answer
17 honestly.

18 THE COURT: I think he was very candid. I think the
19 totality of his questions and, answers to the questions
20 y'all gave him is he should be qualified because he wants
21 to hear the facts and circumstances and it was very clear
22 to me that the didn't know much about the law and
23 mitigating factors, things you might change. Isn't that
24 one of the things y'all asked me to make certain the
25 mitigating factors to be read were, even things that

1 aren't statutory listed but you would consider. Remorse
2 would be one of those, not statutory but at the bottom of
3 the page of that list. Is there any reason whatsoever.
4 He would consider remorse. So I think he is qualified, I
5 find him qualified.

6 MR. YOUNG: Your Honor, we object under the Sixth,
7 Fourteenth Amendment and think that qualification of Mr.
8 Hall is impaneling a Juror uncommonly willing to sentence
9 a man to death in violation of the United States and South
10 Carolina Constitution.

11 THE COURT: Your record is protected. Hope, what
12 will be the instruction to Mr. Hall.

13 CLERK OF COURT: Tell him we will put an email out to
14 the qualified jurors, are to report or to continue to call
15 back until we get all qualified.

16 THE COURT: Bring him back in.

17 (Whereupon, the Juror entered the courtroom.)

18 THE COURT: Mr. Hall, I have determined that you can
19 be a potential Juror in the case. That does not mean that
20 you will be seated. There will be a group that the
21 lawyers will select a panel from and you will be included
22 in that group. So in order for you to keep up with what
23 is going on and how fast things are moving along, check
24 the website Thursday night. You are a potential,
25 qualified Juror. You are qualified and check the website.

1 Follow the instructions. Now, until such time you are
2 still under oath, don't talk about the case, don't let
3 anybody talk to you about the case, you are not to peruse,
4 do any independent research, avoid news broadcast. I want
5 you to stay free and clear of that. When you come back I
6 will ask, kind of go through that, if you have done any
7 research, see any news accounts. You are under oath to do
8 that. All right.

9 (Whereupon, the Juror was excused from open court.)

10 THE COURT: I will adjourn for the evening. We will
11 start in the morning and 9:15.

12 May 1, 2019.

13 THE COURT: I want to talk to y'all real quick up
14 here.

15 (Whereupon, a bench conference was held with the
16 Court and the Attorneys.)

17 THE COURT: I reviewed some of my colloquy and
18 questions. I am going to go a little further and ask them
19 more questions because I think I need to, along the
20 similar things we were trying to get done yesterday. Are
21 y'all ready to get going. Number 256.

22 (Whereupon, Juror number 256, Paul Long entered the
23 courtroom.)

24 Paul Long, being
25 first duly sworn, testified as follows:

1 CLERK OF COURT: State your name spelling your last.

2 MR. LONG: Paul Long, L-O-N-G.

3 THE COURT: Good morning.

4 EXAMINATION

5 By the Court:

6 Q You have been, what is going on is I need to get to
7 know you a little bit and ask you some questions to see if
8 you are a potential Juror. So understand this. Truthful
9 answers, there are no wrong answers, there are no right
10 answers. The lawyers are using this opportunity to get to
11 know you to make determinations. As long as it is
12 truthful it is okay. The lawyers are still massaging
13 their questions per my instructions. And sometimes you
14 give a response and that leads into a follow-up question.
15 If we have to discuss the follow-up questions I may ask
16 you to step outside in the hall. It is not your fault, it
17 is just us trying to sort out the questions. Okay.

18 A Yes, sir.

19 Q My name is Eugene Griffith, I met you Monday. And I
20 told you, gave you instructions to not discuss the case,
21 communicate about the case. Have you followed that
22 instruction?

23 A Yes, sir.

24 Q Has anyone tried to talk to you about the case?

25 A Yes, sir.

1 Q And did you, who?

2 A I have hundreds of customers in this area and I am in
3 contact with them throughout the day and night. A few of
4 them mentioned if I was involved in this case.

5 Q And what was your response?

6 A I told them I could not respond.

7 Q That is exactly pursuant to my instructions. Thank
8 you so much. Now there has been news media reports and
9 different media outlets. Have you seen or observed any of
10 those?

11 A No, sir.

12 Q Fair enough. Now, you were given a list, rather
13 lengthy list of potential witnesses. Did you have an
14 opportunity to review that list?

15 A Yes, sir. Yesterday and today.

16 Q And you already told me you have a lot of customers.
17 Any members, I will give you some of the mechanics of why
18 things are done. The lawyers involved have to present to
19 the Court any potential witnesses, whether they are going
20 to be called or could be called or may be called.
21 Potential witnesses need to be told to the Court, to the
22 witnesses, to the jurors so that if there is any potential
23 connection there can be discern whether there is a
24 conflict or not and you can set aside your relationship
25 because it would be awkward to get half way through the

1 trial and a witness who wasn't on the list gets called by
2 one side or the other and, oh, that is my first cousin.
3 Well, if you weren't alerted to it early on it wouldn't
4 work. So, anyway, you reviewed that list of witnesses?

5 A Yes, sir.

6 Q Are you connected in any way, any member of your
7 immediate family connected in any way to any of those
8 witnesses?

9 A I didn't recognize any names.

10 Q Now, are you or a member of your immediate family
11 connected to any of the lawyers involved in this case in
12 any way?

13 A No, sir.

14 Q You or a member connected in any way to the Jones'
15 family?

16 A No, sir.

17 Q Now, are you or a member of your immediate family a
18 member of any organizations which advocate for victims
19 rights such as Mothers Against Drunk Driving, Students
20 Against Drunk Driving, CAVE, Citizens of Violent Crime,
21 Bikers Against Child Abuse. Any groups such as that?

22 A No, sir.

23 Q Any member of your immediate family or yourself a
24 member of any association such as the Troopers
25 Association, Sheriffs Association, support local law

1 enforcement?

2 A No, sir.

3 Q Now, we are getting into a little more of the
4 mechanics of the case. And this is kind of a broad
5 picture of how the case will proceed according to our
6 criminal procedures and whatnot. Mr. Jones has been
7 indicted and charged with five counts of murder. And in
8 South Carolina murder is defined, this is the legal
9 definition, killing of another person with malice
10 aforethought. Malice is defined as a person who has a
11 wicked or depraved heart, intent on wrongdoing, hatred or
12 ill-will or hostility towards another. The definitions of
13 murder excludes just cause of excuse of the killing. When
14 the State alleges the defense of murder combined with
15 certain aggravating factors which are outlined in the
16 statutes the State can then notify a person accused that
17 they intend to seek the death penalty. Now, before, all
18 the way up through the end of the trial when a verdict is
19 reached, all the way through, any person accused under our
20 laws, under our Constitution is presumed innocent of each
21 and every element of the crime which he is charged. And
22 the State has the responsibility or the burden of proving
23 its case to a standard of proof called beyond a reasonable
24 doubt to remove that presumption of innocence if they can.
25 Now, Mr. Jones is presumed innocent sitting right there as

1 he is. Do you understand that?

2 A Yes, sir.

3 Q I am giving you some aspects of the law and it is my
4 job as the presiding Judge to instruct on the law during
5 the trial and jury selection but most particular at the
6 very end, after all the testimony and evidence considered,
7 I am going to give you an instruction of, the law of South
8 Carolina says, one, two three. That sort of thing. That
9 is my job. Jury's have to answer other questions that
10 they are presented. So it is my job, part of my job is to
11 explain to jury's and jurors what the law of South
12 Carolina is, what the statutory law of South Carolina is
13 and how it fits in and under the Federal Constitution.
14 Now, explain some of that to you and give you instruction
15 of the law, in most criminal cases Judges determine the
16 punishment upon a conviction but in a Capital case the
17 jury determines the punishment. In a Capital case the
18 trial has potentially two parts. The first phase, the
19 first part is called the guilt or innocence phase. Now,
20 if it were that guilty is returned during that phase and
21 then it proceeds onto the punishment phase. I want to
22 discuss the first phase only right now. The first phase,
23 the State must prove a person's guilt beyond a reasonable
24 doubt. I already told you that. And if a jury finds an
25 accused guilty of murder then you go into phase number

1 two. The second phase, the State, if, let me go back. If
2 the jury were to find a person guilty of murder in the
3 first phase then the second phase two, the punishment
4 phase the State has got to prove an aggravating
5 circumstance also beyond a reasonable doubt. So the jury,
6 during that phase, could consider evidence showing
7 aggravation, evidence showing mitigation and I will
8 explain those terms in a minute, in deciding the
9 punishment and either the punishment is one of two things.
10 Life without the possibility of parole or the death
11 penalty. Now, our law in South Carolina does not allow
12 the State to seek the execution of a person if they are
13 convicted solely of murder. The State must prove that
14 aggravating factor. And those are listed, I am going to
15 give them to you in a moment. The State must prove at
16 least one aggravating factor beyond a reasonable doubt.
17 Now, once you get to the sentencing phase and the State
18 has proved murder and then they are under the duty to
19 prove the aggravating factor. The State can prove the
20 aggravating factor beyond a reasonable doubt. The jury
21 still decides punishment. Jurors are required to consider
22 any circumstances in evidence, in mitigation, that is
23 presented to them. And jurors can consider and must
24 consider any and all mitigating factors which is for a
25 sentence other than death. In order for a sentence of

1 death to be imposed the verdict must be signed by all
2 twelve jurors. Now, if jurors unanimously vote to
3 sentence a Defendant to life without the possibility of
4 parole then that sentence is exactly that, life without
5 the possibility of parole is imposed. Now in this case
6 the State has indicted five counts of murder, has notified
7 Mr. Jones that it intends to seek the death penalty. He
8 has entered a plea of not guilty by reason of insanity.
9 In this case you are going to hear testimony and evidence
10 showing many things. A wide variety of testimony may be
11 presented during this trial. There will be a wide variety
12 of witnesses called and you will hear a variety of things.
13 I would instruct you and how to consider and evaluate that
14 testimony and that evidence and whether it is defined as
15 evidence of an aggravating factor, evidence of mitigation.
16 Mitigation is kind of explained as any reason to vote for
17 a sentence of life without parole. Evidence of any
18 defenses, evidence of any affirmative defenses such as
19 accident, guilty but mentally ill or not guilty by reason
20 of insanity. So until the testimony and evidence is
21 presented by the parties I don't exactly know my specific
22 instructions. I have a general idea, I am going to
23 instruct murder and proof beyond a reasonable doubt. But
24 there has got to be testimony supporting the instructions
25 that I give so I decide that at the close of the case.

1 Now, can you accept an oath if you are selected as a Juror
2 to consider all the testimony, all the evidence and apply
3 the law as I instruct it at that time. Can you do that?

4 A Yes, sir.

5 Q And can you consider the evidence consistent with my
6 instructions?

7 A Yes, sir.

8 Q Now, I told you that there is a plea that Mr. Jones
9 as entered is a not guilty by reason of insanity and
10 because of that plea it creates in the guilt and innocence
11 phase four potential verdict forms. And by that I mean
12 the jury will be given a verdict form that says, consider
13 the case, instruction of the Court and here are the four
14 potential results. Guilty, guilty but mentally ill, not
15 guilty by reason of insanity or not guilty, four forms,
16 four choices. Now, can you give consideration to each of
17 those verdicts depending on the facts and circumstances
18 presented to you and the law as I instruct you, can you
19 give meaningful consideration to each of those potential
20 verdicts?

21 A Yes, sir.

22 Q Now, if a verdict comes out in the case of guilty or
23 guilty but mentally ill then the case will proceed to
24 stage two. And it is during that stage that the State
25 then is required to show or prove the mitigating factor or

1 factors shown, demonstrated, written down in the statutory
2 code books, and the codes are right behind me, the codes
3 that are presented are handed down to the Courts from the
4 General Assembly. So, statutory aggravating factors, the
5 General Assembly says these are the ten that are potential
6 aggravating factors. I will read those momentarily. And
7 there are two potential verdicts in this stage. Once you
8 get to the punishment phase there are two potential
9 verdicts, life without parole and the death penalty. Now,
10 do you have any religious or moral beliefs which would
11 prevent you from considering the evidence?

12 A No, sir.

13 Q Do you understand that the death penalty, that stage,
14 is not automatic?

15 A Yes, sir.

16 Q The State has got to prove more in the sentencing
17 phase. Now do you have any beliefs, whether they are
18 ethical, moral, personal which would prevent you from
19 imposing a life without the possibility of parole
20 sentence?

21 A No, sir.

22 Q You could consider the evidence, whatever the
23 evidence is, facts presented, instructions of the Court
24 and make a fair determination of one of those verdicts?

25 A Yes, sir.

1 Q Now, this is where I want to go over some of these,
2 understanding potential defenses in the case, I am going
3 to ask you this. Some of the potential defenses that may
4 be presented in this trial are, these are out of the
5 statutory books and most people who don't deal with law
6 would not know this off of their head. Potential defenses
7 and I am saying these may be presented to you but these
8 are potential ones that could come and, as the Judge, I
9 may deal with them, identification, accident, involuntary
10 intoxication, suicide, self-defense, necessity, insanity,
11 guilty but mentally ill, defense of habitation,
12 entrapment, duress and alibi. Can you give meaningful
13 consideration and apply the law as I instruct you
14 regarding any of those potential defenses, considering the
15 testimony and law presented to you?

16 A Yes, sir.

17 Q Now, I explained to you earlier that mitigation
18 evidence could be presented in the case. Mitigation are
19 factors which could be reasons to impose a sentence of
20 life without parole. And there are other reasons that
21 aren't statutory but potential mitigation evidence you
22 would hear would be this. The Defendant has no
23 significant history of prior criminal convictions,
24 involving the use of violence against another person,
25 never been in trouble. A murder has been committed while

1 the Defendant was under the influence of mental or
2 emotional disturbance; the victim was a participant to the
3 Defendant's conduct or consented to the act; the Defendant
4 was an accomplice in the murder committed by another
5 person and the participation was relatively minor; The
6 Defendant acted under duress or under the domination of
7 another; the capacity of a Defendant to understand or
8 appreciate his criminality of his conduct or his conduct
9 was impaired; the age or the mentality of the Defendant at
10 the time of the crime; the Defendant was provoked by the
11 victim in committing the acts; the Defendant was below the
12 age of 18; the Defendant had mental retardation at the
13 time of the crime. Now, those are the statutory ones and
14 as I told you, those mitigation evidence may come in other
15 forms, neither side is limited to presenting only those
16 statutory mitigating factors but other evidence of
17 mitigation may come at you. Now, can you give meaningful
18 consideration to any facts and testimony in regard to
19 those mitigating factors if so presented and follow the
20 instructions of the Court?

21 A Yes, sir.

22 Q Now, I handed another sheet to you which described
23 three potential types of jurors. Did you have an
24 opportunity to review that?

25 A Yes, sir.

1 Q Now, discussing those with you, type one is a type of
2 person who would hear the facts and circumstances, they
3 pretty much got their mind made up that they are going to
4 impose the death penalty if murder is proven. Type two,
5 slightly different, they can hear the circumstances of the
6 case, murder is proven, aggravating circumstances, that
7 this Juror just feels that life without parole would be
8 the appropriate punishment because they may have a moral
9 belief that they can't do that, they can't sign the
10 verdict form imposing the death penalty. Then there is
11 type three, that once the crime of murder and aggravating
12 circumstances have been proven the jury would not have
13 their mind made up and can hear facts and circumstances
14 considering aggravation and mitigation. And they can
15 bring either verdict. Can you tell me which type of Juror
16 as you perceive as yourself?

17 A After everything has been presented?

18 Q Yes.

19 A Type one.

20 Q Type one?

21 A Yes, sir.

22 Q Now, also I ask you, can you and are you willing to
23 follow the instructions of the Court and decide which
24 sentence to impose. Can you do that?

25 A Yes, sir.

1 Q All right. Mr. Young, do you have some questions? I
2 am sorry, Mr. McGuire.

3 MR. MCGUIRE: Your, Honor, may we take up an issue.

4 THE COURT: Sure. We have got to take up an issue.

5 (Whereupon, the Juror was excused from the
6 courtroom.)

7 MR. MCGUIRE: Your Honor, this Juror is clear, he has
8 understood the Court's charge. At this point and time he
9 has understood the law and he has indicated that he is a
10 Juror who believes that the death penalty is the only
11 appropriate punishment for somebody convicted of murder
12 with an aggravating circumstance. It is very clear, he
13 said after everything is presented, for me, I am a type
14 one. We shouldn't have to ask him any questions, he
15 should be excused.

16 THE COURT: Solicitor.

17 MR. HUBBARD: Your Honor, the only thing I would ask,
18 just go back and actually read number one again, and just
19 say that describes you and if he says yes let's move on.

20 THE COURT: That is kind of my thinking too.
21 Appreciate y'all being on the same page. Bring him back
22 in.

23 (Whereupon, the Juror entered the courtroom.)

24 Q I want to go back over one thing with you to make
25 certain I understood. The type of potential jurors. Type

1 one, if it is proven by the State, murder and aggravating
2 circumstances, do you consider yourself a person who would
3 always give the death penalty or are you going to consider
4 both penalties?

5 A To me if it has already been proven, if the State has
6 proved it and we have agreed or said it is proven, I would
7 say, yes, I am a type one.

8 Q All right, thank you for coming, you are excused.

9 (Whereupon, the Juror was excused from the
10 courtroom.)

11 THE COURT: I forgot to ask his personal schedule.

12 (Whereupon, a bench conference was held.)

13 THE COURT: Bring the next one.

14 (Whereupon, Juror 221, Garrett Johnson came into the
15 courtroom.)

16 Garrett Johnson, being
17 first duly sworn, testified as follows:

18 CLERK OF COURT: State your name and spell your last.

19 JUROR: Garrett Johnson, J-O-H-N-S-O-N.

20 EXAMINATION

21 By the Court:

22 Q Good morning.

23 A Good morning.

24 Q Mr. Johnson, my name is Eugene Griffith, I met you at
25 a distance on Monday. This is an opportunity today for me

1 to ask you some questions and the lawyer will may perhaps
2 ask you some questions to determine if you are, could be a
3 potential Juror in this case. Now, you are under oath.
4 Part of the oath I gave to you earlier in the week was,
5 don't let anybody talk to you about this case, don't talk
6 to anybody about the case. Do you remember that?

7 A Yes, sir.

8 Q Has anyone talked to you about the case.

9 A I saw a news article and there was something in there
10 but not specifics, no.

11 Q You saw a news article you said?

12 A Yes sir, I didn't read it.

13 Q What you described for me is consistent with my
14 instructions and I appreciate that. Now, you are under
15 oath and all are truthful answers. There are some
16 questions I am going to ask, there aren't right or wrong
17 answers. They are just, how do you feel.

18 A Okay.

19 Q So there will be some opinions involved, it is not
20 going to be like, did you talk about the case. That is
21 not an opinion, that is you did or didn't. No wrong
22 answers, only truthful answers. That is what we want. I
23 am going to get to know you. Now, you or a member of your
24 immediate family, any of you a member of any organization
25 which supports or advocates for victims rights such as

1 MADD Mothers, SADD Students, Citizens Against Violent
2 Crimes?

3 A Nobody that I am ware of.

4 Q None you are aware of. Any member of your family,
5 you, a member of the Troopers Association, Sheriffs
6 Association, support local law enforcement, such as that,
7 crime watch zone, that kind of thing?

8 A Not that I am aware of.

9 Q You or a member of your immediate family connected in
10 any way to any of these lawyers here in the courtroom?

11 A No.

12 Q You or a member of your immediate family connected in
13 any way to the Jones' family?

14 A Not that I am aware of.

15 Q Now, there is a long list of witnesses. Did you have
16 a chance to look over that?

17 A I did. It is really long.

18 Q It is really long. I have got to make the lawyers
19 tell me any potential witnesses, we are probably going to
20 call these and they don't tell me potentially that they
21 may need some others. Judge, during the trial, I think we
22 may need these, they can't do that, they have got to tell
23 me so I can ask you this question. Are you connected in
24 any way to any of those potential witnesses?

25 A I don't believe so. My neighbor is a Lexington

1 County Police Officer.

2 Q They live near?

3 A He lives nextdoor, yes.

4 Q You live in West Columbia?

5 A I live in Columbia.

6 Q You don't know, no member of your family has any type
7 of relation with any of these folks, even though they
8 haven't seen it?

9 A Correct.

10 Q All right. I forgot to ask you this question. This
11 jury selection process was moving kind of slowly yesterday
12 and I appreciate your patience waiting on my progress
13 yesterday, that was most of my doing. Nevertheless, I am
14 not sure exactly when we will be through with jury
15 selection, finding and determining the potential jurors.
16 And then once we start the trial I am not exactly sure how
17 long the trial will take, estimating, guessing. Do you
18 have anything, personal or otherwise, medical procedure
19 coming up, vacation schedule to late May or June. Am I
20 going to knock you out of some big trip to Disney Land?

21 A No.

22 Q So your schedule will permit you to serving if so
23 selected?

24 A So far as I am aware, yes. Nothing planned.

25 Q Okay. And I understand it is a big inconvenience and

1 that is just part of our jury process, you get paid a
2 little something for your trouble. But you could do it if
3 so selected?

4 A Yes.

5 Q Now, I am going to give you kind of a preliminary
6 broad brush, a big brush of criminal procedure and how a
7 trial would proceed and kind of explain a few aspects of
8 the law that most people don't know. Part of my job as
9 the presiding Judge to prepare for trial, secondarily,
10 instruct the law consistent with the law of South
11 Carolina. That is what I am suppose to do, and I try to
12 do that. The large part of the trial is instructions on
13 the law of South Carolina is thus and so. And part of
14 your oath would be later on is to accept the law as the
15 Judge is instructing you if you disagree with it. Because
16 sometimes you might not agree with it, you have to follow
17 the law. Now, in South Carolina, I am sorry, in South
18 Carolina murder is defined as the killing of another
19 person with malice aforethought. It is a very simple
20 definition but some of the subparts, malice is defined as
21 a person with a wicked or depraved heart, intent on
22 wrongdoing, ill-will and hostility towards another. The
23 definition of murder excludes just cause or an excuse.
24 Now, when the State accuses a person of any crime that
25 person is presumed innocent until the State proves its

1 case beyond a reasonable doubt. And it may be delayed
2 because the trial is not called the week after something
3 happens, it is down the road until they get the case
4 scheduled. Until such time as a jury hears the case and
5 makes a decision the person accused is presumed innocent
6 all the way through, until the State presents and proves
7 it case to the standard of proof called beyond a
8 reasonable doubt. Now, in certain cases, a case like
9 this, most cases when the State does that, when they try
10 to prove the criminal act against a person, they accuse
11 them of to try to prove, if the person is convicted and
12 the Judge, the Court imposes the punishment. Okay.

13 A Okay.

14 Q In a Capital case the jury decides punishment. Okay.
15 Now, because Capital cases are specialized cases it is
16 divided into two parts. Part one is guilt or innocence.
17 If part one is found not guilty you don't go to part two.
18 You never get there. Part one is guilt or innocence, you
19 determine the guilt of the Defendant of the murder. If
20 guilt is found there then you go to stage two. And then
21 evidence, the State has got to prove its case, all the
22 elements to all of these, to the murder and to the
23 aggravating factors which I am telling you about now. In
24 stage two, if the State is seeking the death penalty the
25 State has got to prove aggravating factors that are

1 outlined in the statutory books which are right behind me.
2 The aggravating factors are listed out, like ten of them.
3 The State has got to prove an aggravating factor beyond a
4 reasonable doubt to a jury. And only then, once they
5 prove the aggravating factor then a jury determines the
6 sentence. And the sentence is one of two things, life
7 without parole or death, okay, one of the two. No other
8 sentence is available. So I want you to understand, our
9 law does not allow a person, when the State is seeking the
10 execution of a person if they are only convicted of
11 murder, they have got to go to the next step to prove the
12 aggravating factor also. Now, in the sentencing side, the
13 death phase, there is also evidence that is listed,
14 considered by the jury, mitigation. Mitigation, there is
15 a list of things and I want to read those to you real
16 quick. These are the mitigating factors potentially to be
17 heard. Mitigation factors include, the Defendant didn't
18 have a significant criminal history, never been in trouble
19 before. Murder was committed by the Defendant under the
20 influence, mental or emotional disturbance. The victim
21 was a participant and the Defendant's conduct or he
22 consented to the act. A Defendant was an accomplice in
23 the murder committed by another and his participation was
24 relatively minor. The Defendant acted under duress, under
25 the dominion of another person, the capacity of the

1 Defendant to appreciate the criminality of his conduct,
2 his conduct to the requirements of law substantially
3 impaired. The age or mentality of the Defendant at the
4 time of the crime. The Defendant was provoked by the
5 victim in committing the murder. The Defendant had mental
6 retardation at the time of the crime. Those are statutory
7 defined mitigating factors but the jury can consider other
8 things when they consider mitigation. Childhood history,
9 that kind of thing, whatever they want. Now, in the
10 sentencing phase the State has got to prove the
11 aggravating factor, mitigation elements are shown. Can
12 you give, I am sorry, I changed my pace of my questions
13 with you today. I handed out a sheet to you and the other
14 jurors too showing types of potential jurors.

15 A Yes.

16 Q And that sheet explains, type one Juror. This is
17 generality. Type one Juror is somebody who once a murder
18 and an aggravating circumstances has been proven by the
19 State that Juror would not need to hear the facts and
20 circumstances of aggravation or mitigation. They feel
21 that once a murder has been committed the death penalty is
22 the appropriate punishment. Type two person is kind of
23 just the opposite. If they believe the crime of murder
24 and aggravating circumstances have been proven then they
25 are not going to listen to anything else and they have got

1 a moral or religious belief, some belief that life without
2 parole is the only sentence that they can sign off on.

3 And type three is the type of Juror that once the crime of
4 murder and aggravating circumstances have been proven
5 beyond a reasonable doubt by the State that Juror would
6 not have his mind made up concerning punishment, they
7 would want to hear the facts and circumstances, consider
8 all the facts and circumstances. Looking at those three
9 categories in general, where do you find yourself?

10 A Three.

11 Q Three. So you consider yourself somebody who could
12 bring a verdict, either life without the possibility of
13 parole or of, a sentence of death?

14 A Either one.

15 Q Either one. Now, let me go back. Now, in this case
16 the State has indicted, accused Mr. Jones of five counts
17 of murder and notified Mr. Jones that it intends to seek
18 the death penalty. So that changes some of the procedures
19 that we go through when selecting jurors by asking
20 questions one on one. Mr. Jones is presumed innocent
21 under out law, okay. I told you that before, a person
22 accused is presumed innocent until the State presents its
23 case beyond a reasonable doubt. Mr. Jones has entered a
24 plea of not guilty by reason of insanity. And so because
25 of that you are going to hear a variety of testimony and a

1 variety of evidence. And so I am going to instruct you on
2 how to consider some of that. Some of that evidence is
3 going to be, some of that testimony you are going to have
4 to evaluate and consider would be any aggravating factors
5 which are, an aggravating factor would be kidnapping or
6 killing of a law enforcement officer, child is the victim,
7 multiple murders, those sort of things. Those are
8 statutory aggravating factors. Y'all get to consider and
9 I will instruct the jury on how to evaluate that type of
10 testimony. You will have to consider evidence of
11 mitigation which would be any reason to vote for a
12 sentence of life without parole and I have described those
13 aggravating factors to you just a moment ago. Evidence of
14 any defenses and I will tell you some potential defenses
15 in this case are accident, involuntary intoxication,
16 suicide, self-defense, necessity, insanity, guilty but
17 mentally ill, entrapment, defense of habitation, duress
18 and alibi. And some of those are affirmative defenses
19 such as guilty but mentally ill, not guilty by reason of
20 insanity and accident. Now, until the testimony is
21 presented because they haven't called any witnesses yet, I
22 haven't heard any trial testimony yet. Until it happens,
23 until they present the testimony I don't know which
24 aspects of those potential defenses I will instruct the
25 jury on. I have got to hear the testimony too to kind of

1 tailor my instructions of, you have heard testimony which
2 would include. I tailor my instruction at that time. I
3 don't have a standard instruction, it is tailored to each
4 case.

5 A Okay.

6 Q So, until the testimony and evidence is presented I
7 can't tell you exactly what I am going to instruct but I
8 have a general idea. Now, can you accept an oath and give
9 meaningful and consider all the testimony and evidence and
10 apply the law as I instruct it to you and consider the
11 evidence consistent with my instructions?

12 A Yes.

13 Q All right. Now, because of the plea entered by Mr.
14 Jones, there are four potential verdicts in the first
15 phase, guilt or innocence. Remember, the State has got to
16 prove murder before we go to stage two. If you think it
17 has not proven murder it stops at stage one. Four
18 potential verdicts, in stage one, guilty, guilty but
19 mentally ill, not guilty by reason of insanity or not
20 guilty, four potentials. Now, do you have any moral,
21 personal, ethical, any reason whatsoever that you know of
22 that you can't give meaningful consideration to each and
23 every one of those verdicts that the jury will be
24 presented?

25 A No.

1 Q Okay. So depending on the facts and circumstances,
2 the law as I instruct it and no matter what type of
3 evidence it is, whether it is mitigating, aggravating, a
4 defense, any and all evidence, you give meaningful
5 consideration to all the evidence presented to you and
6 determine the appropriate finding of guilt and not guilty
7 in that first phase. Can you do that?

8 A I am sorry, say that again.

9 Q I know it is confusing. The first phase, can you
10 give meaningful consideration to all the law as I instruct
11 it but consider all the evidence that is presented to you
12 whether it is testimony, hard evidence, fingerprints,
13 something like that, any evidence, give meaningful
14 consideration to all of that evidence. Whether it is a
15 defense, whether it is a mitigating factor, whether it is
16 an affirmative defense, or whether it is an aggravating
17 factor, can you give consideration to all of that?

18 A Yes.

19 Q What I am looking for is a fair and impartial Juror.
20 That is what my job is, to seek out and find fair and
21 impartial jurors. Okay?

22 A Yes.

23 Q Now, if we get to stage two, so stage two I gave you
24 the four potential verdicts, guilty, guilty but mentally
25 ill, not guilty by reason of insanity, not guilty. Either

1 of those two verdicts of not guilty or not guilty by
2 reason of insanity the case stops. It goes to the second
3 phase if either of the guilty verdicts, do you understand?

4 A Uh-huh.

5 Q Now, do you understand, at that time that is when the
6 jury has to change gears and determine the punishment.
7 That is what the jury will be doing. If that stage is
8 reached do you have any religious or moral beliefs which
9 would prevent you from imposing the death penalty?

10 A No.

11 Q Now, do you have any religious, ethical, moral,
12 personal beliefs of any kind which would prevent you from
13 imposing a sentence of life without parole?

14 A No.

15 Q Now, you understand, I try to be fair and specific
16 about the broad brush of procedure. Do you understand the
17 death penalty is not an automatic result that has got to
18 be decided by the jury in stage two?

19 A Yes.

20 Q Now, I forgot this. This is another question, this
21 trial, a wide variety of testimony is going to come before
22 the jury. There is going to be testimony concerning
23 children, maybe some graphic pictures of their bodies,
24 testimony of all sorts of things, maybe graphic in nature.
25 It is testimony of that type, graphic testimony which may

1 be a little disturbing. Would that create an issue for
2 you to be a fair and impartial for both, the State and Mr.
3 Jones. Can you do that?

4 A Yes, I could. Pleasant--

5 Q -- no, it is not pleasant.

6 A No, I mean--

7 Q Could you consider the testimony like that and
8 evidence like that?

9 A Yes.

10 THE COURT: All right, Mr. McGuire.

11 EXAMINATION

12 By Mr. McGuire:

13 Q Good morning, Mr. Johnson.

14 A Good morning.

15 Q My name is Bill McGuire, I am one of the lawyers in
16 the case and this is our opportunity to ask you some
17 questions.

18 A Okay.

19 Q And we are going to focus primarily on your views
20 about the death penalty for the offense of an aggravated
21 murder. Okay?

22 A Okay.

23 Q And it is a little weird that I have to ask you
24 questions about punishment when we haven't even had a
25 trial now, Mr. Jones has plead not guilty by reason of

1 insanity and there is a chance we would never even get to
2 a penalty phase in this trial. Do you understand that?

3 A Yes.

4 Q Does that sound fair to you?

5 A Yes.

6 Q Okay. Now, you came from Illinois to South Carolina,
7 right?

8 A Correct.

9 Q And you have been here for about three years?

10 A I have been here for many years.

11 Q Many years. I am sorry.

12 A I am trying to think of the year, I was in eighth
13 grade, I don't remember what year that was, late '90's.

14 Q Okay. I may have misread something on your
15 questionnaire. When this incident happened do you
16 remember hearing any publicity at that time, it would be
17 about four years ago?

18 A I am sure I heard something but I don't specifically
19 remember, I might have heard like when it happened. But I
20 didn't remember like names or details or anything like
21 that.

22 Q When you say you heard what happened you knew the
23 basic facts of the case?

24 A Yes, kind of like, you are scrolling through like
25 Facebook or something and you kind of, like I have got

1 news channels on it, right. So you know, you see articles
2 but you don't necessarily read it, you just kind of scroll
3 through and such and such happened on, I am sure I saw
4 something but I don't remember it.

5 Q If I recall correctly, you get most of your news from
6 the internet, is that right?

7 A Correct.

8 Q Okay. And that would make sense, you are an IT
9 analyst, right?

10 A Uh-huh.

11 Q So when you saw the story on the internet you
12 scrolled through it, what was your reaction to the story?

13 A Like, years ago when it happened?

14 Q Yes.

15 A I don't remember. I don't remember actually reading
16 it or seeing it.

17 Q Okay.

18 A I am sure I did but there is no specific, like 2015,
19 '14, whenever it--

20 Q But you don't recall specifics?

21 A I don't recall specifics.

22 Q And I think you indicated to the Judge that you saw a
23 little bit of publicity recently?

24 A Correct.

25 Q What do you remember about that?

1 A It was last week, what is today, Wednesday, it was
2 last week. There was, again, I was scrolling through and
3 I saw an article. I was looking at something else on, I
4 want to say WIS and there was like, the next article, so,
5 you know, I scrolled through it as well and it wasn't very
6 large, it was just a, kind of like a blip I guess is what
7 they call it. Just a couple of details on who, what and
8 then--

9 Q Sort of the nature of the case?

10 A Basically, yes. It was very short like two
11 paragraphs.

12 Q And did you have any kind of reaction to that,
13 emotional or otherwise?

14 A I mean, yes, like sad, bad news, sad.

15 Q Do you, from what you have read do you believe Mr.
16 Jones committed the acts he is accused of killing his
17 children?

18 MR. HUBBARD: I am going to object to that.

19 MR. MCGUIRE: I object to speaking objections and I
20 would like to take it up on the record if it is going to
21 take up any argument at all.

22 THE COURT: Okay. Let's, Mr. Johnson, sometimes the
23 lawyers have got to explain a little more depth in the
24 law, we have to make a record of it. We will put you in
25 the hall while I talk to them and then we are going to

1 move forward.

2 (Whereupon, the Juror was excused from open court.)

3 THE COURT: All right, Mr. Hubbard.

4 MR. HUBBARD: The objection is, the question was, did
5 you think Mr. Jones did it. That is absolutely improper.
6 He can't ask that. The question is, have you formed an
7 opinion and if you have can you set it aside. You don't
8 ask what it is. Can you set it aside and listen to the
9 evidence here in this courtroom. You can't ask this
10 Juror, do you think he did it. That is absolutely
11 improper.

12 THE COURT: All right. Mr. McGuire, why do you think
13 you can ask that question.

14 MR. MCGUIRE: Well, because the law allows it, it is
15 absolutely appropriate. There is a case, Louisiana versus
16 Monroe where a Defendant, Capital case, there is some
17 publicity about a Defendant's videotaped confession. The
18 jury did go through voir dire, did say they could set it
19 aside. Two jurors that saw the video of a confession were
20 seated on the jury and United States Supreme Court said it
21 doesn't matter if they can say, we heard it, we can set it
22 aside and be fair. The reality is they have been tainted
23 and putting them on the jury was reversible error. That
24 is why I am allowed to ask the questions to prevent
25 reversible error in this case, to make sure that we have

1 somebody who can presume Mr. Jones innocent. If he says,
2 I have formed an opinion, I can't presume him innocent.
3 Do we think he is qualified. No. Do we need to make sure
4 he doesn't get on the jury. Yes. How do we do that, we
5 ask them, that's it. It is commonsense. This is not an
6 objection, this is a request for a favor from the Court.
7 Judge, please don't let him ask that question, it might
8 uncover some stuff that will make this guy unqualified.
9 Not only is it an allowable question, I think I would be
10 committing malpractice if I didn't ask. It would be silly
11 not to ask it.

12 MR. HUBBARD: Your Honor, here is the objection. The
13 way the question went, do you think he did it. The proper
14 question is, did you form an opinion. If we get a yes
15 there, first of all, can you set it aside. But we haven't
16 even gotten that yet, it is, did you think he did it.
17 That is absolutely improper. That is staking this man out
18 right now. Will you think this man, based on what you
19 just heard already outside there, convict this man, you
20 can't do that. First of all, there is no logical
21 difference between asking him based on what you have read,
22 what you have heard, do you think he did it. And the
23 question, have you formed an opinion regarding his guilt
24 based on everything you have read. It is the same
25 question. There is a legal distinction between the two.

1 So the way I ask it it is perfectly proper.

2 THE COURT: No, no, no. I don't need that, don't do
3 that again.

4 MR. MCGUIRE: They do that all the time, Judge.

5 THE COURT: Well, y'all do it too.

6 MR. MCGUIRE: I don't.

7 THE COURT: Both tables, I can clearly say that those
8 two haven't stood up yet. But y'all have both been
9 vigorously representing your, don't do that. I am trying
10 to manage the courtroom so I am going to keep trying. All
11 right, let me hear you further. I kind of like the way it
12 sounds better, have you formed an opinion and if he says
13 yes, what it is.

14 MR. MCGUIRE: It is the same thing. We are picking
15 on little tiny differences in words. It is ridiculous.

16 THE COURT: I agree, y'all are picking on small
17 words.

18 MR. HUBBARD: My justification for doing it that way
19 is almost feeding him a line, do you think he did it.
20 That is difference, that is a different sentence.

21 MR. MCGUIRE: Feeding him a line, I don't really know
22 what that means but I don't think that, I think it would
23 be absurd to say that, the question that I asked is so
24 powerful and moving that I am going to make him compelled
25 to say yes. That is absolutely absurd. Basically what

1 you have learned, do you think he actually did the act he
2 is accused of. That is a very plainly simple question and
3 it is the exact same question, based on everything you
4 have heard, read, have you formed an opinion about Mr.
5 Jones' guilt. I could ask it that way, I don't care.

6 THE COURT: Let's do that. Bring him back in.

7 (Whereupon, the Juror entered the courtroom.)

8 Q Sorry for the interruption. So, what I was asking
9 you when we left off was, based on what you heard and read
10 in these stories have you formed an opinion as to the
11 guilt of the Defendant?

12 A Yes, like I read an article and it had some basic
13 facts. I am sure everybody has got an opinion about it.
14 So, yes, I have an opinion.

15 Q So that is what I want to ask you about. What is
16 your opinion based on everything you have read regarding
17 Mr. Jones' guilt?

18 A From a little bit I read it kind of seemed like he
19 did it.

20 Q Okay. And how strong is that opinion?

21 A I mean, I really don't know how to answer that.

22 Q Maybe it is not a great question. I guess what I am
23 saying is, if another Juror came in here and just said,
24 you know, I have read about the case and I really think he
25 did it and I have formed a pretty strong opinion that he

1 is guilty that would be something that the Judge would
2 want to talk to you about, I would want to talk to you
3 about it. Do you have a strong opinion as to whether Mr.
4 Jones is guilty?

5 A I don't know, to define strong. I mean, I have an
6 opinion of it, I don't like, am I solid, you know, like
7 locked in, probably not.

8 Q Have you heard anything, the Judge has told you that
9 Mr. Jones has plead not guilty by reason of insanity. Do
10 you understand that?

11 A Yes.

12 Q Do you know what that means?

13 A Sort of.

14 Q Tell me what your thought is about that?

15 A I mean, what would you, so like he was mentally
16 incapacitated during the time or like, I guess
17 incapacitated was the wrong -- I can't think of the word I
18 am looking for. I am sorry. It would be like he would be
19 mentally incapable or of like, realizing what he did or I
20 guess why he did it.

21 Q I think you are pretty close. When the Judge was
22 talking to you about it, he gave you a definition of the
23 person would be not capable of understanding the legal or
24 moral wrong with what they did. Does that make sense?

25 A Yes, like why he did it or why he thinks it is bad or

1 not bad.

2 Q Maybe he didn't realize he was doing a bad thing or a
3 morally wrong thing. Does that make sense?

4 A Yes, I can see that.

5 Q Okay. And some folks might show up, not you, some
6 other Juror might show up and say, you know what, I heard
7 about the case, it is five dead children, I am not going
8 to be able to consider not guilty by reason of insanity.
9 That is kind of like letting them off. Does that describe
10 you?

11 A A little bit. I don't know because insanity kind of
12 seems like a very broad term, definitions.

13 MR. HUBBARD: Your Honor, if I may, can you find it?

14 THE COURT: Sure, I will go back to where I read
15 before.

16 MR. MCGUIRE: That would be helpful, thanks, Judge.

17 THE COURT: All right. The definition would be the
18 capacity of a person accused, the criminality of his
19 conduct, conform his conduct to the requirements of law.
20 Is it fair. All right. And that is a broad brush.

21 A Right.

22 MR. MCGUIRE: Mr. Hubbard and I are looking for a
23 different definition there.

24 THE COURT: Okay.

25 MR. HUBBARD: The NGRI.

1 THE COURT: Y'all propose something for me because I
2 didn't, that prepared to read over --

3 MR. HUBBARD: I guess the statute or maybe a charge
4 that would be in your charge book.

5 THE COURT: I don't have a charge book with me, y'all
6 are putting me on the spot and I don't like that. Help me
7 out.

8 MR. MCGUIRE: We are going to come to your aid,
9 Judge, in just a second.

10 THE COURT: Y'all presume I have got a great charge
11 book but then y'all have read them some and they are
12 terrible because--

13 MR. MCGUIRE: Yeah, Judge Peeples gave me his, he
14 didn't think it was worth much.

15 THE COURT: All right, here is the statute, this is
16 one of those books they had already copied out. Okay. At
17 the time of the commission of the act constituting the
18 offense, the Defendant, the result of a mental disease or
19 defect lack the capacity to distinguish moral or legal
20 right from a moral or legal wrong or to recognize
21 particular, the charge is morally or legally wrong. That
22 really clears things up for you.

23 Q Sometimes legal definitions are not clear.

24 A I understand.

25 Q But I think the essence of what is in there, I think

1 the Court will agree with me, is if a person cannot
2 distinguish legal right and wrong or moral right and
3 wrong, he would fit within that definition. That is
4 really the essence of it. Does that make sense to you?

5 A Yes.

6 Q As I was saying earlier, maybe another person in
7 Lexington County could come here and say, you know, I
8 heard about this case, five dead children. That
9 definition that the Judge just read to you, not guilty by
10 reason of insanity, it might say in there that is kind of
11 like letting the guy off and I really can't consider that.
12 Would that describe you?

13 A No, I guess not.

14 Q You can fairly consider that?

15 A Right.

16 Q If the evidence supports it?

17 A If the evidence supported it.

18 Q You could vote for it?

19 A Yes.

20 Q Okay. Now, if you would just come with me in your
21 mind and let's say we are at the break room at your work,
22 TD Bank?

23 A Yes.

24 Q Okay. Let's say we are at the break room at work and
25 one of our coworkers says, you know, I am a supporter of

1 the death penalty, I think we should use it more. And he
2 said, Garrett, what do you think about that. What would
3 you say?

4 A Use it more?

5 Q Yes, we should--

6 A If the crime fit the punishment or if the, yes, if
7 the crime fit, yes.

8 Q Do you have an opinion whether the death penalty is
9 used too much, not enough?

10 A I don't know how much it is used, so.

11 Q You don't keep up with it?

12 A No, not really.

13 Q If you were to say, I want to take you away from the
14 break room, if you are in charge of the State of South
15 Carolina and you could sign a bill saying we are going to
16 have the death penalty or not have the death penalty, if
17 you were Governor for a day. Would you sign to have it or
18 sign we don't have it?

19 A Have it.

20 Q Because it serves a purpose?

21 A Yes.

22 Q What kind of purpose do you think it serves?

23 A I mean, it is a fit punishment for certain crimes.

24 Q Okay. And part of the criminal justice system, there
25 is a word called retribution. Have you heard that before?

1 A What do you mean.

2 Q Well, when we punish somebody for committing a
3 offense there is a couple of things that serves society,
4 serves the criminal justice system. One is, punishing
5 somebody for doing something wrong. That is called
6 retribution. Another thing, another factor is deterrence,
7 it keeps other people from doing something bad. And
8 another thing is called incapacitation. It means that
9 particular person is locked up or gone and can't do
10 another crime.

11 A Okay.

12 Q So those are like the three big factors. And
13 sometimes the death penalty is described as the ultimate
14 punishment, meaning that when you really want to punish
15 somebody for doing something bad, retribution, the death
16 penalty is the ultimate punishment. Does that make sense?

17 A Yes.

18 Q Okay. And I want to ask you about your views about
19 punishment, the death penalty as applied to aggravated
20 murder. And what I want to do is go back to the
21 definition of murder. Okay. So we are on the same page,
22 is that okay?

23 A Okay.

24 Q Okay. Now the Judge already said murder in South
25 Carolina is killing another person with malice

1 aforethought. And malice is sort of the person's state of
2 mind, their heart. It is described as a black, malignant
3 heart fatally bent on evil, wickedness, having hatred and
4 hostility. It is pretty serious stuff. The Judge also
5 said without any just cause or justification or excuse.
6 That means it is not an accident, it is not like somebody
7 cleaning a gun and the gun goes off, it is not
8 self-defense. That sort of thing. It is a person
9 intended to kill, chose to kill and killed. Are you with
10 me?

11 A Yes.

12 Q All right. And the Judge also told you that in South
13 Carolina people, well, let's back up or let me back up.
14 In that situation where a person intentionally
15 deliberately with an evil heart kills an innocent person,
16 do you believe that the death penalty is the appropriate
17 punishment?

18 A Yes.

19 Q And there are some people who would say, there are
20 some cases that are always bad, like the killing of
21 children and the death penalty would be appropriate in
22 that type of case.

23 A Is that a question, I am sorry.

24 Q It is a bad question, Mr. Johnson. So what I hear
25 you saying is, for the intentional killing of an innocent

1 victim the death penalty is appropriate?

2 A Yes.

3 Q And I am going to add something to that and that is
4 an aggravating factor. It can be lots of different
5 things, it can be like robbery, rape, stuff like that.
6 But what I want you to answer my question on is, if the
7 victims are innocent children that type of case demands
8 the death penalty?

9 A Yes.

10 Q Okay. And your answers to these questions are your
11 sense of justice?

12 A Yes.

13 Q And reflection of your values?

14 A Yes.

15 Q Your moral code?

16 A Yes.

17 Q And they are all truthful and under oath?

18 A Yes.

19 Q So in this case that we are talking about, the
20 intentional killing of innocent victims, children. Would
21 the Defendant's background, character, who he is as a
22 person, would that be relevant in fixing punishment, the
23 death penalty for the killing of innocent children?

24 A It could be.

25 Q How so?

1 A I mean I guess it would depend on, because you said
2 if it was like background or circumstances.

3 Q Just sort of walk in life, how he grew up.

4 MR. HUBBARD: Your Honor, I have an objection.

5 THE COURT: We will put it on the record then. Back
6 to the hall again, please, Mr. Johnson.

7 (Whereupon, the Juror was excused from the
8 courtroom.)

9 THE COURT: All right, Mr. Hubbard, and thank you for
10 registering the objection only.

11 MR. MCGUIRE: I appreciate it as well.

12 MR. HUBBARD: Your Honor, I could have stood up much
13 earlier. This has gone way beyond what you do on voir
14 dire. He is asking for his opinion on matters. That is
15 not voir dire. The fact is, have you heard stuff outside
16 that would make you form an opinion, if you can't be fair
17 can you set it aside. And here is, what are your thoughts
18 on the death penalty. Your Honor, I understand why they
19 want to get into that. It is interesting but this man has
20 no idea how we apply it, he has even said that. And then
21 mitigating circumstances, he has no idea what those are.

22 THE COURT: Wait a minute. Hey, hey, y'all did this
23 to me yesterday. Y'all have got, Bill, you get back over
24 here and Rick, you stay over here. And when y'all argue
25 on the law I want you to stand and take positions and they

1 can move around a little bit. This crisscrossing is
2 hugely distracting to Joy and me. Now, keep going.

3 MR. HUBBARD: It is unfair to ask a Juror, what is
4 your opinion on mitigating circumstances when he doesn't
5 even know what we are talking about. And we have gone so
6 far afield asking specific questions about this case,
7 getting into the facts. And how we are putting this Juror
8 in the position where we are asking him his opinions on
9 things that he has no legal definition for and he has no
10 facts.

11 THE COURT: I agree. I understand where you are
12 coming from. What I don't like is the characterization
13 question is, there is no two options. You start out with
14 there is only one option, we are discussing the death
15 penalty, we are discussing the death penalty and he has
16 got -- I want you to ask that earlier rather than setting
17 him up for, let me add one more fact to it and one more
18 fact to it and one more fact to it. That is kind of
19 hardly unfair to him. I went over, can you impose either
20 sentence and then you are going back just asking for one
21 and this is appropriate and he is wanting to say
22 appropriate but I want to hear everything. He is leaning
23 that way to say it but you are giving him a law school
24 exam. Name some mitigating factors. Y'all put me on the
25 spot. Can you define insanity, he doesn't know that, that

1 is a horribly unfair question. He answered it pretty well
2 and you should have stopped with the test. You are
3 beating him up. Explain your opinion on insanity, he
4 doesn't have an opinion on insanity. He just knows it
5 exist.

6 MR. MCGUIRE: I think a lot of people do have an
7 opinion, they think it is an excuse and it is letting
8 people go--

9 THE COURT: No, I didn't mean, I meant in general.

10 MR. MCGUIRE: Oh sure.

11 THE COURT: That is an opinion. And you asked him
12 during that examination, we have got a murder, children
13 are the victims and the State has got to prove an
14 aggravating factor. They have already proved one, the
15 children. You didn't pull him in on that.

16 MR. MCGUIRE: I did.

17 THE COURT: No, you didn't.

18 MR. MCGUIRE: I did.

19 THE COURT: No. You said, all right, here we are at
20 guilt. And the State has proven of an innocent child.
21 Then the State has got to prove an aggravating factor.
22 That was kind of--

23 MR. MCGUIRE: If I did that I apologize.

24 THE COURT: At least that is what I thought you did.

25 MR. MCGUIRE: When I had the children in I thought I

1 was adding aggravating. If I did that I apologize.

2 THE COURT: All right. Well, I mean, how many
3 questions are you going to ask him, he has been pretty
4 fair. How many times are you going to rephrase the
5 question, the same question over and over and over. That
6 is what Mr. Hubbard is upset about, is you keep back down
7 the same road, the same loop. How many times can you
8 reask that same question.

9 MR. MCGUIRE: One time, sort of stated his position,
10 that I added the children--

11 THE COURT: And that is who you are as a person.
12 Your moral beliefs are very strong.

13 MR. MCGUIRE: And, Judge, I would just point out that
14 the sheet, the State's voir dire questions, their number
15 three is what do you think about the death penalty. I am
16 ready to go forward. I have got a few questions.

17 MR. HUBBARD: Your Honor, still several areas I have
18 got a problem with. One, asking the Juror about murder
19 and you are adding a fact, you are adding a fact. You
20 know, it is aggravating or it is murder with children. So
21 we are adding facts, facts that are going to come from
22 this case but then we turn and say, or the Defense is
23 turning and saying, all right, tell me about mitigating
24 circumstances and they have no clue. It is patently
25 unfair. I have a suggestion. Your Honor, we sat in your

1 office, both sides for a long time to try to hammer out
2 the four corners of how voir dire was going to go. Why
3 don't we stay with what we did yesterday before we came
4 out here. Let this be the parameters. Let this be the
5 ditches that we have to drive through. Judge, if we keep
6 going this way I am going to have to keep objecting, we
7 are going to be here through July. And it is just unfair
8 to the jurors coming in here not knowing things.

9 THE COURT: I agree with you, it is. They are
10 totally caught flatfooted, not trained, not read the law.
11 I agree with you, they are flatfooted.

12 MR. HUBBARD: And I would just say, they have been
13 introduced to the fact, what aggravating circumstances--

14 THE COURT: I agree, they get some of, I agree with
15 you. I don't like asking them, tell me some mitigating
16 factors. The guy yesterday said remorse. That is not one
17 so you flunk. No, that was a great answer, it was an
18 honest answer. I agree with you.

19 MR. HUBBARD: I do have a suggestion. Can you just
20 balance it, there is aggravating and mitigating
21 circumstances before you go into adding these factors. If
22 Your Honor is going to allow that, I don't know if you are
23 or not.

24 THE COURT: I kind of like presenting them both
25 because it is going to be presented both ways.

1 MR. MCGUIRE: And Your Honor already gave your
2 preliminary--

3 THE COURT: You need to give them both up front and
4 not just give aggravating. So I am going to direct you to
5 say, here aggravating but also perhaps walk in life or
6 however you got to word it. You need to present both of
7 those to him at the same time and not just murder only,
8 just five aggravating factors, just ten aggravating
9 factors. That is how you are doing him. Then, all right,
10 would you consider, that is not fair to him.

11 MR. MCGUIRE: So, I didn't ask him to come up with
12 his own mitigating factors.

13 THE COURT: He did.

14 MR. MCGUIRE: I did not and what I did was, I gave
15 very accurately the definition of what mitigation can be
16 which really is, the way describing cases it is record and
17 character versus background. And I ask him, would that be
18 relevant, punishment for this type of case. And he could
19 say yes, he could say no. He said yes which is great.
20 But he could also say no, if he says no he could maybe not
21 be qualified. So it is a good question to find out if he
22 is qualified or not.

23 THE COURT: Okay.

24 MR. HUBBARD: My request, Your Honor, is just, when
25 we are asking him, it is not like, let's go through

1 aggravating. I think we need to start, there is
2 aggravating and mitigating circumstances you may hear.

3 THE COURT: I kind of like that fashion better
4 because it makes the question a little fair to the Juror
5 who is flatfooted.

6 MR. HUBBARD: And the second part of what my request
7 would be, first of all, I don't think you can latch them
8 in and say what would you do. I think that is improper.
9 But finally at the very end you have got to come back and
10 say, you have got to bring, come back to those again
11 because that is what, it is the only fair way I know that
12 for somebody off the street that they are going to have
13 both in front of them so you have got to come back to that
14 and be fair if we are going to get to this question of
15 what are your thoughts which I believe is going to far
16 anyway.

17 THE COURT: The facts presented that aren't, include
18 mitigation, understanding that the Defense doesn't have
19 any responsibility to prove beyond any burden of proof.
20 If you don't present any y'all got a problem anyway. So
21 there is going to be both types of testimony out there,
22 all sorts of testimony out there. And, you know, it is
23 kind of like this. The cases that have gone through,
24 sometime jurors don't know what mitigating or aggravating
25 are. If you say is it worse to kill somebody or kill a

1 child, kill a child. They can identify it, they don't
2 know that it has been defined as an aggravating factor or
3 mitigation factor but they now lean this way or lean that
4 way.

5 MR. MCGUIRE: Judge, I have got one more thing to
6 say.

7 THE COURT: Okay.

8 MR. MCGUIRE: Mr. Long who came in earlier listened
9 to all of your questions and said, yes, appropriate
10 response to all of them, indicated he would have been
11 qualified. When you got to the one, two and three he was,
12 if all the evidence is in the guy is guilty for murder,
13 not aggravating murder, just murder, it is the death
14 penalty for him. We just sort of need to acknowledge
15 there can be people like that that will answer all of your
16 questions, seem qualified, but will also be substantially
17 impaired because they are leaning, they are so predisposed
18 to the death penalty. And it doesn't even have to be
19 automatic. That is not the test, the test is just they,
20 they are predisposed under evidence--

21 THE COURT: I understand.

22 MR. MCGUIRE: But how do we square that. I mean, I
23 am just kind of throwing that out there, there are cases
24 where people give qualified answers at certain kinds of
25 questions but they are really something else.

1 THE COURT: All right. You are not presenting to him
2 the balance of the aggravating factors as child victims
3 and, you know, perhaps--

4 MR. MCGUIRE: And I am going to get to it. I am
5 one-hundred percent going to get to it, I have already
6 asked him about mitigation. He is not mitigation
7 impaired, he didn't say he would reject it, he didn't say
8 it was not relevant, he said it could be. And I didn't
9 ask him to come up with something, I didn't do that.

10 THE COURT: You were thinking about it.

11 MR. MCGUIRE: No, I did not.

12 THE COURT: You were thinking about it.

13 MR. MCGUIRE: I think I asked him a very appropriate
14 question.

15 THE COURT: Bring him back in here, I am ready to
16 move on.

17 (Whereupon, the Juror entered the courtroom.)

18 THE COURT: Mr. McGuire will ask you a few more
19 questions.

20 Q Sorry for the interruption. We were talking about
21 your view that the death penalty is appropriate for an
22 intentional killing and that was a reflection of your
23 value system. I want to ask you some other questions now.
24 Some people would say or could say, you know, let
25 something get the life penalty and live out their years in

1 prison. That is really not sufficient or severe enough to
2 punish the killing of innocent children. Does that
3 describe you?

4 A Yes and no.

5 Q Could you just elaborate on that?

6 MR. HUBBARD: Your Honor, I am back to--

7 THE COURT: I am going to let him answer that
8 question, I want to hear the answer.

9 A It could be, depending on more details.

10 Q When you say details are you thinking about the facts
11 of the crime or what?

12 A Yes. Like, I mean, was it like one person, was it
13 like one-hundred people.

14 Q For example, five children.

15 MR. HUBBARD: Your Honor,--

16 THE COURT: No, that is what I don't want to get
17 into. I want it both ways, mitigation and aggravating,
18 don't just point one way. Rephrase that question.

19 Q Sure. So right now, the chair that you are in right
20 now, you are a potential Juror, okay, and that is why we
21 are asking all of these questions. That is why the Judge
22 is very interested in your answers, I am very interested.
23 And you are not going to be forced to do anything or
24 follow any rules unless you get put in one of these chairs
25 over here on the jury. Okay. So we just want your

1 personal, honest, candid views and I think you have been
2 very good about that. I want to ask you a little bit more
3 about that, just your personal view. If we were at the
4 water cooler at work and someone said there is some cases
5 that demand the death penalty, like killing a police
6 officer, risking their lives to protect us, maybe a rape,
7 murder case. What I heard you say earlier was that the
8 death penalty is always appropriate in a case where
9 multiple children are killed.

10 A Yes.

11 Q Now I want to kind of put you over here in the jury
12 box and there are some rules of court I want to ask you
13 about, about some legal principles and just ask you your
14 opinion about them to see if you can follow them. Okay.
15 So some of the rules in court are for me, some for the
16 Judge, some for Mr. Jones but some are for you. And when
17 you take a Juror oath you are stating to the Judge you
18 will try the case based on the evidence and in a penalty
19 phase, assuming the person was found guilty, like the
20 Judge said, you would move into a second phase. And that
21 is the penalty phase, life in prison or the death penalty.
22 Okay.

23 A Okay.

24 Q Now, the first phase, guilty or not guilty, those
25 questions are fact and science can usually prove one of

1 them or not. If a car was red or black, it either was or
2 it wasn't or, these are fact questions, something did or
3 did not happen. Right. Does that make sense?

4 A Yes.

5 Q Okay. And the penalty phase for a Capital trial, the
6 jurors, the individual jurors decision is described in the
7 case law as an individual moral judgment. Does that make
8 sense to you?

9 A Yes.

10 Q It is more of an emotional moral judgment, it is not
11 a fact based question. Science can't answer that, it is
12 just really a person's individual position. Does that
13 make sense?

14 A Yes.

15 Q And when you take a Juror oath, if a Juror reaches
16 their individual moral judgment and it is either one or,
17 whatever it is, if somebody on the jury said, we want you
18 to change your position and just come over with the
19 majority just for the sake of getting a majority or
20 unanimous verdict and they abandon their individual moral
21 judgment that is actually against the Juror oath.

22 MR. HUBBARD: Your Honor, I object to this line. The
23 same objection I made yesterday.

24 THE COURT: Rephrase that question, please. The
25 objection is sustained.

1 Q So, if you saw a Juror where it was clear where they
2 had reached their individual moral judgment would you
3 respect that and let them have that?

4 A Yes, they would have, they would have their own
5 judgment, right.

6 Q Right. And in a matter so serious and grave as to
7 whether or not another human being lives or dies, you
8 expect some disagreement on that question, right?

9 A Yes.

10 Q And then we can agree that it would be wrong to
11 basically to try to force somebody to kill a human being
12 when they didn't want to?

13 A Correct.

14 Q And would you be able to end the day with some
15 disagreement. Just say, you know what, we are all
16 individuals, we are entitled to our opinion, it is a
17 serious matter, it is okay, we can send a note out to the
18 Judge and be in disagreement.

19 MR. HUBBARD: Your Honor, I object to that based on
20 yesterday, your rulings yesterday.

21 THE COURT: Sustained.

22 Q But you would respect everybody else, let them have
23 their individual moral judgment?

24 A Yes.

25 Q Okay. I want to ask you about one more legal

1 principle, it is a little unique. And normally we think
2 of jurors speaking with one voice and everybody agreeing
3 on something. Right?

4 A Right.

5 Q From TV the Juror says the verdict of the jury and
6 all twelve agree, right?

7 A Right, on TV.

8 Q Before I went to law school that was my -- so here is
9 the thing, in a Capital case the law says that each
10 individual Juror can decide what mitigation evidence is.
11 And the Judge read to you some statutory ones and I think
12 he told you it is basically any reason not to vote for
13 death. Does that make sense. I want to be a little bit
14 more specific but some Juror can just say I don't want to
15 vote for the death penalty and that is a good enough
16 reason. Does that make sense to you?

17 A Yes, I mean they can say--

18 Q And people can have different reasons. And what I
19 mean is, all twelve people don't have to agree that there
20 is a piece of mitigation evidence that exist. Somebody in
21 this seat could say a Defendant might have had a good
22 relationship with his father and did some good things in
23 life or somebody might say he had a hard life, grew up in
24 poverty. And when it comes to it I am going to sign that
25 the weight of mercy, I am not going to vote for the death

1 penalty. And this person could have a different reason,
2 and this person could have a different reason and this
3 person could have a different reason and somebody could
4 say I don't even have a reason, I just don't want to kill
5 another human being and mercy alone is my position. And
6 you see how they could all be different?

7 A Yes.

8 Q And nobody has to agree on that?

9 A Okay.

10 Q That is another part about the individuality of the
11 penalty phase, is that a principle that makes sense to you
12 and that you could follow?

13 A Yes.

14 Q So I am just going to visit one more thing, I know I
15 said that a couple of times. But I mean it this time,
16 Judge. In that sheet that the Judge went over with you,
17 type one, type two Juror, type three Juror. When I was
18 talking to you earlier, considering everything that we
19 have talked about, the Judge talked to you about, it
20 sounds like if, in a case where you can consider all the
21 evidence, the aggravation, mitigation, life sentence,
22 death sentence, that when it comes to, when it really
23 comes to an intentional killing of an innocent victim it
24 sounded like you were more type one--

25 MR. HUBBARD: Objection, objection.

1 THE COURT: I think that is unfair. Rephrase it
2 because you are suggesting the answer.

3 MR. MCGUIRE: I put everything in there, life, death,
4 mitigation, aggravation.

5 Q Now, knowing all of that that the Judge talked to you
6 about and the concept of mitigation, concept of
7 aggravation, knowing that the life penalty would be
8 available to some jurors, death penalty would be
9 available. Knowing all of that, everything that we have
10 talked about today, the type one Juror, intentional
11 killing of an innocent person, that type one Juror says
12 the death penalty is the appropriate penalty. Type two
13 Juror would say the life penalty is always the appropriate
14 penalty. And three is it depends but it sounds like if it
15 is an intentional killing an innocent person that you are
16 really more a type one. Is that right?

17 MR. HUBBARD: Objection.

18 THE COURT: I will let him answer it.

19 MR. HUBBARD: My objection for the record, it has
20 been asked and answered by Your Honor. Your Honor,--

21 THE COURT: It has been asked and answered, I am
22 going to let him ask this.

23 Q Do I need to restate it?

24 THE COURT: No, please don't. He has heard it three
25 times.

1 A The types, from what I understood was a
2 generalization, not specific for, so, I mean, depending on
3 the crime and the incident it could be life or it could be
4 either one. So that would be type three. It seemed like
5 type one was like always, you know, always death, always
6 life in prison.

7 Q And it is sort of unfair because you haven't heard
8 evidence. But just knowing nothing more than the person,
9 they got the right guy, convicted, killed an innocent
10 victim on purpose. In that situation are you type one,
11 two or three?

12 A Like this specific--

13 MR. HUBBARD: Your Honor, objection--

14 THE COURT: I think it is asked and answered.

15 MR. HUBBARD: Yes.

16 THE COURT: He said the same answer twice.

17 MR. MCGUIRE: I disagree, I thought it was more, it
18 was him wrestling with the, it was a generalization type
19 thing. I am just bringing him back to--

20 THE COURT: You reask him, you took all the other.

21 MR. MCGUIRE: No.

22 THE COURT: Yes, you did. You said if it is murder
23 of an innocent person then where do you follow. That
24 takes out the mitigation, the aggravation, the
25 affirmative, takes out everything. You took that out the

1 second time you asked it. He has answered it. And my
2 objection goes further. Now he is getting into specifics,
3 case specific, that is objectionable.

4 MR. MCGUIRE: I disagree with that.

5 THE COURT: No. I didn't really get what he said. I
6 have already ruled that your second question, you reasked
7 it, left out everything.

8 MR. MCGUIRE: Let me take one more shot at this and I
9 want to try to do it in the way that it is, I think the
10 Court will be satisfied.

11 Q So in all Capital cases they get to the very end.
12 That means that there will be an opportunity to evaluate
13 the State's aggravation evidence. In this case it is
14 multiple victims of murder and--

15 THE COURT: You are getting case specific.

16 MR. MCGUIRE: Just child killing, multiple victims,
17 child killing, that is a category, it is not case
18 specific.

19 THE COURT: It is case specific in this one.

20 MR. MCGUIRE: Well it is a category, it is like rape,
21 murder, police officer killing, child killing.

22 Q So that is where we are, are you with me?

23 A Yes.

24 THE COURT: He is confused. I know you are confused,
25 you are listening to me arguing with the lawyers. That is

1 why I make you step out because we do it that way. I want
2 you to understand that my marshaling with the lawyers and
3 telling them to rephrase their question, that is what I
4 get to do. And most of the time you are not in here to
5 listen to it because it is confusing. So reask your
6 question, try to be clear and concise.

7 A So as the Judge was talking to you about the second
8 phase, the penalty phase, that means you as a Juror, if
9 you were on a jury you would have the opportunity to
10 evaluate aggravating evidence, child killing, multiple
11 victims, you would also be able to evaluate mitigation
12 evidence, it could be anything about a person's life, how
13 they grew up, their background, could be anything. You
14 have an opportunity to consider that. And the two
15 penalties would be life and death. And all of that would
16 be on the table. And but the one thing, see, I talked to
17 a lot of people and said, maybe it was self-defense or
18 accident, but that is why I am going back to--

19 THE COURT: Wait a minute. Wait a minute. His
20 self-defense--

21 MR. MCGUIRE: He is not guilty.

22 THE COURT: -- he is not guilty. That is terribly
23 unfair.

24 Q What I want to bring you back to, some people would
25 say, if the guy really meant to do it, knew right from

1 wrong, intentionally kill innocent victim then the penalty
2 that I am, that I think is the very most appropriate is
3 the death penalty and that you would be more of a type one
4 as opposed to two or three. Is that fair.

5 MR. HUBBARD: Objection, objection to that question,
6 Your Honor.

7 THE COURT: No, I think the question ought to be,
8 where do you found yourself.

9 Q Where do you fall out on one, two and three.

10 THE COURT: One, two or three,--

11 MR. HUBBARD: Without the specific facts of this
12 case. That is the underlying problem.

13 THE COURT: I got you.

14 A So somebody, yes, intentionally killing innocent
15 individual, individuals, yes.

16 Q Type one?

17 A Type one.

18 MR. HUBBARD: Your Honor, that is my objection
19 because--

20 THE COURT: It is. I will let you come and ask
21 questions.

22 Juror Garrett Johnson Examination By Mr. Hubbard

23 By Mr. Hubbard:

24 Q Mr. Johnson, I know you have had a long day yesterday
25 and probably a longer one right now. Do you understand,

1 as the Judge said, we have two potential parts to this
2 case?

3 A Yes.

4 Q The first phase, we are just trying to decide is he
5 guilty or is he not guilty. Do you understand that?

6 A Yes.

7 Q And you understand from the Judge that if you and
8 other jurors were hearing this case and y'all decided he
9 was guilty then y'all have already decided that he acted
10 with malice, that the victims were, has been said,
11 innocent, they didn't cause this. You would have already
12 decided that. Do you understand that?

13 A Yes.

14 Q And then you get to the second phase, in that
15 situation. And the second phase is all about what kind of
16 punishment. Now and you understand that?

17 A Yes.

18 Q Now, did I hear you correctly, if you get to that
19 other phase and determine life or death you would want to
20 hear everything, all the facts, all the issues that could
21 be brought forward to say, here is aggravating things that
22 may, things that we didn't talk about maybe in the first
23 part but things that show this case may be worse. And
24 then there is things that the Defense might present or
25 that might come out in the case even as we present it that

1 show that maybe there are things in favor of the
2 Defendant. Do you understand that, that you might hear
3 those things.

4 A I am sorry.

5 Q When we get to that second phase you have aggravating
6 and mitigating circumstances?

7 A Yes.

8 Q Would you want to hear all of those before you
9 sentence somebody?

10 A Yes. Wouldn't all of that be done in the first
11 phase, right?

12 Q No sir, no sir. That is why I was getting there. It
13 got really confusing a while ago, didn't it, with all of
14 those questions. The first half is he is guilty or not
15 guilty.

16 A Okay.

17 Q Once you decide somebody is guilty then and only then
18 do you consider punishment.

19 A Okay, right.

20 Q And punishment in this type of case would either be
21 life or death. And my understanding is you can consider
22 either one of those options.

23 A Yes.

24 Q And in that second phase, in considering those
25 options, you would hear aggravating circumstances, things

1 that talk about that murder that might give you more
2 specific information that might be bad about the
3 Defendant. But you also might hear mitigation factors
4 that may be in his favor. Now, if you are on a jury and
5 deciding whether he gets life or death would you want to
6 hear both the good and the bad?

7 A Yes.

8 Q Would you feel like you need to have that before you
9 can truly issue a verdict of life or death?

10 A Yes.

11 Q And you would want to?

12 A Yes.

13 Q I think that is all we can ask you, Mr. Johnson,
14 thank you so much.

15 THE COURT: All right. Good deal. We will put you
16 in the hall for a second and bring you back in here in a
17 moment.

18 (Whereupon, the Juror was excused from the
19 courtroom.)

20 MR. MCGUIRE: Your Honor, move to strike for cause.
21 When the Juror understood that the evidence, that it was a
22 deliberate killing, even when I put everything in
23 mitigation, life is available, death is available, he came
24 to type one. He is like, he just didn't know everything
25 when he decided type three. But when he learned that it

1 wasn't self-defense, accident, intentional killing he said
2 he is type one.

3 THE COURT: There you go again. Self-defense is not
4 guilty, accident is not guilty. It is guilty, all of that
5 is now off the table. It is confusing to these poor
6 jurors, the aggravating factors has got to be shown in the
7 guilt of innocence by necessity because it is part of the
8 group anyway and that is confusing to them. There is
9 death of a child, that is one of the aggravating factors
10 so they are already hearing it, it is confusing to them
11 like you have got to tell them the aggravating factor
12 again. That is what they are not getting. This kind of a
13 hard concept to get is, what do you mean again.

14 MR. MCGUIRE: Of course, he came out as being
15 automatic death penalty on murder with no aggravator. He
16 said, yes, that's me, the death penalty.

17 MR. HUBBARD: Your Honor, this was also the Juror
18 that thought all of that was in the first phase because he
19 was so confused which is ultimately the bedrock basis of
20 all of my objections. It is misleading and confusing
21 somebody who as Your Honor is noted is coming right in off
22 the street. That is the problem.

23 THE COURT: I don't know how y'all are going to, if
24 you continue to ask questions, if I continue to allow
25 y'all to ask questions in this fashion how would anybody

1 qualify unless they are a type two and then they are not
2 qualified. That is kind of the way you are asking the
3 questions.

4 MR. MCGUIRE: Well, I would disagree. There is no
5 magic silver unicorn question that we have all agreed on
6 that is the perfect question. It is a confusing subject,
7 it is difficult to do this and I am trying to do it by
8 just using plain English addressing one factor at a time.

9 THE COURT: See, what you did, what you do, what you
10 did twice is. If this is proven and this is proven and
11 this proven then the death penalty is appropriate. You
12 leave out the always and then when you get to life you put
13 it in there and that is not fair either.

14 MR. MCGUIRE: Maybe that I ask it two or three times,
15 maybe I am trying to get it right.

16 THE COURT: I think we have got to work on your
17 questions because you keep going with the same question
18 over and over until you get the answer you are talking
19 about.

20 MR. MCGUIRE: Judge, I mean, I don't think anyone
21 thinks that me asking a question can change his personal
22 opinion as to whether the death penalty is the only or
23 most appropriate punishment, just by asking a question. I
24 don't have that talent to get him to say, I am going and
25 put inside in him an opinion that he should automatically

1 kill people for the offense of murder. I can't do that
2 and I do request the latitude to break it down, address
3 these issues individually. I am doing it as simple as I
4 possibly can, it is a terribly difficult subject to talk
5 to these people about it. It is hard. And to say that we
6 have to put more stuff in our questions to make sure it is
7 all, every question has everything in it, it is impossible
8 and we don't have the talent to make somebody have the
9 belief and personal opinion that death is always the
10 appropriate punishment when somebody intentionally kills
11 an innocent victim. I don't have that talent, we can't do
12 and we need to ask for the little, tiny, little bit of
13 latitude to be able to ask these questions this way.

14 THE COURT: I will give you a lot of latitude but
15 y'all get so case specific.

16 MR. MCGUIRE: It is category specific, Your Honor.

17 THE COURT: You are calling it category specific, he
18 is calling it staking. Y'all are saying the same thing
19 and you think it is fine and he thinks it is the other
20 way.

21 MR. MCGUIRE: Category specific would be Mr. Juror,
22 some people might say that the death penalty is always
23 appropriate in some category of cases, like a rape,
24 murder, child killing, police officer.

25 THE COURT: Let me rephrase my question. If you have

1 multiple children killed, they are innocent, that is what
2 you did.

3 MR. MCGUIRE: So the case law is, can it be a fair
4 and impartial Juror in this case and he might not be and
5 that is why we have to focus on child killing, we have to.
6 Multiple victims, child killing, we have to get that out.
7 What if he says, no, no, not for me, I have three kids,
8 child killing. What if he says that, that is what you
9 need to know, Judge.

10 THE COURT: I do need to know that but he didn't say
11 that.

12 MR. MCGUIRE: He did say that.

13 MR. HUBBARD: Two things, one, you brought that out
14 in your charge but the problem is with the question about
15 can I put something in their hearts and minds with one
16 question. I tell you what you can put in their hearts and
17 minds with that one question and it is confusing and that
18 is what I think is evident. This Juror, on my, when I got
19 up was confused about mitigating and aggravating and when
20 they come about. I have a suggestion. After you rule on
21 this Juror can we maybe take a break and maybe re-huddle
22 just to see if we can make things go faster.

23 THE COURT: I want to try to phrase the question, can
24 you impose either penalty as opposed to, do you think only
25 one penalty is appropriate, which is it. Maybe that is a

1 better way to characterize it.

2 MR. MCGUIRE: And, Judge, that is not a legal ground.

3 THE COURT: He is saying, let's huddle, that is not
4 an objection but that is something we are going to do.

5 MR. MCGUIRE: Your Honor, I want to take a page out
6 of Mr. Hubbard's playbook and tell you this. Mr. Young
7 and I have been Counsel in every Capital trial in South
8 Carolina since approximately 2009. And every Judge has
9 let us ask these types of questions.

10 THE COURT: Judge Couch didn't.

11 MR. MCGUIRE: Child victim, yeah.

12 THE COURT: Yeah but he kept calling you back, quit
13 asking that question because I read the transcript
14 thoroughly.

15 MR. MCGUIRE: And he would listen to mitigation in
16 evidence.

17 THE COURT: And you picking out the two you want
18 only, the aggravators.

19 MR. MCGUIRE: The test is, can a Juror be fair in
20 this case based on this evidence, this type of case. That
21 is why we have to do it, every Judge has allowed it, every
22 Judge. For the record, can I preserve the record just
23 very briefly, Judge. That if you were to allow this Juror
24 to sit it would violate Mr. Jones right to a fair trial
25 pursuant to the Sixth and Fourteenth Amendment and also

1 pursuant to the holdings in Dickerson, Witherspoon,
2 Illinois. And, Judge, I mean, I think you are aware of
3 this but the law in the cases if we exhaust our strikes
4 and one Juror that the Supreme Court thinks is impaired
5 then it all comes back.

6 THE COURT: I find Mr. Johnson qualified. I think he
7 was confused by the piecemeal question you asked. When
8 you led him, suggested the answer that he was mostly
9 likely a type one. Every other answer he gave was, he
10 wanted to hear, he wanted to hear, he wanted to hear
11 everything and he would consider everything. He said that
12 repeatedly, totality of everything. He was openminded,
13 and a listening Juror, I find him qualified. All right,
14 bring him back, please.

15 (Whereupon, the Juror came into the courtroom.)

16 THE COURT: Mr. Johnson, you are still under oath,
17 you will remain under oath. You have been determined to
18 be a qualified Juror. That does not mean that you will be
19 seated as a Juror. You have got the card to the website,
20 go on there Thursday and see what it tells you to do as a
21 qualified Juror. You may have to come back in or check
22 back in. Just watch that website to determine when we
23 need you back in. In the meantime you are still under
24 oath, do not communicate, discuss with, ask questions
25 about, respond to questions about and avoid media reports

1 of the case.

2 JUROR: Okay.

3 THE COURT: Can you do that?

4 JUROR: Yes, sir.

5 THE COURT: All right, I will ask you that when I see
6 you again. Okay.)

7 (Whereupon, the Juror was excused from the
8 courtroom.)

9 THE COURT: Let's take a short break because I need
10 one and then we are going to talk about how to
11 streamline.)

12 (Whereupon, a short break was taken.)

13 THE COURT: All right, we are back in order. We had
14 a bench conference and we were discussing the individual
15 moral judgment and the line of questioning that the
16 Defense was proposing that they would be allowed to ask.
17 The way the last went, kind of summarizes. You understand
18 there is a term called individual moral judgment.
19 Everyone may have that. Would you respect others in
20 whatever individual moral judgment they may have as well
21 as they should respect theirs, everybody act in a civil
22 manner. And there may be a time when everybody agrees or
23 disagrees. The discussion at the bench was, what
24 follow-up question to that would be allowed to ask. And
25 Mr. Young, let me hear you on that. What question do you

1 propose to be asked after that.

2 MR. YOUNG: Your Honor, the Defense question would
3 be, if one Juror in their individual moral judgment was
4 determined that life was the appropriate punishment then
5 the punishment would be life. That if the jury can't
6 reach a unanimous decision or all twelve individual moral
7 judgments are not in agreement the Judge will take the
8 case and sentence to life. Are you okay with that, can
9 you follow that law, to be asked after that.

10 MR. HUBBARD: Two problems with that. First, the
11 law, case law says that jurors know the consequences or,
12 know the consequences of their sentencing. So life means
13 life, we can't get around that, life means you die in
14 prison. Death means just that, if you sign that, that
15 death sentence is a death verdict. It is like a death
16 warrant. They know the consequences of that. If they
17 can't reach a decision then it is out of their hands.
18 They aren't sentencing. So, there is no consequence that
19 they need to be apprized of. But here is the real bedrock
20 problem with what they are proposing, if Your Honor needs
21 to read that I will let you read it first.

22 THE COURT: Keep on.

23 MR. HUBBARD: My objection is that it minimizes the
24 jury's responsibility. There is case after case saying
25 that if we in any way told jurors they don't need to worry

1 about something that is going to be a problem.

2 THE COURT: This is where I think I want to stop it
3 is questions of the sort of, the last question asked on
4 several different jurors in another case that people were
5 involved in was, the Judge will charge you in the
6 sentencing phase decision making process. The decision is
7 called individual moral judgment. This is a question, we
8 would expect some disagreement and the case may be so
9 significant in a case as important as this. Could you
10 respect or let people have and keep their own individual
11 moral judgments. The answer was given and they stopped.
12 That was Mr. McGuire actually. I read another one that
13 was you, Bill's question in another case. And I am very
14 comfortable with that.

15 MR. HUBBARD: Yes, sir. To finish my thought though
16 too and why I would like to stop right there--

17 THE COURT: I have ruled.

18 MR. HUBBARD: The second question, is that where your
19 ruling is--

20 THE COURT: That is where I am comfortable right
21 there, I don't think y'all should go past that.

22 MR. HUBBARD: Okay, fine.

23 THE COURT: Because I am concerned that if the Juror
24 knows they don't have to make a decision, come to court
25 and they can bail out real quick.

1 MR. HUBBARD: There is case law on that.

2 THE COURT: We don't have any moral responsibility
3 invested in this and we have gone through four weeks of
4 trial, I want the jury to be very aware they have to make
5 a unanimous decision. If they don't make a decision, I
6 know what the statute is. I think the jury knows that
7 they have got to impose a sentence in the sentencing
8 phase. If they unanimously vote for life that is the
9 sentence. If they unanimously vote for death then that is
10 the sentence. If we don't reach a verdict then the Judge
11 gets to it, I think that puts the whole case in an awkward
12 position.

13 MR. MCGUIRE: Your Honor, may I be heard?

14 THE COURT: Yes.

15 MR. YOUNG: Your Honor, we would object to the
16 limitation. Jurors are told they can vote for life for
17 any reason, right?

18 THE COURT: Yes.

19 MR. YOUNG: Or no reason at all or mercy alone.

20 THE COURT: Sure.

21 MR. YOUNG: And, jurors, you can't expect jurors who
22 say, well, we are going to respect people's rights, have
23 no reason, I don't have a reason, I just feel like it is
24 appropriate and this is what I want to do, to sit right
25 there and get beat up by jurors who want to vote a

1 different way. The United States Supreme Court labels it
2 the decision about whether or not another person lives or
3 dies is an individual moral judgment. That is not my
4 language, I didn't come up with it.

5 THE COURT: I understand.

6 MR. YOUNG: A long history of United States Supreme
7 Court cases. And in South Carolina decisions come about
8 in one of three ways. Twelve individual moral judgments
9 in agreement for death, that is the appropriate
10 punishment. Twelve individual moral judgments did agree
11 for life, life is the appropriate punishment or they
12 agree, disagree in which case the Court gives a life
13 sentence. That is the statute, all we are trying to do is
14 tell the jurors the truth so that they can make a
15 decision. We are not trying to hide the ball from the
16 jurors. And if you don't tell the jurors about the third
17 option that is based in the statute as to how they arrive
18 at a verdict they labor under the misconception that if
19 they can't reach unanimity that the case will have to be
20 tried again. And Your Honor can't allow a jury to make a
21 decision about whether or not Mr. Jones lives or dies
22 under the false pretense that by failing to read unanimity
23 on the each individual juror's individual moral judgment
24 then the case will have to be retried again. And all we
25 are asking for is to tell the jurors the truth of what

1 happens. If all twelve of them decide for death there is
2 death. All twelve of them decide for life it is life.
3 But they will deliberate, no one has instructed them not
4 to deliberate. They need to know that if they can't reach
5 an agreement that is okay, the law allows them to be, to
6 not be in agreement.

7 THE COURT: I don't want to go that last step, I am
8 just, consistently with these jurors in this other case
9 that is where y'all stopped or at least the pages I have
10 got. Y'all did it with several jurors, exactly what we
11 are talking about. So if somebody has a different moral
12 judgment than you, you can respect and you wouldn't want
13 somebody imposing their moral judgment on you, you would
14 respect them. And likewise you would respect theirs. And
15 I think in one witness Mr. McGuire said, if you saw that
16 and you thought somebody's moral judgment was being
17 imposed on you would let the Judge know that it was
18 getting non-civil or a little bit heated, whatever the
19 words were. That seems to be appropriate too, the one, we
20 can agree or disagree and maintain my individual moral
21 judgment, appropriate question.

22 MR. YOUNG: I understand the Court's ruling. I am
23 not going to argue with the Court's ruling, the Court
24 understands our objection.

25 THE COURT: Okay. You want to try another one, or

1 y'all want to eat lunch and come back.

2 MR. YOUNG: I like that idea.

3 THE COURT: It is 12:20, let's go eat lunch, 1:30, an
4 hour and ten minutes.

5 (Whereupon, a lunch break was taken.)

6 THE COURT: All right, are we ready to get to work?

7 MR. YOUNG: Yes, sir.

8 THE COURT: All right. Before we bring the next
9 Juror, Mr. Young, you have an issue you want to present
10 before I bring a Juror in.

11 MR. YOUNG: Yes, sir.

12 THE COURT: All right. Go ahead.

13 MR. YOUNG: Your Honor, as the Court is aware there
14 is a newspaper stand out in front of the Court House where
15 the, it looks like The Chronicle, The Dispatch News,
16 Lexington County Chronicle is the paper and it was filled
17 with the headlines, it says, Mass Slayer's Trial opens out
18 in front of the Court House. So everybody coming in, all
19 the jurors coming in are walking past this and it has been
20 taken out now and it is now empty. I don't know if it is
21 refilled or not. But I am going to put in a copy of a
22 picture of the front of the newspaper box, Court's number
23 67 and renew our motion for a change of venue, Your Honor.

24 THE COURT: Does the State want to be heard?

25 MR. HUBBARD: Your Honor, I believe it is a voir dire

1 question, just publicity. Obviously I frankly don't even
2 know where the newspaper box is down there.

3 THE COURT: The Clerk's office saw it first, they
4 brought it to my attention sometime at mid-morning. So I
5 believe it is a voir dire question, the media. And so
6 respectfully I will deny the request for a continuance,
7 transfer of venue.

8 (Whereupon, Court's Exhibit 67 was marked for
9 identification only.)

10 THE COURT: The next Juror is going to be number 240.
11 Are y'all ready?

12 MR. HUBBARD: Yes, sir.

13 MR. YOUNG: Yes, sir.

14 (Whereupon, Juror 240, Thomas Langdale entered the
15 courtroom.)

16 Thomas Langdale, being
17 first duly sworn, testified as follows:

18 CLERK OF COURT: State your name and spell your last
19 name.

20 JUROR: Thomas Langdale, L-A-N-G-D-A-L-E.

21 Juror Thomas Langdale - Examination by The Court

22 By The Court:

23 Q Now, you have been placed under oath to tell the
24 truth. All right, my name is Eugene Griffith, I am the
25 resident Judge from over at the Eighth Circuit and I have

1 been assigned this case here today. And it is an
2 opportunity for us to get to know you a little bit and ask
3 you some questions. I will remind you that since you are
4 under oath all of your answers need to be truthful and
5 candid. It is kind of, we are trying to gather
6 information about you, the lawyers are, the parties are,
7 the Court is. And so a lot of these questions are going
8 to kind of maybe be opinions or recollections, there is
9 not a right or wrong answer. It is just give your, it is
10 an opinion, give it. So just be truthful with it. If
11 they ask you what color you drive you tell them the right
12 color but that is an example of a very easy question, what
13 opinion is the color of your car, unless it is some odd
14 color, you know. Truthful answers and no right or wrong
15 answers, you will be okay. Do you understand.

16 A Yes, sir.

17 Q First part of this, I am going to explain some things
18 to you, ask you some questions and go over some of the
19 criminal procedures and whatnot of how mechanically a
20 trial proceeds and kind of what you can expect. And the
21 lawyers will then get up and follow-up on some of my
22 questions and they will ask you some other type of
23 questions. Now, first and foremost, qualification of
24 jury's take a long time, you are the fifth one on here and
25 it is Wednesday after lunch. I am not sure exactly how

1 long it will take to get the jury, qualified jurors
2 paneled and then selected from that panel. So if you
3 qualify as a Juror that doesn't mean you get to sit on it,
4 it means you are part of the group and may get selected
5 from. So it gets narrowed down. The trial may take into
6 May, almost into June. Do you have anything scheduled on
7 your schedule, vacation, are you getting married or
8 anything like that here in the next several weeks that is
9 going to affect your ability to serve?

10 A No, sir.

11 Q So if you were picked you could serve?

12 A Yes.

13 Q Now, when I introduced myself on Monday and I made
14 you take an oath saying I won't discuss the case with
15 anybody and I won't let anybody discuss the case with me.
16 Have you followed that oath?

17 A Yes sir, I have.

18 Q Has anyone tried to discuss the case with you?

19 A My wife has asked me multiple times but I told her
20 not to ask.

21 Q And you could say Judge Griffith says not to discuss
22 the case, that is a good answer. Now, the media has been
23 reporting certain things and they get to do that and some
24 television reports, newspaper, whatever. Have you had a
25 chance to observe any of those, have you seen any of

1 those?

2 A I heard on the 4:00 o'clock news Monday, they briefly
3 started and I just turned the TV off and walked away.

4 Q Okay. So you didn't consider that but you minimized
5 your viewing of that?

6 A Yes, sir.

7 Q Fair enough. Any other opportunities to see anything
8 on the news?

9 A No, sir.

10 Q Okay. Thank you for following that instruction.
11 Now, we gave you some preliminary papers to review, I am
12 going to get to those in a minute. But you are a member
13 of your immediate family, that would be your wife or your
14 children, a member of any organization that is advocating
15 for victims rights which is Mothers Against Drunk Driving,
16 Students Against Drunk Driving, Citizens Against Violent
17 Crime, Bikers Against Child Abuse. Any advocacy groups
18 like that?

19 A No, sir.

20 Q Now, are you or a member of your immediate family
21 contributed to the Troopers Association, Sheriffs
22 Association or any group that supports law enforcement?

23 A No, sir.

24 Q Very well. Are you or a member of your family
25 connected in any way to any of these lawyers here in the

1 courtroom?

2 A No, sir.

3 Q Are you connected in any way to any of the Jones'
4 family?

5 A No, sir.

6 Q All right. Now, the long list, potential list, I
7 noticed that you brought a sheet of paper. Did you jot
8 down some of their names?

9 A Yes, sir.

10 Q My question to you, you reviewed that list and had
11 ample time to do it by now?

12 A Correct.

13 Q Are any names on that list, are you connected either
14 by blood, marriage or close personal friends to any of
15 those potential witnesses?

16 A No, sir.

17 Q Now, do you have any relationship with those people,
18 social, church, business relationship with any of those
19 potential witnesses?

20 A No, sir.

21 Q Not connected to them?

22 A Not connected to them.

23 Q All right. I am going to give you a thumbnail sketch
24 and I am going to call it a big brush, what to expect as
25 the case gets started. Right now we are in the

1 preliminary stage of trying to get a jury together. And
2 so in this case Mr. Jones is charged with five counts of
3 murder. I want to define murder for you first because you
4 have kind of got to understand some of my follow-up
5 questions. Murder is defined as the killing of another
6 with malice aforethought. That is the actual definition,
7 that is very short and concise but you have got to
8 understand parts of it. Malice means wicked, evil,
9 depraved heart, ill-will, hostility. That is what malice
10 means towards another person. Now, the definition of
11 murder excludes just cause or an excuse for killing
12 somebody. It doesn't include that. Now when the State
13 alleges murder certain aggravating factors that are
14 defined in our statutes, the State can then decide whether
15 or not it wants to seek the death penalty. And so the
16 State has to determine whether or not it wants to do that
17 or can do that. Now, once a person is accused of a crime,
18 any crime whatsoever, the State moves forward with an
19 indictment. From that time all the way until the trial is
20 conducted and the jury reaches a verdict, that person
21 accused is presumed innocent. That presumption remains
22 with them all the way through the entire trial until the
23 jury makes a decision. Okay. And in most criminal cases
24 once that decision is made, guilty or not guilty, then the
25 Court or the Judge imposes a sentence, whatever the law

1 allows on whatever the crime may have been. Now, in a,
2 the State must also prove the elements of whatever the
3 accusations are and in this case it is murder. But
4 whatever it is there are certain elements, element of
5 this, element of that, those elements. The State has to
6 prove each and every element beyond a reasonable doubt,
7 meanwhile the Defendant is presumed innocent, Mr. Jones is
8 presumed innocent sitting right there. In most cases the
9 Judge determines punishment. A Capital case is different.
10 In a Capital case the jury determines punishment if
11 necessary. All right. Now, so because a Capital case is
12 different it is divided into two phases, part one, part
13 two or phase one, phase two. Phase one is guilt or
14 innocence. And so that is tried in a trial by itself and
15 then the jury makes a determination of guilt or innocence.
16 If innocence is found then there is no stage two so it can
17 end there. If a guilt of a Defendant is found in a
18 Capital case then it goes to stage two which is the
19 punishment phase, decide what punishment is. In those
20 cases the jury's have two options, life without parole,
21 which means you live out the balance of your life, you
22 never get out, you die in jail or death by execution, two
23 choices, no in between. Those are the two options for the
24 jury. And if the jury votes for life without parole the
25 person lives, if votes for death, that is the sentence

1 that is imposed. Do you understand?

2 A Yes, sir.

3 Q Okay. Now, what I am describing to you, those are
4 giving you instructions on the law. That is what the
5 Court, that is what Judges do. Jurors make decisions on
6 facts, what something was, answers questions of fact. In
7 this case also they decide, impose punishment if
8 necessary. Judges instruct the law. When you hear these
9 facts you consider them with commonsense and they tell you
10 what the law is, that is what I do as a Judge just about
11 every day, I explain law and instruct law. That is part
12 of my responsibility and then I kind of manage the trial.
13 Now, let me explain to you two parts of the Capital case,
14 that is the guilt or innocence phase. In that phase the
15 State has to prove murder, each and every element beyond a
16 reasonable doubt. The jury then considers guilt or
17 innocence. If it is innocence it stops, if it is guilty
18 it goes to the punishment phase. Now, in the punishment
19 phase the State then has got to prove or reprove an
20 aggravating factor which are, there are several
21 aggravating factors and they are all in the statutes which
22 are in the blue books behind you, list if you kill a
23 police officer, if it was kidnapping, rape, that kind of
24 thing involved with the murder, children, multiple victims
25 is also an aggravating factor defined in our statutes.

1 The State has got to prove those also beyond a reasonable
2 doubt in the sentencing side of it before a jury makes a
3 determination. The jury also gets to hear what is called
4 mitigation evidence. And mitigation evidence is reasons
5 you can give someone a life without parole sentence or
6 not. Now, so during the sentencing phase, after guilt is
7 determined the jury considers aggravating factors and
8 mitigating factors, instructions the Court gives and they
9 make a determination which of the two sentences to impose.
10 All right. Now, I explain to you also, the State proves
11 murder and an aggravating circumstances. The jurors are
12 required to consider any mitigating evidence which is
13 presented. Do you understand that once the State has
14 presented the case on a punishment and the Defense
15 presents whatever it wishes on mitigation that the two
16 options of the two sentences are the two options. One is
17 not required, it is like there is a common misconception
18 to that, guilt is found and the death penalty is
19 automatic, that is not the law of South Carolina, common
20 misconception. There are two options. It depends, those
21 are the instructions that I give to the jury. Do you
22 understand that?

23 A Yes, sir.

24 Q Now, do you understand that if the jury doesn't--
25 mitigating circumstances and the State proves guilt and an

1 aggravating factor the jury still does not have to impose
2 the death penalty. Do you know that?

3 A I did not know that.

4 Q If a jury unanimously decides life without parole
5 that is the sentence. Okay?

6 A Okay.

7 Q Now, I handed to you earlier types of potential
8 jurors. And I will explain to you very briefly, you don't
9 have any of the facts in this case and I am well aware of
10 that because a lot of facts in the case. A lot that you
11 will hear, you have heard nothing other than my comments
12 thus far and the accusations. Now, the accusations aren't
13 proven. Now, I have sent this summary of the three
14 typical types of jurors. Type one Juror is a person who
15 listens to the facts and evidence and the State proves
16 beyond a reasonable doubt murder and any one of the
17 aggravating factors and that person has already kind of
18 decided they are always going to give the death penalty.
19 Type two is a little different, listen to the facts and
20 evidence and they believe the State has proved its case
21 beyond a reasonable doubt of murder and aggravating
22 circumstances. They are always going to give life
23 imprisonment perhaps for some of their personal beliefs.
24 People can do that. Type three is the type of Juror who,
25 if they are convinced that the State has proved its case

1 beyond a reasonable doubt to the murder and one of the
2 aggravating factors then they can listen to mitigating
3 facts, defenses, affirmative defenses. I will define
4 those to you in a moment. But they will listen to
5 whatever is presented to them, don't have their mind made
6 up, they want to listen and then they make a decision of
7 what they think the punishment should be. Having reviewed
8 what I have basically given you thus far and the
9 explanation of the three types of jurors how would you
10 classify yourself under which of those types.

11 A Type one.

12 Q Okay and are you pretty firm in that?

13 A Yes, sir.

14 Q Okay.

15 THE COURT: Anything further?

16 MR. YOUNG: No, Your Honor.

17 THE COURT: You are free to go and that is what, no
18 right or wrong answers. Thank you for your candor. You
19 are free to go.

20 JUROR: Thank you.

21 THE COURT: Lawyers, do you like the types in my
22 questioning. Is it about right?

23 MR. HUBBARD: Yes sir, that is fine.

24 MR. YOUNG: I thought we had agreed to add hatred in
25 the malice.

1 THE COURT: It is in there, I am ab libbing a little
2 bit trying to, because of the pace. Bring me another one.

3 (Whereupon, Juror number 473, Jacob Whitten entered
4 the courtroom.)

5 Jacob Whitten, being
6 first duly sworn, testified as follows:

7 THE COURT: State your name and spell your last.

8 JUROR: Jacob Whitten, W-H-I-T-T-E-N.

9 EXAMINATION BY THE COURT

10 By The Court:

11 Q Good afternoon, Mr. Whitten. My name is Eugene
12 Griffith, I am going to ask you some questions to start
13 with and then the lawyers may get an opportunity to do the
14 same. Now, you have been placed under oath. Your answers
15 to my questions and all of your answers need to be
16 truthful. Now, I remind you right now, no wrong answers,
17 nothing right or wrong, some of these answers might
18 require you to give personal opinions, so just candor.
19 Okay.

20 A Yes, sir.

21 Q Now, you took your oath and this is an opportunity
22 for the lawyers to gather some information on you. Part
23 of the oath I gave you Monday was, don't talk about the
24 case, don't let anybody talk to you about the case. Has
25 anyone tried to talk to you about the case since Monday?

1 A Nobody has tried to talk to me about the case. My
2 mom mentioned that she heard that this case specifically
3 was coming up and I told her I was a Juror. We didn't
4 talk any further about it.

5 Q Okay. And you understand my instructions, don't
6 discuss it with her?

7 A Yes, sir.

8 Q Okay. You are going to follow that instruction?

9 A Yes, sir.

10 Q Very well. Have you seen or heard anything on the
11 media, television, internet, newspaper about this case or
12 anything?

13 A No, sir. When you asked me initially I can think of
14 hearing of this case before. Thinking back I may have
15 heard of the result, I didn't hear of the name or any of
16 the facts or anything like that though.

17 Q And so whatever that was, that was a long time ago,
18 you don't remember anything specific about it?

19 A Right.

20 Q Fair enough. How old are you?

21 A I am 22.

22 Q What are you reading?

23 A I am reading reinforced concrete masonry. I work for
24 an engineering company and I was actually suppose to have
25 a test today.

1 Q Were you taking a test to become an engineer?

2 A No, not to become an engineer, I just do material
3 testing, concrete, soil, masonry.

4 Q My future son-n-law did that before he became an
5 engineer.

6 A Okay.

7 Q And did a lot of concrete structural studies and
8 things like that?

9 A Yes, sir. I find it interesting.

10 Q It can be. Now, you live on your own or you live
11 with your folks?

12 A I live with my grandma and my mother.

13 Q Now, I am going to ask you questions in that regard
14 so those are members of your immediate family. You or
15 your immediate family, any of those folks member of any
16 organization that would advocate for victims rights. MADD
17 mothers, SADD students?

18 A No, sir.

19 Q Criminal advocacy groups, Citizens Against Violent
20 Crimes?

21 A Nothing like that, no sir.

22 Q Any members of your immediate family, household, make
23 contributions to the Sheriffs Association, Troopers
24 Association or law enforcement support of associations?

25 A I believe my grandma contributes to the law

1 enforcement association.

2 Q Okay. Now, do you, does she go to meetings or you
3 just know she gives money to get the sticker?

4 A I just believe she gives money and gets the sticker.

5 Q Now are you or a member of your family connected to
6 any of these lawyers to your knowledge?

7 A No, sir.

8 Q You or a member of your immediate family connected to
9 any of the Jones' family?

10 A No, sir.

11 Q Now, I gave you a list, this is my copy, the same
12 list of potential witnesses. Understand the lawyers put
13 all potential witnesses, doesn't mean they will call them
14 all, they have to list them all out because if they don't,
15 we are planning on just calling these special, the most
16 important witnesses. That is what they plan to do. But
17 something may come up and they call someone else. They
18 kind of have an idea of what they are going to call. But
19 the rules make them produce all potential witnesses so
20 that half way through the trial, we didn't intend to call
21 that witness but now we need to and it is your brother.
22 Now, wait a minute, you weren't ask that, that wasn't fair
23 so potentially any of these could be called, likely all of
24 them will not be called. Are you connected by blood,
25 marriage, close personal friends with any of those

1 witnesses?

2 A No sir, I don't believe so. I recognize a name,
3 Theron Smith, I have a cousin named Thereon Smith but I
4 know he is not a pastor at any church.

5 Q So you don't have any social, personal, business
6 relationship with any of those folks?

7 A No, sir.

8 Q Not connected to any of the potential witnesses at
9 all?

10 A No, sir.

11 Q I am going to give you a little summary, a kind of
12 big brush summary of the criminal procedure of South
13 Carolina because my job as a Judge is to instruct the
14 jurors and the lawyers and make rulings on the law. The
15 most important is to instruct on the law. Part of my job
16 today, this week, is try to pick a fair jury for this
17 trial. I don't pick the jury, I help qualify jurors, able
18 to listen to the case, free from any preconceived notion
19 of what happened. And the lawyers take turns and the jury
20 gets selected randomly more or less. So my job is to make
21 sure that process is done fairly. So I am going to
22 explain some things to you and what maybe to expect if you
23 are placed as a potential Juror, what you can expect.

24 Okay?

25 A Yes, sir.

1 Q One of my biggest challenges is people see things on
2 TV, internet and my job is to instruct the law
3 consistently and correctly. And in this case Mr. Jones
4 has been indicted for five counts of murder. And I tell
5 you, the indictments are just an accusation by the State
6 telling him of what to be prepared to come into court to
7 defend himself on. Everybody that is accused of anything,
8 by a Government Agency, the State, you are accused of a
9 crime, until that charge is resolved, whether a jury trial
10 or otherwise, that person is presumed innocent all the way
11 through up to the trial, even through the trial until the
12 jury reaches a verdict, presumed innocent. The
13 presumption can be removed by the State convincing a jury
14 beyond a reasonable doubt unanimously of all the elements
15 in the crime. And I can explain reasonable doubt later
16 but the State has got to prove the guilt beyond a
17 reasonable doubt and then the presumption goes away. The
18 State can't do that, if they fail to meet the burden then
19 the presumption overwhelmed them and not guilty is the
20 verdict. Okay. Now, I want to define murder for you so
21 you kind of understand what it is and then I am going to
22 define some other things, aggravating factors and
23 mitigating factors and statutory defenses. So I will walk
24 you through slow, not going to give you an exam at the end
25 but I want to explain to you so you will understand what I

1 am trying to help organize for you so you will understand
2 it a little bit. Murder is the charge in this case, five
3 counts. Murder is defined as the killing of another
4 person with malice aforethought. That is the entire
5 definition in the statute. That is what murder is defined
6 as. Now, malice is defined by our courts in the statute
7 as wicked or depraved heart, hatred, ill-will, hostility
8 towards another person. Now, the definition excludes just
9 cause or excuse, that is not murder. Murder is the
10 intentional killing of another with hatred in your heart.
11 And when the State alleges that offense they can seek, in
12 a Capital case they can seek the death penalty if they can
13 also prove at least one of the aggravating factors. There
14 are numerous aggravating factors also. These are the code
15 books handed down by the General Assembly, the laws are
16 written out and organized. Aggravating factors are such
17 as killing a police officer, killing a child, kidnapping
18 with the murder, rape with the murder, those are
19 aggravators. Killing more than one person, that is an
20 aggravator. The State has got to prove an aggravator
21 along with the murder, to make, where they want to try to
22 seek the death penalty, they have got to prove that also.
23 So it is like an additional hurdle they have got to
24 overcome to seek the death penalty. So when you qualify a
25 jury for a Capital case the process is a little bit

1 lengthier, you get past what is called voir dire questions
2 but the questions to see if you have got preconceived
3 notions and whatnot, can you be fair and impartial, that
4 is what we are looking for, in a case of that type. Now,
5 I want to explain to you that South Carolina law doesn't
6 allow a person to be executed. The State only convicts
7 them of murder. Murder has another sentence. In order to
8 seek the death penalty it has got to be murder plus
9 something else, an aggravating factor is what that is and
10 the State has got to prove the aggravating factor also
11 beyond a reasonable doubt. Now, it is real early on, you
12 haven't heard any facts and any witnesses from anybody.
13 Now, there are certain statutory defenses people can claim
14 in a murder. Some of those are, accident, involuntary
15 intoxication, self-defense, insanity, guilty but mentally
16 ill, entrapment, duress, alibi. Those are some defenses.
17 There is also mitigating factors which will be reasons to
18 not get a death penalty. A lot of testimony coming in a
19 trial such as this, a wide variety of it. Now, knowing
20 you have heard nothing about this case, the little bit you
21 heard on the media and you have heard here today which was
22 the accusation to five murders and the State is intending
23 to seek the death penalty. I handed to you a sheet that
24 had types of potential jurors. Now, like I said, no
25 testimony has been presented but the State has got to

1 present its side of the case first to try to convince the
2 jury of the guilt of the murder. If they don't, not
3 guilty verdict the case stops there. If they find guilt
4 there then they go to step two and you will hear
5 testimony, mitigating factors, potential defenses,
6 potential things, aggravating factors the State has got to
7 prove in that stage of the case. So, first, it is either
8 guilty or not guilty, if it is not guilty the case stops,
9 no stage two. Go to stage two the State has got to prove
10 the aggravating factor but the jury gets to hear a lot of
11 mitigating factors. This sheet for potential jurors, it
12 outlines three typical types. Type one is a person who
13 listens to the case. The State proves the murder beyond a
14 reasonable doubt, finding guilt is found, then the State
15 proves an aggravating factor beyond a reasonable doubt,
16 murder and an aggravating factor. Now, that type of
17 Juror, I am always going to give the death penalty, that
18 is what I am going to do. It is my belief. Type two is a
19 little different. The State proves the murder, we go to
20 stage two of the sentencing phase. The State proves a
21 mitigating factor. Type two jurors says, you know what, I
22 can't sign my name, I cannot do anything other than give a
23 life without parole sentence. Once you get to sentencing
24 in a Capital case, there are only two sentences. Find him
25 guilty, the jury does the sentencing, not the Judge. Two

1 options, life without parole or death. The only two
2 choices you have got. So type two, I can't sign a verdict
3 for death penalty, I can sign life without parole. That
4 is their personal belief, they can't go through the death
5 penalty, they can go for life without parole. That is a
6 type two person. Type three, they don't have their mind
7 made up. The State proves the case, guilty. You go to
8 step two, the State proves aggravating factor beyond a
9 reasonable doubt. Then the testimony is presented, more
10 aggravating factors, mitigating factors, potential
11 defenses, whatever, more factors. And that type of Juror
12 says, I want to hear all of those things, listen to
13 everything, keep an open mind, I can't commit to either
14 right now until I hear everything. Once I hear everything
15 then I can go to either one. I can go life without parole
16 or I can go death penalty. In a Capital case like this
17 the death penalty is not automatic, life without parole is
18 automatic, one of the two. Now, I have given you a very
19 brief description of, without any facts, you know very
20 little so I am kind of putting you on the spot. What type
21 of Juror would you classify yourself as.

22 A I would have to say type three, I am not really all
23 the way right or all the way left. I have to hear, like
24 you said, make sure all the elements are met as well, I
25 think mitigating factors would be important for me to have

1 to listen to before I make a decision like that.

2 Q I will give you some mitigating factors in a minute
3 so you can understand what they might be. And sometimes
4 you are aware of what they are, you just didn't know they
5 were called mitigating factors. Now, in this case I told
6 you the State has accused Mr. Jones with murder five
7 times, his five children. That is the accusation, he has
8 plead not guilty by reason of insanity. That plea creates
9 a little difference, another aspect of the law that I am
10 instructed to explain to you. When he entered that plea,
11 like I say, you are going to hear a lot of testimony about
12 a lot of things. The State is going to present a bunch of
13 witnesses, the Defense may present some witnesses, he is
14 still presumed innocent. But you will hear a lot of
15 testimony and evidence, you will hear a wide variety of
16 things. I am going to instruct you, as we go and at the
17 very end, and in some of these things I don't have a
18 preprinted instruction on a murder case. I kind of know
19 what is coming but sometimes there is aspects of the case
20 that I am not aware and so jury's can't consider certain
21 aspects of the case if it doesn't apply. Like for
22 instance, one of the mitigation, if the person is under
23 18, that is not the case today so I wouldn't put that in
24 my instructions. Y'all consider this because he is under
25 18, he is not under 18. That is a real simple example. I

1 would tailor my instructions consistent with the facts
2 that have been presented for the jury to consider. Okay.

3 A Okay.

4 Q Now, you will hear a wide variety of testimony, you
5 will hear evidence of aggravating factors, mitigation.
6 And I explained to you, the mitigating thing is a reason
7 during the sentencing you might consider or a reason you
8 assigned to giving life without parole, to not go with the
9 death result. Now, evidence of affirmative defenses, such
10 as accident, guilty but mentally ill, not guilty by reason
11 of insanity. You will hear testimony that may support
12 that. So, until all of that testimony and evidence has
13 been presented I can't tell you exactly what my
14 instructions will be, can you accept to follow my
15 instructions at that time.

16 A Yes, sir.

17 Q Now, I think I gave you some potential defenses but
18 if the testimony is presented, the evidence presented
19 regarding potential defenses which could be accident,
20 involuntary intoxication, self-defense, insanity, guilty
21 but mentally ill, entrapment, duress, alibi, necessity. I
22 would define those then, can you consider, meaningful
23 consider and evaluate the testimony that is presented
24 regarding those and the instructions that I give at that
25 time?

1 A Yes, sir.

2 Q And also regarding mitigation. There are several
3 statutory mitigating factors that are outlined and then
4 there are some that aren't even listed in the statute and
5 you can consider those too. Statutory mitigating factors
6 may include that a person accused has no significant
7 history of a prior criminal act for violent, never been in
8 trouble before. A murder has been committed while the
9 Defendant was under the influence of mental or emotional
10 disturbance. The Defendant was an accomplice in a murder
11 committed by another person and his participation was
12 relatively minor. The Defendant was, the victim was a
13 participant of the Defendant's conduct and consented to
14 the act, a Defendant acted under duress. The capacity for
15 the Defendant to appreciate his criminality of his
16 conduct, conform his conduct to the requirements was
17 substantially impaired. The Defendant was provoked by the
18 victim who committed the murder, the age or mentality of
19 the Defendant at the time of the crime, the Defendant was
20 below 18. The Defendant had a mental retardation at the
21 time of the crime. Those are many of the statutory
22 mitigating factors which are reasons you could assign to
23 give the life without parole sentence. You consider a
24 person growing up, how they came along and the quality of
25 life, that kind of thing. Now, understanding that, that

1 is in the sentencing phase. Can you consider, meaningful
2 consider testimony and evidence regarding mitigating
3 factors, listen to my instructions on the law and make a
4 fair and impartial judgment in this case?

5 A Yes, sir.

6 Q Now, let me go back to the plea Mr. Jones entered.
7 Because of the not guilty by reason of insanity creates
8 different verdicts, it is not just guilty, not guilty. It
9 adds another layer of the aspect of the verdict form. So
10 the case gets presented by the State, this is in the guilt
11 or innocence phase, phase one. The verdict form handed to
12 the jury for them to consider at that time is going to
13 read, do you find, has the State proved its case beyond a
14 reasonable doubt on the offense of murder. Is your
15 verdict, the verdict has to be unanimous, beyond a
16 reasonable doubt, presumption of innocence. There are the
17 four potential verdicts. Guilty, guilty but mentally ill,
18 not guilty by reason of insanity, not guilty. Four
19 different verdicts. Can you give meaningful consideration
20 and my instruction of the law of what those mean to each
21 of those verdicts, give consideration to each and every
22 one of those verdicts?

23 A Yes, sir.

24 Q And that would be depending on the facts and
25 circumstances and whatever instructions you get to hear

1 from me on the law. All right, now, as I told you before,
2 guilt or innocence. If we stop at the guilt or innocence
3 and he is not guilty on either of those two forms the case
4 stops there. If he is guilty but mentally ill or guilty
5 we go into the sentencing side of the trial. If that
6 stage is reached do you have any personal, moral, ethical,
7 any type of beliefs whatsoever which would prohibit you or
8 cause you concern that you could not consider reaching the
9 death penalty, invoking that as the punishment.

10 A No, like I said, I am not totally against it or for
11 it.

12 Q You understand when you get to the sentencing phase,
13 the death penalty is not automatic?

14 A Right.

15 Q And the death penalty, penalty verdict, each Juror
16 has got to sign the verdict form. Do you understand that?

17 A Yes, sir.

18 Q Do you have any beliefs, moral, personal, whatever
19 type of beliefs that would prevent you from finding a
20 verdict of, I am sorry, not a verdict, imposing a sentence
21 of life without the possibility of parole and that would
22 mean life without parole, the sentence is imposed, he
23 stays there for the rest of his life. That is what it
24 means. Do you have any reason that you could not sign,
25 impose that sentence.

1 A No, sir.

2 Q Like I say, in this type of case the jury does the
3 sentencing, they make that choice. Can you consider the
4 instructions that the Court gives, the facts that you
5 believe have been proven, whatever beliefs you have,
6 personal or otherwise and impose that verdict?

7 A Yes, sir.

8 Q Now, another thing, I didn't ask this and I should
9 have asked it earlier, didn't have it written down. But a
10 murder case, five accusations, testimony is going to be
11 graphic, perhaps unpleasant. I haven't seen, seen some of
12 it, not all of it, the case hasn't been tried. Not
13 exactly sure what all will be there. Knowing there is
14 going to be death involved and perhaps seeing the victims
15 bodies and whatnot. Subject matter such as that, which
16 will be described as unpleasant, is a subject matter of
17 that type going to create an issue for you and where you
18 can't function and appropriately evaluate the evidence.
19 Is it going, oh, are we going to start talking about that
20 and I just can't deal with it, it is just too gross or too
21 unpleasant. Are you going to be able to consider that
22 type of graphic evidence in a case like this.

23 A Yes, sir.

24 Q Are you going to be able to follow my instructions
25 and consistently keep your mind open all the way

1 throughout the trial?

2 A Yes, sir.

3 Q You don't get to discuss the verdicts until the very
4 end. That is an aspect that a lot of people don't know.
5 You sit here and listen and take notes, I am not going to
6 give you instructions until the end, you don't get to talk
7 about it as it goes. The next to last thing may flip the
8 whole thing upside down and make it go the other way. So
9 you don't make up your mind ahead of time. That is one of
10 the instructions that I give over and over and over. Have
11 you made up your mind in this case already?

12 A No, sir. Like I said, the mitigating matters at the
13 end.

14 THE COURT: I think I have done all of mine. Mr.
15 Young, your turn.

16 Q He gets to ask you some questions and then the other
17 lawyer gets to ask you questions. Let me tell you this.
18 They may have an issue with the way they ask a question.
19 One of them may say, Judge, I am trying to ask this
20 question or that question. The lawyers argue in legal
21 terms I am trained to understand. Sometimes when they get
22 arguing about that it gets confusing. I excuse all the
23 jurors thus far while I am discussing legal issues with
24 the lawyers I am going to put you in the hall and let me
25 sort it out because it is just easier to do it that way.

1 You answer his questions the best you can.

2 EXAMINATION BY MR. YOUNG

3 By Mr. Young:

4 Q Good afternoon, Mr. Whitten.

5 A Hey, how are you doing.

6 Q I am doing well. Thank you for being here with us on
7 this process. I appreciate it. Right there at the end
8 the Judge was talking to you about sort of the graphic
9 nature of the testimony and the pictures and pictures of
10 dead children and I know that you have a five-year-old
11 daughter. And I know that the Judge asked you if you
12 would consider--

13 MR. HUBBARD: Your Honor, I have got to step in right
14 now regarding about this.

15 THE COURT: I know what you mean, we did that with
16 the other Juror and he asked the proper question, not the
17 improper question.

18 MR. HUBBARD: My understanding was--

19 THE COURT: Step out, this is one of those issues.

20 (Whereupon, the Juror was excused from the
21 courtroom.)

22 THE COURT: We dealt with this on the gentleman
23 yesterday, didn't we?

24 MR. HUBBARD: Yes, sir. And you cannot ask a Juror,
25 you cannot say you have got a child, you can't do that.

1 And we dealt with that yesterday. That is in the
2 question. You have got a daughter, whatever, five years
3 old, ten years old.

4 THE COURT: Finish your question, Mr. Young. You
5 said you have a five-year-old daughter.

6 MR. YOUNG: You told the Judge that you would
7 consider that graphic testimony, understand you have a
8 daughter, does it make you pushy all the way to not being
9 able to consider a verdict other than guilty of death.

10 MR. HUBBARD: Absolutely object to that, absolutely
11 object to that. That is improper, there is not a case
12 anywhere that will say that is proper. That is absolutely
13 forbidden.

14 MR. YOUNG: There is not a case anywhere that says it
15 is forbidden. And maybe the Court can clear it up. And I
16 am happy for the Court to put it up. He said he would
17 consider it and that is fine and he is going to consider
18 everything. I just want to make sure that my
19 understanding is correct and I have to ask him in order
20 for my understanding to be correct is that when you
21 consider, he understands that it is not going to push him
22 all the way to a verdict. And he can consider it and
23 still be fair and impartial.

24 THE COURT: He has no facts whatsoever. The only
25 fact you give him is you have a daughter or a child, I

1 don't know which it was.

2 MR. YOUNG: Judge, I don't know. I have children
3 about the same age. This case is hard for me and if he is
4 like everybody else he is going to say, and he may say I
5 can still be fair and impartial, it is going to be
6 graphic, it is going to be unpleasant, I can still be fair
7 and impartial. If he says that that is fine, that is my
8 question. Can you consider it. He said, yes. Can you
9 consider it and still be fair and impartial, that is my
10 question.

11 MR. HUBBARD: There does not need to be any reference
12 to his children, that is improper. Judge, he is bringing
13 in his own personal experiences into this courtroom.
14 Every Juror that has children is going to be bringing
15 their personal experiences in. And when you are asking
16 them, can you be fair and impartial in a case involving
17 children and they say yes. That is asked and answered.

18 MR. YOUNG: I just want to ask him if he can consider
19 it and still be fair and impartial.

20 THE COURT: Here is the question that I think you
21 will like. You have a child, this question, this case
22 involves children. Can you still be fair and impartial.

23 MR. HUBBARD: That is what I am objecting to. I
24 don't think you can even say you have a child. It is out
25 there, he already knows that. He doesn't need to be

1 reminded he has a child and that is objectionable.

2 THE COURT: He does know he has a child, you know he
3 has got a child.

4 MR. YOUNG: He said he can consider it. I am asking
5 him if he can consider it and still be fair and impartial.

6 MR. HUBBARD: Judge, it is asked and answered. He
7 knows he has a child, he said he could be fair and
8 impartial. He hasn't heard one iota of evidence. I can
9 be fair, he has a child. If there is any child in his
10 head right now, it is not images of these children here,
11 it is images of his child. But he can be fair.

12 THE COURT: I sustain the objection. Let's move on.
13 Bring him back in.

14 MR. YOUNG: Your Honor,--

15 THE COURT: Hang on.

16 MR. YOUNG: Please note my objection. I know that he
17 said he would consider it. I just want to know if he can
18 still be fair and impartial after considering it.

19 THE COURT: All right. How about this. Why don't
20 you come in at the end, any reason whatsoever you can't be
21 fair and impartial. I will ask that.

22 MR. YOUNG: I understand.

23 THE COURT: Bring him in.

24 (Whereupon, the Juror came into the courtroom.)

25 THE COURT: Mr. Young, continue on.

1 By Mr. Young:

2 Q Mr. Whitten, the Judge talked to you a little bit
3 about Mr. Jones has plead not guilty by reason of
4 insanity. You understood that?

5 A Yes, sir.

6 Q And the Judge, not guilty by reason of insanity would
7 mean that somebody says, based on a mental disease or
8 defect that the individual was unable to appreciate the
9 legal or moral wrongness of their actions. Do you
10 understand that?

11 A Yes, sir.

12 Q Some people think that is just sort of just an excuse
13 and that this is not a verdict that they can really
14 consider. You are shaking your head, you are like no?

15 A Yes, sir.

16 Q For you, you understand that and legally that is an
17 appropriate verdict in an appropriate case?

18 A Yes, sir.

19 Q Okay. And that is something that you could give
20 meaningful consideration?

21 A Yes, sir.

22 Q Now, if somebody who had plead not guilty by reason
23 of insanity and is found guilty or guilty but mentally
24 ill, that means they are guilty of murder. Okay. And you
25 understood the Judge's definition of that, the intentional

1 killing of another with malice aforethought?

2 A Yes, sir.

3 Q And that means no excuse or justification, like the
4 Court said, it is not self-defense, it is not an accident.
5 The person knew the difference between right and wrong,
6 chose to kill an innocent person. Are you with me on
7 that?

8 A Yes, sir.

9 Q And I want to talk to you a little bit about your
10 feelings about the death penalty, and it is the only
11 appropriate punishment for that guilty murder. How do you
12 feel about it?

13 A I don't believe it is the only appropriate
14 punishment. Like I said, I have to hear both sides,
15 aggravating factors as well as mitigating factors to
16 determine my decision.

17 Q So we are moving forward with the trial, we had the
18 trial about guilty, not guilty, that has been decided.
19 Are you with me on that?

20 A Yes, sir.

21 Q And remember the second part of the trial where the
22 jurors are able to determine the punishment, right. And
23 you said, based on murder, you are open one way or the
24 other, right.

25 A Yes, sir.

1 Q Now, in that case, there are a category of cases
2 where we are talking about the death of children. You
3 understand that?

4 A Yes, sir.

5 Q As an aggravating circumstance. Does that factor
6 cause you think that death is the only appropriate
7 punishment?

8 A Not only appropriate.

9 Q Can you tell why not?

10 MR. HUBBARD: Your Honor, I--

11 THE COURT: That's not fair. That is what we don't
12 need to get into. He answered your question. Sustained
13 on that. Ask your next question.

14 Q And I understand you are talking about mitigating
15 factors and the Judge has been over some of those
16 mitigating factors for you, right?

17 A Yes, sir.

18 Q Can you just tell, just based on who you are, what do
19 you think is important to you in deciding between life or
20 death.

21 MR. HUBBARD: Your Honor, again, I object. What do
22 you think without any facts.

23 THE COURT: Yes. In his defense you didn't give any
24 facts to violate Stanko.

25 MR. HUBBARD: Your Honor, it is not a fair question

1 to somebody when they don't know any facts, any legal
2 principles.

3 THE COURT: I think he has asked and answered the
4 question saying he wanted to consider all the facts,
5 aggravating and or mitigating. Rephrase your question,
6 Mr. Young, the way it was asked, I will sustain it but
7 rephrase your question.

8 MR. YOUNG: Yes, sir.

9 Q If you were the Governor of South Carolina and you
10 got to decide we are going to have the death penalty or
11 not have the death penalty. What would you say?

12 A I would say leave the death penalty as an option.

13 Q And why?

14 A I just believe that if someone is inherently bad and
15 there is no turning them around I don't see the point in
16 keeping them locked up for their life and remain who they
17 are.

18 Q Okay. And I don't want to put words in your mouth
19 and this is your opportunity to tell me if I am, but you
20 are saying that somebody who says, sort of death penalty
21 is necessary for the worst of the worst?

22 A Yes sir, in a sense that is what I am saying.

23 Q Okay. The phrase sort of, we hear this phrase a lot,
24 an eye for an eye. It sounds like that is not a view you
25 would succumb to, is that right?

1 A I believe the punishment should fit the crime. I
2 wouldn't say I am totally against an eye for an eye.

3 Q Would you say you are against the life for a life?

4 A No sir, not completely.

5 Q So I am just trying to figure out where you are on
6 this not completely and I am just trying to get you to
7 talk to me about your views.

8 MR. HUBBARD: Your Honor,--

9 THE COURT: I understand your objection. He hasn't
10 asked a question, he is just saying I am trying to
11 understand.

12 MR. HUBBARD: Well, I think it has been asked and
13 answered. He has explained several times already.

14 THE COURT: I agree. Rephrase your question, Mr.
15 Young.

16 Q This guy who is going to continue to act badly that
17 we have talked about, I believe that you talked to me
18 about, that the death penalty might be an appropriate
19 punishment for that kind of person. Are you with me on
20 that?

21 A Yes, sir.

22 Q Is there anything that you think that you could learn
23 about that type of person that would make you think, well,
24 you know what, maybe the life penalty is the appropriate
25 punishment?

1 MR. HUBBARD: Objection.

2 THE COURT: That is a fair question, that is a fair
3 question.

4 MR. HUBBARD: Hypothetical, Judge, which is
5 objectionable, hypothetical.

6 THE COURT: I think it is following with the way he
7 answered it.

8 MR. HUBBARD: Which is what I objected to.

9 THE COURT: No, what he did answer. Overruled.

10 MR. YOUNG: Thank you.

11 A Could you ask that again.

12 Q Sure. That person, that evil person, is there
13 anything about that person that you think you could learn
14 that would make you lean away from the death penalty, that
15 maybe life is appropriate for that person?

16 A Yes sir, I think that is a possibility.

17 Q And can you tell me what some of things might be for
18 you.

19 MR. HUBBARD: Your Honor,--

20 THE COURT: That is fair, that is fair, that is good.

21 A Just character traits really to determine whether or
22 not what evil person said they--

23 Q -- I think I understand where you are on that. Do
24 you start at sort of leaning towards life or death or are
25 you in the middle, I am open to both?

1 A I would have to start in the middle because every
2 situation would be different.

3 Q Could life in prison without the possibility of
4 parole be substantial enough penalty for you for somebody
5 who has been convicted of murder?

6 A Yes, sir.

7 Q Do you think that that is a serious punishment?

8 A I do.

9 Q I am going to talk to you, my understanding is that
10 you may know Madison Lundy who works at the Solicitor's
11 office, is that right or am I wrong about that?

12 A I have heard that name with my friends.

13 Q Okay. I am wrong about that. I want to talk to you
14 a little about sort of how this decision is ultimately
15 made by jurors and the Judge has explained some of it. We
16 have aggravating factors which the Judge has told you
17 about and they have to be proven beyond a reasonable doubt
18 to the satisfaction of all twelve jurors. Do you
19 understand that?

20 A Yes, sir.

21 Q It is sort of like the first decision about guilty,
22 not guilty, not guilty by reason of insanity. It has to
23 be unanimous. Are you with me on that?

24 A Yes, sir.

25 Q Okay. Mitigating factors are different. As the

1 Judge told you, he told you some statutory ones and there
2 is non-statutory mitigation. Are you with me on that?

3 A Yes, sir.

4 Q And that stuff doesn't have the burden of proof,
5 okay. Each Juror gets to decide that for himself. Are
6 you with me on that. Does that make sense to you?

7 A It does.

8 Q When deciding whether or not somebody lives or dies
9 and sort we allow jurors to say, to me this is mitigation?

10 A Yes, sir.

11 Q And that Juror is allowed to find any mitigation they
12 want and give it the weight of life if they choose to.
13 Are you with me on that?

14 A Yes, sir.

15 Q And Juror number one can say, I saw him have the
16 relationship with his family and I think that is
17 mitigating and I want to give life and that is fine. Do
18 you understand that?

19 A Yes, sir.

20 Q And Juror number two may say, I didn't see that but I
21 thought he had a tough childhood and I think that is
22 mitigating and I will be the way of life and that is fine
23 too. Are you with me on that?

24 A Yes, sir.

25 Q And even if jurors say, well, I don't see any

1 mitigation, for no reason at all I just feel like life is
2 the appropriate punishment for me and that is fine too.

3 Are you with me on that?

4 A Yes, sir.

5 Q You understand why the law is that way?

6 A I do.

7 Q Does that makes sense to you?

8 A It does.

9 Q Is that the way you think it should work?

10 A Yes, sir.

11 Q At the end of the day the ultimate decision about
12 whether or not another person lives or dies is what is
13 called an individual moral judgment. Are you with me on
14 that?

15 A Yes, sir.

16 Q That is what the Supreme Court calls it, an
17 individual moral judgment. And we all meet moral
18 judgments every day, right?

19 A Yes, sir.

20 Q The best way it was described to me was for choosing
21 your faith, whatever faith is right for you you have made
22 your personal moral judgments about that?

23 A Yes, sir.

24 Q And you expect other people to respect your choices?

25 A Respect choices and I understand they have

1 different--

2 Q That is right where I am going and somebody else
3 could have a different individual moral judgment than you,
4 right, a different faith than you, right?

5 A Yes, sir.

6 Q And you respect their right to have their own
7 individual moral judgments?

8 A Yes, sir.

9 Q If you saw somebody trying to say your judgment is
10 wrong, your opinion is wrong, your opinion is stupid,
11 trying to get bullied out of changing what was they have
12 arrived at is their individual moral judgment. Would you
13 stop?

14 A I would stop the bullying, yes sir.

15 Q You would say that is their opinion and they are
16 entitled to it?

17 A Right.

18 Q And you would respect the right of another Juror to
19 say, I don't have to explain to you why my vote is the way
20 it is, it is just my individual moral judgment and that is
21 what I want to do?

22 A Yes, sir.

23 Q And you would respect their right to do that?

24 A Yes, sir.

25 Q And expect them to respect your right?

1 A Correct.

2 Q When we are talking about making individual moral
3 judgments, at the end of the day it is okay to agree to
4 disagree. Do you understand that?

5 A Yes, sir.

6 Q And in an agreement to disagree is not a failure of
7 the jury. Do you understand that?

8 A Yes, sir.

9 Q Thank you, Mr. Whitten.

10 EXAMINATION BY MR. HUBBARD

11 By Mr. Hubbard:

12 Q How are you doing today?

13 A I am alright, thank you.

14 Q You had a long day yesterday?

15 A I did, yes sir.

16 Q Welcome to court, we always mean well but you see
17 sometimes we have disagreements?

18 A I understand.

19 Q That is why we have someone with the black robe here
20 to hold us apart.

21 A Yes, sir.

22 Q Appreciate you being here.

23 A Yes, sir.

24 Q Now, I understand from you, when it comes to that
25 first phase, deciding whether somebody is guilty or not

1 guilty you want to hear all of the evidence?

2 A That's correct.

3 Q And you will consider every available verdict?

4 A Yes, sir.

5 Q Consider the facts?

6 A Yes, sir.

7 Q You understand when you get to that second phase, you
8 only get there if somebody is convicted of murder?

9 A Right.

10 Q And then I think I understood you to answering both
11 the Judge and the Defense lawyer you would consider all
12 evidence in mitigation?

13 A Yes, sir.

14 Q And all evidence in aggravation before you issued a
15 sentence?

16 A Right.

17 Q Now, and you would want to do that, would you not?

18 A Yes, sir.

19 Q Now, let me ask you this and the Judge eluded to it
20 but I want to get a little bit more specific. Now, with
21 mitigating and aggravating, you know there is, even if you
22 find both you know there is no automatic sentence?

23 A Correct.

24 Q So if you find an aggravator you don't have to
25 sentence somebody to death. Do you understand that?

1 A Yes, sir.

2 Q If you find mitigation you don't have to sentence
3 them to life?

4 A Yes, sir.

5 Q You are in charge. You understand that?

6 A Yes, sir.

7 Q And but there is something that the Judge eluded to
8 that to put someone to death after they have been
9 convicted and you move into that second phase you have to,
10 before you can do that there has to be aggravating
11 evidence?

12 A Right.

13 Q All the jurors have to see that?

14 A Yes, sir.

15 Q And then they have to decide death is appropriate.
16 Do you understand that?

17 A Yes, sir.

18 Q But what is unique is every single Juror, before they
19 do that, has to sign their name. Now, this may sound
20 silly, but a lot of people will tell you all day long
21 about what they think. But when you ask them to put their
22 name down on a piece of paper and they say, you know, I
23 can't do that. If you got to that second phase and you
24 find aggravating circumstances with your colleagues, your
25 fellow jurors, that death is appropriate could you sign

1 your name to that piece of paper?

2 A Yes, sir.

3 Q But no matter what you would want to hear all the
4 facts, both good and bad?

5 A Correct.

6 Q I think that is all we can ask you and I appreciate
7 it.

8 A Yes, sir.

9 THE COURT: Anything else, Mr. Young.

10 EXAMINATION

11 By Mr. Young:

12 Q One final question. Is there anything about this
13 case, Mr. Whitten, these allegations that would cause you
14 not to be fair and impartial?

15 A No, sir.

16 Q Thank you.

17 THE COURT: Step out in the hall and we will have you
18 back in in a minute. I have to talk to the lawyers and
19 have you right back in.

20 (Whereupon, the Juror was excused from the
21 courtroom.)

22 THE COURT: Mr. Young.

23 MR. YOUNG: Judge, I think based on the totality, his
24 responses, he is qualified. We do object not being able
25 to, the way I had to ask the fair and impartial question

1 about a child involved in the case and I think Your Honor
2 had noted my objection.

3 THE COURT: I did and your objection is noted for the
4 record. Other than not being allowed the question do you
5 think he is qualified?

6 MR. YOUNG: Yes, sir.

7 THE COURT: Solicitor?

8 MR. HUBBARD: He is qualified, Your Honor.

9 THE COURT: Bring him back in, I find him qualified.
10 (Whereupon, the Juror entered the courtroom.)

11 MR. YOUNG: Your Honor, did you ask him about his
12 availability.

13 THE COURT: I did ask you about your availability,
14 you don't have a vacation or anything, do you?

15 JUROR: No, sir.

16 THE COURT: Okay, you are good. I think I did ask
17 you that, I wanted to make certain. We found you
18 qualified as a Juror. What that means, you are on the
19 list of qualified jurors. Remember, we had about 167
20 people, we will have to do this process with them, you are
21 on the front end. I want you to check back with the
22 website, on the back of your card. And it will have
23 instructions for the qualified jurors. I need you to come
24 back in some time, check that website each night after
25 6:00 and see what it says and follow those instructions.

1 Until you get back, come back in the courtroom there will
2 be daily news reports, minimize watching them. Don't see
3 them and watch, don't do any research, don't let anybody
4 talk to you about the case. Blame it on me, Judge
5 Griffith says I am not to do that. You are under oath to
6 do that. When you come back to the Court House I will
7 say, Mr. Whitten, have you seen anything, I will ask you.
8 So you are on your oath not to discuss the case, not let
9 anybody contact you. What you need to decide the case is
10 here in the courtroom. So see you soon, check the website
11 and I remind you you are under oath. Okay.

12 JUROR: Okay.

13 THE COURT: See you soon.

14 (Whereupon, the Juror was excused from the
15 courtroom.)

16 THE COURT: Let's take a short break.

17 MR. YOUNG: Can we put one thing on the record.

18 THE COURT: Yes.

19 MR. YOUNG: Your Honor, I would like to object to the
20 Solicitor's continued speaking objections in violation of
21 criminal rule 18. And when Your Honor makes a ruling,
22 when an objection is made it needs to state objection,
23 grounds. If Your Honor needs to hear more I believe the
24 Court can ask for it but these continuing speaking
25 objections and continuing talking over people and

1 continuing telling people it is improper is itself
2 improper and we would object to it. And we object to it
3 outside the presence of the jury.

4 THE COURT: All right. I have told the Solicitor
5 this morning and he has been, yesterday was more my fault
6 because I didn't remind him. But, objection, I have got
7 an issue, the Juror will go out.

8 MR. HUBBARD: And, Your Honor, I would say this too.
9 I am trying to contain myself. I am in a position now
10 that I look like the bad guy, every time I stand up to
11 defend what I think we have already agreed upon only to
12 find the questions being asked again. And I am pulling my
13 hair out here.

14 THE COURT: I will congratulate both sides, he
15 stepped out of the courtroom one time. So good for us.
16 Be back in about ten minutes.

17 (Whereupon, a short break was taken.)

18 THE COURT: All right, the next one. Sarah Fucci,
19 number 150.

20 SARAH FUCCI, being
21 first duly sworn, testified as follows:

22 CLERK OF COURT: Have a seat and state your name and
23 spell your last name.

24 JUROR: Sarah Fucci, F-U-C-C-I.

25 EXAMINATION BY THE COURT

1 By The Court:

2 Q Ms. Fucci, good afternoon. My name is Eugene
3 Griffith and I introduced myself over in the other Court
4 House Monday. And I am certain, you are the first lady
5 potential Juror.

6 A Yes.

7 Q I don't know if that was a good group you got put in
8 or just--

9 A They were a good group of fellows.

10 Q Sorry for the delay. It is moving a little more
11 efficiently now but we had to get organized and what not
12 and what have you. I gave you an oath or the Clerk did
13 when we were over there that said, don't talk about the
14 case, don't let anybody discuss the case with you. Has
15 anyone tried to talk to you about the case?

16 A No. Over there we talked about what happened on
17 Monday.

18 Q The qualification process?

19 A Yes.

20 Q But y'all didn't discuss the facts about the case?

21 A No.

22 Q Have you seen or heard any media reports, any
23 newspaper articles?

24 A I had before we showed up in court on Monday.

25 Q And are those recent ones or ones several months ago?

1 A I saw them in February.

2 Q Okay. And what kind of, in general what were they?

3 A It told of a, in the state paper, "secret meetings
4 here in Lexington." I guess interviews for witnesses.
5 His father was being interviewed at the time, a reporter
6 came in. It gave more information than I had known
7 previously through just when it happened years ago.

8 Q There is some aspects of the case that I had to hear
9 and make preliminary decisions on before they could be
10 used at trial. That is one of those hearings, it really
11 wasn't secret. It doesn't matter.

12 A That is what it was referred to.

13 Q We are here now and the process we are going through
14 is to try to find a fair, impanel fair and impartial
15 jurors. You have been drawn as a potential Juror so we
16 have got to ask you some questions today and you are under
17 oath. And I will tell you, what I need is truthful
18 answers and candid answers, there are no right or wrong
19 answers. The first question, based upon the newspaper
20 article and knowing we had a secret hearing, would that
21 impact your decision?

22 A Well, that in itself, no sir.

23 Q Okay. Now, this trial will last several weeks. The
24 jury selection process may last into next week. Do you
25 have any personal plans over the next few weeks that if

1 you were selected as a Juror that would impact?

2 A Well, next month.

3 Q What have you got?

4 A Vacationing in Ohio with my sister and her
5 grandchildren.

6 Q I am being told being a grandparent is great?

7 A It is awesome.

8 Q When are those plans, how far?

9 A Memorial Day Weekend before until the weekend after.

10 Q So late May?

11 A Yes, sir.

12 Q If you were selected as a Juror that would impact
13 that trip?

14 A Yes, sir. I seem to have determined over the weekend
15 that I could not do this unbiasedly.

16 Q Okay. That is why I have got you here. Why do you
17 think, you formed an opinion that you think it would be
18 difficult.

19 A A friend of mine in 2013 came up missing and they
20 found her body in October. And they guy that did it, I
21 don't even know if he has gone to trial yet.

22 THE COURT: Can y'all hear that?

23 A In 2013 a friend of mine came up missing in
24 Greenville, Misty Johnson. And the following month they
25 found her body. I think I could not do this and not be

1 unbiased.

2 Q That is a personal event in your life that would
3 impact your decision making?

4 A Yes sir, it would.

5 Q And if it does it does. And that is the candor I am
6 talking about. I don't want you to say, oh no, I can put
7 it aside when you have doubts when you may could or
8 couldn't?

9 A Yes.

10 Q That is what I need to hear. Any objection, she has
11 got vacation plans and a potential problem with an event.
12 Any objection to me excusing her right now?

13 MR. HUBBARD: None, Your Honor.

14 THE COURT: Mr. young, are you good with that?

15 MR. YOUNG: Yes, sir.

16 THE COURT: Ms. Fucci, you are free to go and thank
17 you for coming. Thank you so much for your patience.

18 JUROR: Thank you, sir.

19 (Whereupon, Juror 339, James Prescott entered the
20 courtroom.)

21 James Prescott, being
22 first duly sworn, testified as follows:

23 CLERK OF COURT: State your name and spell your last
24 name.

25 JUROR: James Prescott, P-R-E-S-C-O-T-T.