

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Lexington County

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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THE FOLLOWING DOCUMENTS ARE ON FILE WITH THIS COURT:

STATE’S EXHIBIT #177 (PHOTO-KNEE), STATE’S EXHIBIT #206 (BODY RECOVERY VIDEO), STATE’S EXHIBIT #207 (ELIAS BODY RECOVERY PHOTOS), STATE’S EXHIBIT #207A (PHOTO-ELIAS), STATE’S EXHIBIT #207B (PHOTO-ELIAS), STATE’S EXHIBIT #208 (MERAH BODY RECOVERY PHOTO), STATE’S EXHIBIT #208A (PHOTO-MERAH), STATE’S EXHIBIT #208B (PHOTO-MERAH), STATE’S EXHIBIT #209 (GABRIEL BODY RECOVERY PHOTO), STATE’S EXHIBIT #209A (PHOTO-GABRIEL), STATE’S EXHIBIT #209B (PHOTO-GABRIEL), STATE’S EXHIBIT #209C (PHOTO-GABRIEL), STATE’S EXHIBIT #209D (PHOTO-GABRIEL), STATE’S EXHIBIT #210 (ABIGAIL BODY RECOVERY), STATE’S EXHIBIT #210A (PHOTO-ABIGAIL), STATE’S EXHIBIT #210B (PHOTO-ABIGAIL), STATE’S EXHIBIT #211 (NAHTAHN BODY RECOVERY PHOTO), STATE’S EXHIBIT #211A (PHOTO-NAHTAHN), STATE’S EXHIBIT #211B (PHOTO-NAHTAHN), STATE’S EXHIBIT #211C (PHOTO-NAHTAHN), STATE’S EXHIBIT #211D (PHOTO-NAHTAHN), STATE’S EXHIBIT #212 (AUTOPSY-ELI), STATE’S EXHIBIT #212A (PHOTO-ELI), STATE’S EXHIBIT #212B (PHOTO-ELI), STATE’S EXHIBIT #212C (PHOTO-ELI), STATE’S EXHIBIT #213 (AUTOPSY-MERAH), STATE’S EXHIBIT #213A (PHOTO-MERAH), STATE’S EXHIBIT #213B (PHOTO-MERAH), STATE’S EXHIBIT #214 (AUTOPSY-GABRIEL), STATE’S EXHIBIT #214A (PHOTO BODY-GABRIEL), STATE’S EXHIBIT #214B (PHOTO SHIRT-GABRIEL), STATE’S EXHIBIT #214C (PHOTO SLIPPER-GABRIEL), STATE’S EXHIBIT #214D (PHOTO JOURNAL-GABRIEL), STATE’S EXHIBIT #214E (PHOTO DIAPER-GABRIEL), STATE’S EXHIBIT #214G (PHOTO BODY-GABRIEL), STATE’S EXHIBIT #215 (AUTOPSY ABIGAIL), STATE’S EXHIBIT #215A (PHOTO BODY-ABIGAIL), STATE’S EXHIBIT #215B (PHOTO BODY-ABIGAIL), STATE’S EXHIBIT #216 (AUTOPSY NAHTAHN), STATE’S EXHIBIT #216A (PHOTO BODY-NAHTAHN), STATE’S EXHIBIT #216B (PHOTO BODY-NAHTAHN), STATE’S EXHIBIT #216C (PHOTO ELBOW-NAHTAHN), DEFENDANT’S EXHIBIT #135 (CD DR. BIGLER-IMAGES), DEFENDANT’S EXHIBIT #137 (POWERPOINT), COURT’S EXHIBIT #90 (VIDEO-CYNTHIA TURNER)

DIRECT EXAMINATION

By The Court:

Q Good afternoon, Mr. Prescott.

A Good afternoon.

Q My name is Eugene Griffith. You are under oath, I am going to ask you some questions. Speak into the microphone. I am going to ask you some questions, explain some things to you about the criminal procedures and things that you may not be aware of and then the lawyers get an opportunity to follow up on my questions. Initial part of the conversation is me and you but she is taking it down and everybody gets to listen to your responses. Now, you took an oath Monday right before we left and I ask y'all to promise not to do any kind of independent research, talk about the case, don't let anybody talk to you about the case.

A Right.

Q Has anyone tried to talk to you about the case?

A No.

Q Have you talked to anyone about the case?

A No.

Q Have you done any independent research?

A No but let me go back to the other question. I had to call my boss and he lives in Kentucky. I had to let him know I didn't know how long this would take. And I

1 said it is a murder trial and that is all I said. I
2 didn't say names or anything. But I had to let him know
3 the circumstances which I would be out of work longer than
4 expected. I thought I was going to be in and out Monday.
5 I had no idea what this was about until Monday.

6 Q Fair enough. Have you seen or heard any media
7 reports?

8 A No.

9 Q Anything in the paper, news accounts?

10 A No, I don't read that stuff.

11 Q Now, talking about work. This case will take a while
12 to get a jury together. Once we have got you here today
13 to see if you are going to be a qualified Juror or not and
14 if you meet certain parameters you would be a qualified
15 Juror and then you could be picked, that doesn't mean you
16 will be picked but could be picked. Once we go through
17 that, we have got a number of people because you are on
18 the first panel, it may be the middle of next week before
19 I get through all the panels. Not only that and the trial
20 will start after we go through all the panels. The trial
21 may last a couple of weeks or better. So the month of May
22 is probably occupied if the trial goes all the way
23 through. Do you have any personal plans, vacation,
24 surgery, personal obligations you need to attend to if you
25 are so seated. Understand, this is an inconvenience and

1 you probably wouldn't volunteer. I understand that.

2 Anything on your personal schedule that would prevent you
3 from serving?

4 A I have got a birthday in [REDACTED] days.

5 Q I see how old you are.

6 A The same age as you.

7 Q That's right. Okay.

8 A No, I have nothing.

9 Q That means you are a little bit older than me, mine
10 is in December.

11 A Okay.

12 Q I remind you you are under oath. The answers to the
13 questions, some of them will be opinion questions. And
14 you are entitled to your opinion so there is not a right
15 or a wrong answer. I just want candid truthful answers.
16 That is what the lawyers want. They are getting to know
17 you. That is why I sent that questionnaire out, what is
18 going on, who are you, where do you work. That kind of
19 thing. You have answered all of those questions
20 truthfully?

21 A As far as I know.

22 Q Now, are you or a member of your immediate family a
23 member of any organization which advocates rights of
24 victims, such as MADD Mothers, Students Against Drunk
25 Driving, Citizens Against Violent Crimes, Bikers Child

1 Abuse, any advocacy group for victims. Are you a member
2 of any of that?

3 A No but can I speak freely. I need to amend my
4 questionnaire. And I didn't realize it until this past
5 weekend when I was turkey hunting. One of the guys that I
6 turkey hunt with, he is an officer of the law, he works
7 for Cayce Police Department and I think I put on there,
8 the best that I can remember, I put on there that I don't
9 know anybody in law enforcement.

10 Q He is a hunting buddy?

11 A A hunting buddy. But it kind of slipped my mind
12 that, until I saw him this weekend, crap, I don't think I
13 put that on there.

14 Q So you have got a close friend who is a member of the
15 Cayce Police Department?

16 A Yes.

17 Q Fair enough. Would that effect your judgment in the
18 case?

19 A No.

20 Q Can you listen to the facts and circumstances
21 presented?

22 A Yes.

23 Q And obviously you have not talked to anybody about
24 the case would include him?

25 A Correct. Well, he knew I had jury duty and I am sure

1 he probably knew this trial was coming up but he never
2 mentioned, hey, I know what trial you are going for.

3 Q Not many people knew that was coming except the
4 people who got the summons and folks in this room. We
5 scheduled it a while back but it is just how it worked
6 out. This happens to be the week we started.

7 A Okay.

8 Q Now, you have examined the witness list, list of
9 potential jurors, a long list?

10 A It was.

11 Q The parties are required to give all potential jurors
12 a list of potential witnesses regardless of whether they
13 will be called or not. It is very likely that all of
14 these won't be called but out of an abundance of caution
15 they got to list them all to alert you when I say, is this
16 your first trial?

17 A Yes.

18 Q Do you know anybody on the witness list?

19 A I did not recognize one name.

20 Q You are not connected by blood, marriage, close
21 personal friends to any of those potential witnesses?

22 A No.

23 Q That is why it is there so you can review and
24 determine that because it would be awkward if during the
25 trial a witness gets called up and it is your

1 brother-n-law.

2 A Right.

3 Q That would create a huge problem for you and for us
4 so that is why we ask. So not connected to anybody?

5 A As best as I could see.

6 Q No social, personal, business relationship.

7 A I didn't even recognize one name on there, not even
8 just hearing about somebody, I don't even recognize
9 anything like that.

10 Q Now, I am going to kind of give you a broad brush,
11 this isn't detailed explanation of the law but a little
12 bit of criminal procedure, a little bit about some of the
13 elements of certain defenses and then ask you, can you
14 follow the process and if you can, because my job as the
15 Judge is preside over the trial, that includes ruling on
16 preliminary issues, trying to impanel a fair and impartial
17 jury, ruling on evidence in the trial, instructing the
18 jury at the very end because right now I am a little bit
19 like you, I am in the dark as to what exactly witnesses
20 the parties will call. I have got an idea, I know some of
21 the witnesses, I have heard some preliminary matters that
22 I had to rule on to decide whether they come forward or
23 not. I have got an idea of what is going to be presented
24 but until I hear, I haven't heard it either so I am in the
25 dark like you. You have heard nothing other than a little

1 bit of the, you heard about the case maybe?

2 A Whenever you ask the other day in the other Court
3 House, if we heard any publicity. My hearing about it
4 went back to when it happened and it was National news. I
5 have not even heard, I don't watch a whole lot of local
6 news but I haven't heard anything recently about the case.

7 Q You haven't made up your mind about the case?

8 A No, I am going way back to whenever I heard it on
9 National news.

10 Q Late summer or early Fall, almost five years ago?

11 A Almost five years ago.

12 Q Now, here is the big broad picture, give you some
13 definitions and procedures and laws. And I understand a
14 lot of testimony and evidence will come in later and that
15 kind of fills and the law applies to it, maybe, maybe not,
16 depending on how the facts come in.

17 A Okay.

18 Q My instructions will be the law in the trial. I
19 don't have a blanket instruction, Mr. Prescott and ladies
20 and gentlemen of the jury, the law of South Carolina is
21 thus, thus and thus. I have got to wait and hear the
22 testimony and kind of tailor, make my instructions based
23 upon what is shown in court. I have got to tailor it
24 specific for each case.

25 A Right.

1 Q That is part of what I do, explain the law and
2 instruct the law. And the law is the law of South
3 Carolina, what I am tasked with instructing y'all, I can't
4 give, can't give the wrong law, incorrect, I have got to
5 do it like it is handed down, the books from the General
6 Assembly. And likewise, part of your oath will be
7 accepting the law as instructed, even if you disagree with
8 it. Okay.

9 A Okay.

10 Q Are you going to be able to do that?

11 A Yes, sir.

12 Q Okay. Now, in this case, we are talking about this
13 case, Mr. Jones has been accused and indicted for five
14 counts of murder and the law in our State presumed him to
15 be innocent until he is proven guilty beyond a reasonable
16 doubt. So as he sits right there he is presumed innocent.
17 The State hasn't proved anything, they have made
18 allegations towards him with those indictments. And that
19 is telling him, here is what you need to be prepared to
20 defend yourself against when you come into court. That is
21 what he knows. Aside from that he is presumed innocent
22 and the State, because they are making the accusation,
23 they have got to present their case in an attempt to prove
24 the elements of murder beyond a reasonable doubt and the
25 jury considers that and makes a determination of whether

1 they can prove each and every element beyond a reasonable
2 doubt and a jury finds a unanimous verdict of guilt.

3 Okay.

4 A Right.

5 Q Now, murder is defined as the killing of another with
6 malice aforethought. Real simple and short. That is the
7 definition. Most people don't know it is that short. But
8 now the definition of malice is hatred, ill-will, depraved
9 heart, hostility, intent on wrongdoing. That is malice.
10 So a person killing another person with hatred. That is
11 what murder is defined as. It is not an accident, it is
12 not something along those lines. There is no excuse for
13 it.

14 A Right.

15 Q There are some defenses and I will go over those in a
16 little bit. There are some defenses to murder and those
17 may be presented and we will talk about those. Murder,
18 killing of another, malice aforethought. Mr. Jones is
19 accused of that by the State. The State has got to prove
20 that beyond a reasonable doubt. Now, I say he is presumed
21 innocent. Okay.

22 A Okay.

23 Q Now, in certain cases, in most cases, this is a
24 Capital case. In most cases the State brings a charge,
25 makes an accusation of a crime. They prove it, a person

1 is found guilty. The Judge determines the sentence and it
2 may be a range, it may be a specific number of days or
3 years or whatever. Judges impose sentence. In a Capital
4 case it is a little bit different. Upon a finding of
5 guilt then, there is two phases to a Capital case, guilt
6 or innocence phase where it is guilty or not guilty.
7 Phase two starts, things start over to determine
8 punishment. The jury votes on the punishment. There are
9 two choices, life without parole, death. The State has
10 got to prove, in order to seek the death penalty, because
11 conviction of murder, the State is not entitled to ask for
12 the death penalty. But a conviction for murder and if the
13 State can prove during the sentencing side an aggravating
14 circumstance, an aggravating factor defined in these code
15 books back here and there are several, killing a police
16 officer, rape, murder follow-up, kidnapping of a murder, a
17 child is the victim, multiple victims. Those are
18 aggravating circumstances and the facts of the crime fit
19 that and the State can prove one or more of those
20 aggravating circumstances then they can ask for the death
21 penalty. It is not automatic.

22 A Okay.

23 Q So phase one is guilt or innocence. Phase two, if
24 you get there, because if it is not guilty the case is
25 over, no phase two.

1 A Right.

2 Q But if it is guilty, go into phase two and that is
3 when the State has got to prove the aggravating factors.
4 So, do you understand it is a two-step process?

5 A I do.

6 Q Okay. And the State has got to prove all of its
7 elements, murder and then aggravating factor beyond a
8 reasonable doubt, the murder has got to be unanimous to
9 murder.

10 A Okay.

11 Q Now, I am going to define a couple of things. In the
12 guilt or innocence side, that first phase, a lot of
13 evidence to be presented, instructions will be done after
14 the result of the testimony and evidence is presented.
15 But there is some potential defenses in there, in this
16 case Mr. Jones has entered one of those. Potential
17 defenses which can be shown and not all of them apply but
18 depends on the facts of each case individually. So there
19 are some available defenses for people accused. I am
20 going to read those off to you and then come back and ask
21 you another question. Potential defenses include
22 accident, identification issue, suicide, involuntary
23 intoxication, self-defense, necessity, insanity, guilty
24 but mentally ill, defense of habitation, entrapment,
25 duress and alibi. Those are potential defenses. And

1 those are presented during the guilt or innocence side.

2 Okay.

3 A Okay.

4 Q If the defense has proven or shown and the jury finds
5 that then not guilty. Now, in this case Mr. Jones has
6 entered a plea of not guilty by reason of insanity. I am
7 not going to define insanity for you right now but because
8 of that plea can present evidence in that regard. The
9 jury will get to consider that. But I want to ask you
10 this, normally the guilt or innocence is two verdicts,
11 guilty, innocent. When someone enters a plea like this,
12 there are potential verdicts. There is guilty, guilty but
13 mentally ill, not guilty by reason of insanity and then
14 not guilty at all. And I am very aware, you have not
15 heard a single fact, not a single witness, not a shred of
16 evidence has been presented to you. A lot of evidence
17 will be presented to you if you are qualified as a Juror.
18 I will instruct you on the law and the aspects of those
19 potential verdicts. Do you have any reason right now why
20 you couldn't find any one of those four verdicts, could
21 you accept the law as I instruct you, consider the
22 testimony and evidence which is presented to you, fairly
23 evaluate it, meaningful consider all the evidence and
24 apply the law as I instruct it and reach any one of those
25 four. Can you do that?

1 A Yes.

2 Q Now, is there any one those particular verdicts that
3 you couldn't find?

4 A No.

5 Q Okay. Now, also in the second phase, I discussed
6 with you, the aggravating factor. I don't know if I
7 mentioned mitigating factors. There are also mitigating
8 factors. Mitigating factors are considered by the jury in
9 the second phase. So if there is a not guilty in phase
10 one the case is over. If there is a guilty in phase one
11 we go to phase two, the sentencing side. Two potential
12 verdicts. You understand, the death penalty is not
13 automatic. Two potential verdicts for the jury to decide,
14 life without parole sentence, death penalty. Those are
15 the two potential sentences the jury can impose. We got
16 past guilty, not guilty.

17 A Right. Only in phase two.

18 Q Only in phase two. Now, aggravating factors, I
19 defined those a moment ago to you. The death of a police
20 officer and such as that.

21 A Right.

22 Q Those are some aggravating factors and the State has
23 got to prove one of those two you, not more than one but
24 at least one beyond a reasonable doubt before y'all can
25 consider whether to impose death or only impose life

1 without parole. Now, mitigating factors are listed in the
2 statute and there are some that aren't listed in the
3 statute, jury's can consider those also. You may hear
4 evidence of those. So evidence of mitigating factors, I
5 am going to list out a few factors and ask if you can
6 consider those. But mitigating factors would include that
7 a Defendant has no significant prior criminal history,
8 never been in trouble before. The murder was committed
9 while the Defendant was under the influence of mental or
10 emotional disturbance, the victim was a participant in the
11 Defendant's conduct and consented to the act. The
12 Defendant was an accomplice and committed by another
13 person but his participation was minor. The Defendant
14 acted under duress and in the dominion of another person,
15 capacity of the Defendant to appreciate criminality of the
16 conduct or conform his conduct was substantially impaired,
17 age or mentality of the Defendant at the time of the
18 crime, the fact that the Defendant may have been provoked
19 in committing the crime. The Defendant was below the age
20 of 18. The Defendant had mental retardation at the time
21 of the act. And then there is some other factors, say you
22 had a rough life growing up. Those are factors jury's can
23 consider, if the testimony supports it, in deciding to not
24 give the death penalty but impose a life without parole
25 sentence. Do you understand that?

1 A Yes.

2 Q Okay. Now, at the end of the case when we get
3 through all of this I am going to instruct you how to
4 evaluate the testimony and so you are going to consider
5 testimony, instructions from me, a wide array of this is
6 testimony and people, I didn't realize that was an
7 aggravating factor or mitigating factor. But for some
8 folks just evidence of what happened. So until the
9 evidence is presented I don't exactly know what my
10 instructions will be but you have to follow instructions
11 in defining testimony as evidence of aggravation, evidence
12 of mitigation which are any reason or both, just for a
13 life sentence. And life means die in jail, the balance of
14 your life, no release. That is what it means.

15 A Right.

16 Q Evidence of defenses which I have gone over with you,
17 evidence of affirmative offenses such as accident, guilty
18 but mentally ill, insanity, that kind of thing. Now, you
19 will hear all of that testimony. Will you be able to
20 listen to all the testimony, consider all of the evidence,
21 weigh it consistent with my instructions on the law in
22 reaching your verdict. Can you do that?

23 A Yes.

24 Q Now, I handed out to you and for you to read over a
25 sheet much like this, it has three types of jurors. And

1 type one is a Juror who is, this includes, kind of
2 combines things. So stage one is down, guilty if found.
3 If it is not guilty we don't get this far. Guilt has been
4 found that a murder has been committed, the State has
5 proved beyond a reasonable doubt. We are into stage two,
6 at the end, the State has proved beyond a reasonable doubt
7 an aggravating factor. All right.

8 A Okay.

9 Q Once that is done and the jury starts considering
10 punishment some people say, you know, the State has proved
11 that, the death penalty is what I believe a person should
12 always get, proven a murder as well as an aggravating
13 factor. And so death penalty is always going to be
14 imposed. Type two Juror is a little bit different. They
15 say the State has proved the murder beyond a reasonable
16 doubt and an aggravating factor, I have got some personal
17 belief, moral belief I just cannot sign a verdict for a
18 death penalty. I am going to impose life without parole
19 because to me that is, keep them in jail the rest of their
20 life. I am going to give that sentence no matter what.
21 And then there is a type three. The State has proved
22 guilt, proved an aggravating factor. This type of Juror
23 wants to hear all the testimony, whether it be a defense,
24 whether it be a mitigating factor, whether it be an
25 aggravating factor, whether it be just personal belief.

1 They want to hear everything. And then decide which
2 sentence it is going to be, life sentence, life without
3 parole or a death sentence. They don't stand in the
4 courtroom, walking in and decide one way or the other. So
5 kind of the question is, where do you find to classify
6 yourself in one of those three types?

7 A Type three.

8 Q Type three. So you haven't made up your mind on what
9 the punishment should be?

10 A No.

11 Q You understand and I have explained to you, the jury
12 determines life without parole or the death penalty?

13 A I understand that now.

14 Q Did you understand before today?

15 A Before today, no. I didn't know the jury did the
16 sentencing.

17 Q Twelve people make that decision and that is why it
18 is important for these folks because they want a fair jury
19 knowing that decision has been made by those jurors. And
20 that is why it is important. It is kind of a, a Capital
21 case, that is why it takes so long to go through picking
22 of the jurors because we have got to sit down and ask, do
23 you have an open mind, do you have a moral belief. These
24 questions are asked for this reason. It makes it more
25 clear, doesn't it?

1 A It does.

2 Q Okay. Now, do you have any religious, moral beliefs,
3 personal beliefs which would prevent you from considering
4 the death penalty?

5 A No.

6 Q Do you have any beliefs, personal, ethical, moral
7 which would prevent you from imposing a life without
8 parole sentence?

9 A No.

10 Q Do you understand, if the verdict is unanimous for
11 the death penalty each of the jurors sign the verdict
12 form, the punishment form actually?

13 A Right.

14 Q Do you understand that?

15 A Yes.

16 Q Did you know that?

17 A No.

18 Q But you understand now that I have explained to you
19 two choices. It is not automatic one way or the other?

20 A Right.

21 Q And you have got an open mind right now?

22 A I do.

23 Q Okay.

24 MR. YOUNG: We have one issue I would like to take
25 up.

1 THE COURT: Okay. This is why it is taking long
2 because legal issues that I have got to discuss with the
3 lawyers and so I will put you out in the hall and we will
4 have you back in.

5 (Whereupon, the Juror was excused from the
6 courtroom.)

7 MR. YOUNG: Your Honor was talking about the first
8 statutory mitigator which is no significant history of
9 prior, no significant history of prior conviction
10 involving the use of violence against another person. And
11 Your Honor cut it off short just saying never been in
12 trouble before. Mr. Jones has a criminal history, we are
13 all aware of Mr. Jones' criminal history. I don't want
14 the Juror to hold it against us when we have asked for
15 this charge and he says, well, you know what, the Judge
16 told me never been in trouble before. That might be a
17 mitigator. But you understand my concern.

18 THE COURT: You want me to correct that with him or
19 do you want me to not go from this point forward. Because
20 I can fix it right here.

21 MR. YOUNG: Well, I think we have to.

22 THE COURT: Okay. Once we do that are you ready?

23 MR. YOUNG: Yes, sir.

24 THE COURT: Okay. Bring him out.

25 (Whereupon, the Juror entered the courtroom.)

1 Q All right. Mr. Prescott, I did misstate something
2 and I will give you some of the mitigator factors. Some
3 of them apply and some of them don't. I want to make
4 certain you understand this. Like a person over 18, Mr.
5 Jones is well over 18. So I wouldn't instruct on that
6 one. You won't hear testimony he is under 18. But I
7 misread, I kind of shortened it. A person has no criminal
8 history, violence against another person is a mitigating
9 factor. If someone has been convicted, I said never been
10 in any trouble before. I didn't mean that they haven't
11 gotten a speeding ticket. But if someone has never been,
12 in the way the statute reads, no significant history,
13 prior criminal conviction involving the use of violence
14 against another person. That is actually what it says.
15 Do you understand that. That is a mitigating factor.

16 A Okay.

17 Q Can you consider that, if it turns out to be the
18 case.

19 A Yes.

20 Q Okay.

21 THE COURT: Sufficient, Mr. Young?

22 MR. YOUNG: Yes, sir.

23 THE COURT: Mr. McGuire.

24 MR. MCGUIRE: Yes, sir.

25 EXAMINATION

1 By Mr. McGuire:

2 Q Hey, how are you doing. My name is Bill, Bill
3 McGuire, as the Judge said. Good afternoon, Mr. Prescott.

4 A Good afternoon.

5 Q I just want to talk to you, like at your job in the
6 break room or the water cooler and just to throw some
7 things out to you and just get your views, your personal
8 opinions about the death penalty. Okay. If we were at
9 the water cooler and one of our coworkers came by and
10 said, you know, Mr. Prescott, I think we should use the
11 death penalty more often in South Carolina. What do you
12 think. What would you say to that?

13 A I don't think the amount of times you use the death
14 penalty should matter in any way. I mean, I think it
15 would go back to the Judge was reading to me about
16 mitigating factors and stuff like that to determine
17 whether it was necessary or not.

18 Q Sure. If you were Governor of South Carolina for a
19 day and you could have a Bill on your desk and it would
20 say, we have the death penalty or we can have a Bill that
21 says we don't have the death penalty. What decision would
22 you make, would we have the death penalty or not. If it
23 was up to you and you could choose?

24 A I don't think I would go either way, one way or the
25 other, I don't think I would go either.

1 Q You wouldn't have a strong opinion about that?

2 A I wouldn't, no. I think there is a reason for both
3 at times.

4 Q When you say both, you mean both sentences?

5 A Yes. Both, you know, life without parole or death
6 penalty. I think there is a case for either one at times
7 but I would not go you know, exactly one way or the other,
8 I wouldn't.

9 Q And just so we are definitely on the same page, I
10 want to start at the beginning. We are talking murder, as
11 the Judge said, it is killing somebody deliberately and
12 intentionally, malice aforethought, evil intent, hatred in
13 your heart, not self-defense, not accident, not voluntary
14 manslaughter like a spouse finding their spouse in bed
15 with somebody and then they shoot both people. That would
16 be voluntary, heat of passion. This is the intentional
17 deliberate killing, innocent victim. Are you with me?

18 A Yes.

19 Q And the Judge told you about some types of cases, I
20 think he said police officer killing, rape, murder,
21 kidnapping murder, that sort of thing. There are some
22 categories of cases that have aggravators attached to them
23 to make the murder worse, more aggravating. And the one I
24 want to ask you about is the category of case involving
25 multiple deaths of children. So we have this situation, a

1 situation, intentional killing of innocent victim,
2 children. Would the death penalty always be appropriate
3 in that category of cases?

4 A I am not going to make a decision on that. I think
5 you would have to hear all the facts and evidence and
6 testimony, all of that. I mean, that is what a Juror does
7 is weigh, right.

8 Q Well, sort of. When you say facts and evidence, are
9 you talking about the facts of the killing?

10 A Yes. I don't know any of the facts other than the
11 gentleman was caught in Mississippi almost five years ago
12 and there was some children that were killed and that was
13 it. That was the last I heard about the case actually
14 until Monday and then, you know, there was some chatter
15 amongst the potential jurors about, you know, what the
16 case was.

17 Q And the Judge talked to you about some other factors,
18 mitigating factors. Things like a person's background,
19 character, sort of their life experience, sort of how they
20 grew up. I mean, would those things be relevant in fixing
21 punishment for somebody convicted of killing innocent
22 multiple children?

23 A I guess it could. I mean, I guess it could. I would
24 have to hear all of that and, you know, just make a
25 decision after hearing all of that.

1 Q Do you think putting somebody in prison, letting them
2 live out their life in prison. Would that be a severe
3 enough punishment for potentially killing innocent
4 children?

5 A I guess punishment is a matter of opinion. Actually
6 I think the life in prison is harsher than the death
7 penalty, it can be.

8 Q A lot of people that come to court say that, that is
9 because you have to live every day of your life thinking
10 about it, right?

11 A Right.

12 Q And that could be hard?

13 A It could be.

14 Q And some people think that the death penalty, it is
15 almost like the easier way out because their suffering
16 ends. Is that kind of what you are saying?

17 A Yes.

18 Q Are, do you think the life penalty, never getting out
19 of prison, dieing in prison, is that always harder than
20 the death penalty in your opinion?

21 A I guess there is certain circumstances for
22 everything. Not necessarily, it could be either way.

23 Q I want to talk to you a little about, I am going back
24 to the second phase, the potential second phase of the
25 trial that the Judge was talking to you about. And it is

1 very different from a typical trial. The Judge said, you
2 know, the first part of a Capital case is just like any
3 other trial, do they have the right guy, did he do it, is
4 he guilty, that sort of thing. And all the questions in
5 the first phase are questions of fact, right or wrong.
6 Did the guy do it, did he not do it, that sort of thing.
7 Do they have the evidence, do they not. Is that your
8 understanding generally?

9 A Yes.

10 Q Okay. And we think of jury's speaking with one voice
11 and being unanimous and always agreeing on that type of
12 case, the first phase, guilt or not guilty part of the
13 trial?

14 A Right.

15 Q Yes. And I am going to take you back to that second
16 phase that the Judge talked to you about, the potential
17 punishment phase. And that is where things don't have to
18 be unanimous on certain issues. And what I mean by that,
19 going back to mitigation, the facts of mitigation.
20 Mitigation is just any reason to vote for something other
21 than the death penalty which would obviously mean life,
22 right?

23 A Uh-huh, (Indicate yes.).

24 Q So it could be any reason. And the way that sort of
25 will play out, as an example. Like Juror number one right

1 here could say--

2 MS. MAYES: Objection, Your Honor, form of the
3 question.

4 THE COURT: Rephrase the question, he has asked
5 something similar before.

6 Q So what I want to do is just sort of give you an
7 example and just ask you your thoughts about it. Okay?

8 A Okay.

9 Q So Juror number one right here can say, you know, I
10 heard that all the facts in the case and I think that I
11 saw something redeeming, a spark of humanity based on a
12 Defendant's relationship with his father. Okay. And
13 another Juror, number two, said well, you know, I didn't
14 necessarily see that but I saw something different. I saw
15 that he endured some really tough circumstances of growing
16 up so I want to vote for life on that reason. And another
17 Juror, number three, could say the Judge told me I could
18 vote for the life penalty for any reason, no reason, mercy
19 alone and I can't really put it into words but I am voting
20 for life. That is my view. So see how they can all be
21 different?

22 A Yes.

23 Q Do you see how they don't have to agree?

24 A I do.

25 Q Because that is a little unique. That is contrary to

1 what we normally think about jurors always agreeing on a
2 fact or something but they don't have to agree. Is that
3 something that you can respect?

4 A Yes.

5 Q Does that sound fair?

6 A Yes, that sounds fair. But all the jurors have to
7 be, it has to be unanimous one way or the other, right?

8 Q Twelve people can vote for the death penalty and that
9 is the only time the death penalty would ever be imposed,
10 if all twelve agree. All twelve have the option of voting
11 for the life penalty as well. But as you might imagine
12 there can be disagreement in a matter so important as
13 whether a human being is put to death, that you would have
14 some disagreement. That would seem normal, right?

15 A Yes.

16 Q And the way the law describes this, is that a
17 person's position in a Capital case is called their
18 individual moral judgment, you probably never heard that
19 phrase before but you heard it today?

20 A Yes.

21 Q And does that sound right, that it should be an
22 individual person's moral judgment as to whether or not a
23 fellow human being dies or not. That sounds right?

24 A Yes.

25 Q Okay. And as you imagine, there might be some

1 disagreement, right?

2 A Yes.

3 Q And the way this works is, the Judge has already
4 given an oath to all potential jurors, there will be
5 another oath given to the jury when they are sworn. And
6 once somebody reaches their individual moral judgment it
7 is a violation of the juror's oath to just say, I want to
8 change that and abandon that and just throw with the
9 majority just for the sake of unanimity. Do you
10 understand that?

11 A Yes.

12 Q Okay. And it would be wrong for somebody to say, I
13 am just going to join the greater number just to have a
14 unanimous verdict.

15 A Yes.

16 Q Okay. Ending the day in disagreement is not a
17 failure. Does that sound fair to you?

18 A Yes.

19 Q Okay. And you would respect everybody else's
20 individual moral judgment?

21 A Yes.

22 Q Even if different from you?

23 A Yes.

24 Q And if you saw, the way the law works is and the
25 Judge will tell you this, if it harms someone's conscious

1 to change their position, to abandon their individual
2 moral judgment that would be wrong. If you saw that
3 happening in the jury room, that if discussions got beyond
4 civil discourse and people were trying to get somebody to
5 abandon their individual moral judgment to come over to
6 the majority, could you stop that?

7 A Is that my duty to stop that?

8 Q Actually it is, sort of the flip-side of that. The
9 Juror, a Juror, when they reach their individual moral
10 judgment, it is actually their obligation and duty to stay
11 in that position and if they abandon that--

12 MS. MAYES: Objection, Your Honor, at this point,
13 again, to the form of the question.

14 THE COURT: Okay. I will let him try to rephrase it
15 because, it is in response to an answer. And so,
16 understand your objection and I am very aware of the
17 question that he can ask.

18 Q So you brought up the term duty, and it is actually,
19 once an individual Juror reaches their own individual
20 moral judgment, let's just say they say life penalty.
21 That is where they are. It would harm their conscious to
22 change that position, it would be a violation of their
23 Juror oath, that you saw people to try to get them to do
24 that with coercive techniques or something and ask you if
25 you could step in and stop that. And you said, is that

1 your duty. What you could do is--

2 MS. MAYES: Objection, Your Honor, that is not the--

3 THE COURT: All right,--

4 MR. MCGUIRE: I will get to the question.

5 THE COURT: It is actually a legal instruction but

6 ask him a question. Sustained as to the judicial

7 instruction.

8 Q So, I am sorry, that was a bad question, that was a
9 little wordy on my part. Could you make sure the Juror
10 oaths are followed, could you pass a note out to the Judge
11 saying it is getting coercive in here, somebody is trying
12 to get somebody, who has reached their individual moral
13 judgment, and it would harm their conscious to change
14 their position but they are trying to do it anyway. Could
15 you write a note out to the Judge that things are getting
16 beyond civil discourse and we need to get some dignity in
17 the proceedings?

18 A If that is what I am suppose to do, yes, I could do
19 that with no problem. I have never--

20 Q You have never been in this situation before?

21 A I have never been called for jury duty.

22 Q Right.

23 A Until this time.

24 Q You know, me either.

25 A I will be 55 years old.

1 Q Mr. Prescott, just give me one second.

2 A Okay. Mr. Prescott, if I just said, on a scale of
3 one to ten, just based on everything you have been
4 instructed on by the Judge about the death penalty for
5 murder, ten being very much in favor for it or one, where
6 do you fall out. Just tell me, kind of rate yourself.

7 MS. MAYES: Objection, Your Honor, we are going
8 beyond the scope now in his questions. We can approach if
9 needed.

10 THE COURT: Y'all approach.

11 MR. MCGUIRE: I would like it on the record, Judge.

12 THE COURT: We will put it on the record if we need
13 to.

14 (Whereupon, a bench conference was held in the
15 presence of the Juror but out of the hearing of the
16 Juror.)

17 THE COURT: Do you want to make a record of it?

18 MR. MCGUIRE: No, not right now. I will put that on
19 the record later.

20 THE COURT: Okay. You will be protected on that
21 question so make a record of it, we can make a record of
22 your question.

23 MR. MCGUIRE: Sure, sure.

24 THE COURT: Joy, I don't know if I ruled on the
25 objection by the State, the objection was sustained.

1 Q Mr. Prescott, let me go back to one of the comments
2 that you made. You said there was some chatter amongst
3 the jury members the first day you came to court. Is that
4 right?

5 A Yes.

6 Q Do you remember what that was, can you tell me about
7 that?

8 A Myself and a couple of other people around me wasn't
9 aware what we were there for. And I think we all had an
10 idea once we saw how many potential jurors were showing
11 up, that this was big. And I believe it was the lady
12 sitting in front of me, I couldn't tell you her name or
13 anything but she said, she said, yeah, this is the Timothy
14 Jones case. And I am like, that doesn't mean nothing to
15 me.

16 Q The name didn't mean anything to you?

17 A It didn't mean nothing to me because I have not heard
18 any recent news.

19 Q You heard stuff about four years ago?

20 A Right, exactly. And she said that the guy that
21 killed his children, that still didn't ring a bell. And
22 then she said, something about him getting caught in
23 Mississippi and that rung a bell, that I remember hearing
24 that National news back whenever it happened.

25 Q When you read the National news story what was your

1 reaction to it?

2 A I just heard it on the radio.

3 Q What did you think, what did you feel?

4 A Sorry for the children.

5 Q That is all I have for you. Thank you so much, Mr.
6 Prescott.

7 EXAMINATION

8 By Ms. Mayes:

9 Q Good afternoon, Mr. Prescott.

10 A Good afternoon.

11 Q My name is Suzanne Mayes and I am the Deputy
12 Solicitor here in Lexington County, we represent the
13 State. So just have a few questions for you. You heard
14 the Judge in the outset go through all of the aggravating
15 factors, mitigating factors, things of that nature that
16 you can consider. Can you follow the Judge's instruction
17 at the end of this case and consider all of the factors in
18 reaching a decision on punishment?

19 A Yes.

20 Q Mr. McGuire was asking you specifically about your
21 role potentially as a Juror and what that would entail.
22 And I believe your response, you never had jury duty
23 before.

24 A I haven't. That is why I was asking, if that is part
25 of my duty to notify somebody I can definitely do that.

1 You have got to let me know what my duty is.

2 Q And my question to you, at the end of this case it is
3 Your Honor who will actually charge and other jurors if
4 you potentially are on the jury as to what the law is in
5 that regard. Would you be able to follow the Court's
6 instructions?

7 A Yes.

8 Q And specifically the Court's instructions as to any
9 duties that you would have as a Juror?

10 A Yes.

11 Q Now, one thing that Mr. McGuire was asking you about,
12 how you felt when you saw or heard news coverage in this
13 case. I think you said you heard it on the radio?

14 A Yes.

15 Q Despite that can you put that aside and be fair and
16 impartial in this case even if it involves the murder of
17 children?

18 A Yes.

19 Q And, Mr. Prescott, would you consider, even in a case
20 involving the murder of a child or the murder of two or
21 more persons, would you still consider both the
22 aggravating and mitigating circumstances that are
23 presented in this case?

24 A Yes.

25 Q Would you able to consider all of those factors in

1 ultimately deciding punishment?

2 A Yes.

3 Q Whether that be life without parole?

4 A Yes.

5 Q Or whether that be the death penalty?

6 A Yes.

7 Q And I believe one of the questions that Mr. McGuire
8 asked you is, if you were Governor, where would you stand
9 on the death penalty or life without parole?

10 A If I had to choose one or the other, I don't think I
11 can make a decision.

12 Q So you are open to both potential sentences as an
13 option?

14 A Yes.

15 Q Thank you, Mr. Prescott.

16 MR. MCGUIRE: Nothing further, Judge.

17 THE COURT: Do I need to send him out?

18 MR. MCGUIRE: No sir, I believe he is qualified.

19 THE COURT: Sometimes we have to have a discussion
20 but you have answered the questions of the Court and I
21 find you qualified to be a potential Juror. So what that
22 means is, you get to go to work. Here is how you are
23 going to keep up with when I need you back. Look on the
24 website to when to come in. You are a qualified Juror.
25 What that means is, there is going to be a list of 50 or

1 so qualified jurors when I get them. We are going to
2 select a panel from that group. You are in the group, you
3 are not on the jury, you could be put on the jury, you may
4 not be. Lexington County website has jury information, go
5 under that and look and see when I need you back. Because
6 it will be one day next week I am guessing. Start
7 watching it Thursday.

8 JUROR: So there will be another stage of this
9 questioning?

10 THE COURT: Oh, no. No more questions of you. Once
11 I get the panel the lawyers and I get together, they have
12 met you, they have seen you, and they don't call back in.
13 We select the jury from the list. You will be here during
14 the selection.

15 JUROR: So all the qualified jurors come in and then
16 you select from that?

17 THE COURT: Right. There you are and that will be
18 one day next week.

19 JUROR: How much notice may I be given or not be
20 given.

21 THE COURT: I would say at least a day. The website
22 will give you more information but you are not going to be
23 called in on a weekend. Watch that website and maybe we
24 will give you more than a day.

25 JUROR: That would be great.

1 THE COURT: You are under oath, you have got to
2 follow that oath until I see you again. Don't talk to
3 anybody, don't let anybody talk to you, avoid the media
4 reports. What I want you to do, if you are selected as a
5 Juror, decide the case on what you hear in the courtroom,
6 on the record, with the lawyers, everybody here, I am
7 here, all together. What happens outside is not relevant
8 on what we are going to hear in the courtroom. News media
9 is going to report because it is news and that is what
10 they do. That is fine, they are free to do that but I
11 don't want you to be influenced by anything other than my
12 testimony from the witnesses if you are selected as a
13 Juror and my instructions. Okay. You are free to go.

14 (Whereupon, Mr. Prescott was excused from the
15 courtroom.)

16 MR. MCGUIRE: Judge, nothing to do with Mr. Prescott,
17 I just want to put on the record, I believe in a situation
18 where we have a Juror bring up the issue that we have to
19 be unanimous, right, that that would give the opening to
20 say, well, let us explain how we work in a Capital case.
21 And in that specific instance where we would have to be
22 unanimous that we would be allowed to ask essentially the
23 question that we have proposed which is twelve can be
24 death, twelve can be life. If they disagree, at the end
25 of the day the Judge takes the case and says the case will

1 be over. In the rarest is where a Juror says something
2 like that I think we should be able to have that window to
3 go into that.

4 THE COURT: Here is what I think the young fellow,
5 young fellow, he is older than me but I like the way I am
6 thinking. He asked, is that my duty. I think the best
7 response is, the Judge will give you instructions and let
8 me rephrase my question. I think that would have been a
9 better way to handle it rather than giving an explanation.
10 Let me give the explanation. You perhaps could have gone,
11 understanding you have got your moral judgment which you
12 did and you can agree to disagree and you can send out a
13 note. That was the way to go rather than trying to
14 explain the law, I think that falls back on me. And so I
15 would rather, if you get called on that again and totally,
16 he answered with a question which was, it happens.

17 MR. MCGUIRE: If I remember correctly, when he
18 brought a duty, that was when I was, in fact, talking to
19 him about can you step in and prevent coercion if somebody
20 was being asked to give up their individual moral
21 judgment.

22 THE COURT: Right. He says, do I have to or am I
23 suppose to.

24 MR. MCGUIRE: But when I was talking about is when he
25 just, well, we have to be unanimous, right.

1 THE COURT: Correct.

2 MR. MCGUIRE: If that happens again I think we should
3 be able to have just the slightest of latitude to say,
4 well, this is how it would end or could end including, if
5 there was disagreement in a non-unanimous jury the Judge
6 will take the case and sentence.

7 MS. MAYES: And the State would oppose to that, Your
8 Honor.

9 THE COURT: I like the way Mr. Young did it and he
10 says, if you can't agree and you agree to disagree, at the
11 end of the day his agreement is not a failure. Are you
12 okay with that. That was his question, I thought that was
13 a very appropriate way to put it. And so respectfully I
14 would rather you not explain it the way you want to.

15 MR. MCGUIRE: I understand.

16 THE COURT: Mr. Young's characterization was very
17 nice.

18 MS. MAYES: Yes sir, Your Honor. And the State would
19 object to any attempt by Counsel on either, either of the
20 Defense to attempt to explain the law and instruct the
21 law. That is strictly the role of Your Honor.

22 THE COURT: Let's get 135 in.

23 MR. MCGUIRE: I forgot to put on the record that
24 bench sidebar. Do you want me to do that now?

25 THE COURT: The sustained objection you said you were

1 going to put on the record? You want to do it right now?

2 MR. MCGUIRE: Yes, if you can stop them.

3 THE COURT: We were at sidebar, came back and I said
4 the State's objection is sustained. And that is as far as
5 we got.

6 MR. MCGUIRE: Yes, sir.

7 THE COURT: Go ahead.

8 MR. MCGUIRE: Just for the record, we had a sidebar
9 in a response to me asking the question, Mr. Prescott,
10 could you rate yourself with regard to the death penalty
11 in cases of murder, ten being very much in favor of it and
12 one being opposed to it. Could you tell us how you fall
13 out on that scale, could you rate yourself. There was an
14 objection and the Court sustained the objection. And our
15 position was that questions, the purpose of voir dire, the
16 purpose of voir dire is to not just uncover biased but to
17 allow Defense Counsel to intelligently exercise peremptory
18 strikes. There is absolutely one-hundred percent no harm
19 in the question, there is no legal objection to it, there
20 is no legal grounds why it should not be asked. And as I
21 have stated before, a lot of these objections aren't legal
22 objections, they are flavorful, Judge, don't let them do
23 that, they are getting information, there is some
24 advantage they are getting, it is disadvantageous to the
25 State. Judge, could you just shut them down a little bit

1 and not let them gather information for no legal reason,
2 no legal objections. And for the Court to sustain it is
3 error.

4 THE COURT: That question troubles me some because I
5 guess the proper question is, understand it is two
6 verdicts and if you are ready to say, where do you stand
7 most at the time in a case, absent any facts, and has
8 already answered my question they are a three, they are
9 not a one, zero, and they are not a ten but somewhere in
10 between.

11 MR. MCGUIRE: Well, so the one, two, three chart is
12 always, that is not the test, it is just if they are
13 predisposed to a certain penalty, one or the other, they
14 are substantially impaired. If they are predisposed to an
15 appropriate significant degree.

16 THE COURT: I think the question I have been allowing
17 you to ask, I am concerned about that question.

18 MR. MCGUIRE: And the Court's comments were, when we
19 were at sidebar that, it sounds like I am asking to weigh
20 evidence, this might just be too.

21 THE COURT: That is an abstract problem.

22 MR. MCGUIRE: And what I wanted to do is bring him
23 straight to the category case, intentional killing,
24 innocent multiple children. Just knowing that, starting
25 point, one to ten, there is no legal objection to that

1 question, it is not confusing, it is not asking to weigh
2 evidence that he hasn't heard. Just asking his personal
3 views about himself, where does he think he falls out on
4 the scale. Everybody has an opinion about, you know what,
5 I am right in the middle. He could have said that, he
6 could have said, I don't know, six. But that information
7 is not detrimental to the State, it is not prejudicial to
8 the State, it doesn't put anything in his mind, it doesn't
9 prejudice the Juror. It is simply allowing us to get a
10 little bit more information so we can intentionally
11 exercise peremptory strikes. And, again, it is just
12 another attempt by the State, Judge, can you just do us a
13 favor and not let them gather more information.

14 THE COURT: All right. I understand your argument, I
15 am concerned about that question.

16 MR. GRAHAM: Can I ask Your Honor to consider
17 something.

18 THE COURT: Yes, what you got?

19 MR. GRAHAM: Voir dire, the purpose of voir dire
20 under 14-7-1020, the purpose is to determine jurors
21 related to the parties, has an interest in the cause,
22 expressed or formed an opinion, has a biased or
23 prejudiced.

24 THE COURT: They are going to say looking for the
25 biased.

1 MR. GRAHAM: The question, where are you at on the
2 scale is not a biased. The question is, are you one, two
3 or three. Once you are in three you don't have a biased
4 and you can listen to everything. Once you start trying
5 to figure out whether they are pro this or pro that, that
6 is not the purpose of voir dire. The Capital situation
7 allows the lawyers, it doesn't make voir dire a favor, you
8 still have the same parameters. And so any question, I
9 mean, for them to be able to ask a question that is, if
10 you look at--

11 MR. MCGUIRE: Judge, I thought you restrained the
12 arguments to the lawyer that actually did the Juror and
13 that is what the Court said when we were up there at
14 sidebar.

15 MR. GRAHAM: I was the one speaking up there actually
16 while we were having a conversation.

17 MR. MCGUIRE: The Court pointed at me and Ms. Mayes
18 and said, those two are going to do that.

19 THE COURT: I have ruled on that and now y'all are
20 going to argue it more. So, I ruled when Ms. Mayes was
21 standing up and you are making a record of why you think
22 it is allowed. I don't like the question, I don't think
23 it is appropriate, I think it causes jurors to try to
24 figure it out, guess at evidence and weight, just all sort
25 of problems.

1 MR. GRAHAM: I just want the Court to recognize, they
2 keeping making the argument that we are asking for favors
3 and we are not. The case law says that the only questions
4 they can ask are the ones that they don't get to ask it
5 make it fundamentally unfair. So short of them being able
6 to say, me not asking this question makes it fundamentally
7 unfair and I can't show a biased or a prejudiced, it is
8 not an allowed question and they don't have a right to it.
9 And that is always our objection, whether we are saying
10 staking out or the form of the question, it is the
11 question that they want to ask does not make it
12 fundamentally unfair because they want to ask it. That is
13 what the law says.

14 MR. YOUNG: Your Honor, I don't know if there is a
15 misinterpretation of the question or what we are asking,
16 we are asking a lot of jurors, what are your general
17 thoughts about the death penalty, are you in favor of the
18 death penalty, are you sort of leaning against the death
19 penalty, are you a little bit more in favor of the death
20 penalty, are you a little bit less in favor of the death
21 penalty, where do you put yourself on the scale of one to
22 ten in favor of the death penalty, always against it.
23 There is no answer other than ten or one which they have
24 already said they are not, it is going to disqualify a
25 jury. We are just gathering information and say, do you

1 sort of lean in favor of it or do you sort of lean away
2 from it. And that is perfectly an appropriate question,
3 we can ask it, do you sort of lean for it or say, hey, you
4 are on a scale, where do you put yourself. We are not
5 asking like, are you going to give the death penalty on
6 every murder case, we are not talking about it. We are
7 asking them that direct question but the scale question is
8 just sort of, where are you, do you sort of lean in favor
9 or do you sort of lean against it, where are you. People
10 like Mr. Prescott who are very middle of the road people,
11 that is fine. We are just sort of trying to probe for
12 where are you coming from.

13 THE COURT: See, somebody answers four, six,
14 whatever. Tell me what that is, they get that and then--

15 MR. YOUNG: Why are you in favor of the death
16 penalty. We ask jurors that question.

17 THE COURT: I thought we were moving on pretty good
18 until y'all got bogged in on this. I don't like the
19 question so ask other questions and those are fair and
20 helping you evaluate this and now this question has hung
21 us up. I don't like the question. It puts people in an
22 awkward position to try to, I don't like the question. I
23 am okay the way y'all have asked the questions before but
24 this is, I know y'all are trying to gather information,
25 got to be an end to it, I mean I got to give you some

1 leniency. You ask the other question and then you ask
2 this one, we are going on and on and getting basically the
3 same answers. So I rather you not ask the question.

4 MR. YOUNG: I understand.

5 THE COURT: Can we live with the questions y'all have
6 been asking, how you feel?

7 MR. YOUNG: We can try it.

8 THE COURT: Okay.

9 MR. MCGUIRE: And, Judge, if I could just add this.
10 There is a quote in State versus Bixby where the South
11 Carolina Supreme Court indicates that State versus Woods,
12 345 SC 583, they put, when they cite Woods they put a
13 parenthetical behind it and they say, the State of South
14 Carolina Supreme Court, purpose of voir dire is not only
15 to determine whether a Juror is subject to a challenge per
16 cause, that would be biased of course, but also to allow
17 the parties to elicit information which will allow them to
18 intelligently exercise their peremptory strikes.

19 THE COURT: I understand why y'all want to ask it,
20 then you are going to think another one, another one. It
21 is like with a mouse, when you give a mouse a cookie, he
22 wants something else, a little something else. Y'all been
23 asking, what are your feelings on this, what are your
24 feelings on that. This is another way of rephrasing it,
25 how many times do you need to ask that same question in a

1 different way. That is kind of my ruling is, I am giving
2 you four or five questions about your feelings, following
3 up, whichever direction you think they are leaning. And I
4 think that is wonderful, that is what you are suppose to
5 do but we don't need to continually go into the same
6 question, rephrase a different way, we will never get
7 done. I think that y'all are gathering information to
8 exercise your peremptory challenges. I have given you
9 latitude, the characteristics of the victims, I don't
10 understand why we have got to ask the same question five
11 different ways. And so I think y'all are asking it
12 roughly three ways.

13 MR. MCGUIRE: And, Judge,--

14 THE COURT: Why do you need that question in addition
15 to your others.

16 MR. MCGUIRE: Right, right. That is what I was
17 getting to. My point is, that with this particular Juror,
18 we found ourselves in a position where his answers were
19 just so general and so middle of the road--

20 THE COURT: He would be a good Juror.

21 MR. MCGUIRE: And I told the Court when we were up
22 there, I am sure he is going to be qualified. I can see
23 that very quickly. It is just that, it is rare that
24 people are exactly in the middle of the road. They must
25 have some leaning one direction or the other. And that is

1 the only, the only reason we ask this question with this
2 guy is because he kind of put himself right on the middle.
3 And we were just trying to ask literally, literally one
4 more question to just see if he is a notch off the middle
5 or not. And that is the only reason we asked of this
6 Juror and it is not going to come often. And, again, the
7 law, the position of the State was that voir dire should
8 be limited strictly just to uncover biased, it is a
9 misstatement of the law, it is untrue and it was wrong. I
10 am sure the Court was always aware that voir dire, so that
11 we can gather information and intelligently use our
12 strikes. Now the State's position was that it is not what
13 voir dire was for, they were very adamant about that and
14 that was a misstatement of the law.

15 MR. GRAHAM: It is not a misstatement of the law.
16 You have already ruled on this, can we move on, Your
17 Honor.

18 THE COURT: That is what I am wanting to do.

19 MR. YOUNG: We are starting panel two.

20 THE COURT: Juror 135.

21 MR. YOUNG: My understanding from the Court was that
22 the Court was going to allow the State to go first on
23 panel number two and we would object based on the reasons
24 that we argued in-chambers, that the right to individual
25 voir dire is guaranteed to the Defense through the statute

1 and not the State and the State's right is derivative.

2 THE COURT: I am going to allow the State to go first
3 if they want to. If they want to let y'all go first they
4 can do that.

5 MR. HUBBARD: I tell you what, Your Honor, to this
6 next panel let's let them continue to go first. And when
7 we make it to the third panel we might say that we might
8 want to jump in. How about that.

9 THE COURT: Fair enough, we will continue this way
10 then. The Defense will go first. Fair enough. Bring me
11 in number 135.

12 (Whereupon, Juror number 135, Martha Edwards entered
13 the courtroom.)

14 MARTHA EDWARDS, being
15 first duly sworn, testified as follows:

16 CLERK OF COURT: State your name and spell your name.

17 JUROR: Martha, M-A-R-T-H-A; Edwards, E-D-W-A-R-D-S.

18 EXAMINATION

19 By The Court:

20 Q Good afternoon, Ms. Edwards. My name is Eugene
21 Griffith and I introduced myself Monday when we first got
22 over to the other Court House. This is an opportunity for
23 the parties to get to know you a little bit, ask you some
24 questions and find out perhaps some opinions you may have.
25 So I tell you, you just took an oath to tell the truth.

1 Now some questions these lawyers may ask you or I may ask
2 you may be opinions. And so when it is an opinion you are
3 not right or wrong, it is truthful. I mean, there is not
4 a wrong answer. It kind of, Carolina/Clemson, who you
5 pull for, you got a reason to pull for Carolina. I am
6 with you. You pull for Clemson, that is fine too but I am
7 a Carolina fan. That is an opinion. So not a wrong
8 answer. So I want to make that clear to you first. One
9 of my instructions to you, don't talk about the case after
10 you left the Court House. Has anybody tried to talk to
11 you about this case since then?

12 A No. My sister-n-law is real curious and she knew I
13 had jury duty. But I didn't discuss anything, my husband
14 still thinks it is a case where you come in for traffic
15 tickets and stuff like that.

16 Q He is not aware of why you are here?

17 A No.

18 Q Okay. You have been very much following my
19 instructions. I am very impressed. Have you seen or
20 heard any of the media reports because the media has been
21 reporting some of this?

22 A The only thing was today when I stopped at Hardees to
23 go and get sweet tea, you know how they have the newspaper
24 thing?

25 Q Yes, ma'am.

1 A I glanced to the left and I saw a headline and I
2 looked the other way but I didn't read it.

3 Q And that was a paper in a box here in Lexington?

4 A It was, it was.

5 Q And that was today?

6 A Today.

7 Q Have you formed an opinion from seeing that headline?

8 A No, I just was, it was just a little bit shocking.

9 Q Okay. So that is part of the reason, I want to know,
10 you know, the facts that led to these accusations and
11 these indictments and occurred about four years ago. And
12 so there have been some news reports, some more recent,
13 have any of those news accounts that you may have seen or
14 heard caused you to form an opinion in this case?

15 A I don't quite know how to answer that.

16 Q Okay.

17 A I have not read anything that I can remember. I
18 don't watch the news but I do think probably some years
19 ago, maybe when it happened, my mother may had mentioned
20 that this had occurred. And I don't have, I didn't even
21 know why I was here.

22 Q Okay. Some of the lawyers will ask you about that
23 later on.

24 A That is fine.

25 Q You and your family, any of y'all members of any

1 organizations to advocate victims rights such as Mothers
2 Against Drunk Driving, Students Against Drunk Driving,
3 Citizens Advocating Against Violent Crimes, Bikers Against
4 Child Abuse, any of those victims advocacy rights groups?

5 A No, not at the current time, no.

6 Q Any time in the past?

7 A I want to think maybe I gave some money one time to
8 Mothers Against Drunk Driving.

9 Q And that was some time ago?

10 A Oh, yes.

11 Q Okay. Now, you or your husband make donations to the
12 Troopers Association, the Sheriffs Association, Law
13 Enforcement Association?

14 A We do.

15 Q Okay. And do you do that on a regular basis?

16 A Not so much, it has been a couple of years. I did
17 give to the K-9 Unit earlier this year.

18 Q Okay. The dogs that help law enforcement?

19 A It is.

20 Q Did you give this year?

21 A I believe that I did.

22 Q All right. Now, would that affect your ability to be
23 fair and impartial to any of the witnesses that may be
24 called because a lot of the witnesses will probably be law
25 enforcement.

1 A I love law enforcement.

2 Q Okay, fair enough. That is one of those candid
3 answers I am looking for. Now, I sent a list of potential
4 witnesses. The State and the Defense has to provide the
5 Court so we can get ready to get organized with all of the
6 potential witnesses in the case. That way, whoever a
7 potential Juror is, they get selected and they are not
8 caught by surprise half way through the trial. Potential
9 witnesses aren't all of the witnesses. Likely witnesses
10 are likely witnesses and the parties kind of really have a
11 good idea of who they are going to call. They are very
12 likely not call all of these but they have got to tell the
13 Court anybody potentially to be a witness. So they have
14 got to provide all of the witnesses to the Court so I can
15 ask you, do you know any of those potential witnesses?

16 A No, sir.

17 Q Are you connected in any way to any of them, you or
18 your husband?

19 A No, sir.

20 Q Not related by blood or marriage or close, personal
21 friends to any of those potential witnesses?

22 A I didn't recognize any of them.

23 Q Social or business or personal with anybody on that
24 list?

25 A Not that I am aware of.

1 Q Okay. Now, I am going to give you kind of a broad
2 brush lesson in criminal procedure and some of the
3 elements of the crime and the State's burden of proof,
4 things such as that and I am giving you a lesson on the
5 law but the facts haven't been presented. Some of the
6 facts that may be presented, until we get to trial we
7 don't know what are the facts or what all the testimony
8 will be. So I am kind of operating not knowing because
9 the case hasn't been pre-tried in front of me so I don't
10 know every single witness, I don't know that. But Mr.
11 Jones is charged with five counts of murder. Those
12 charges were made on indictments. Indictments are a paper
13 that provides notice to him of what to be prepared to come
14 into court to defend himself against. Okay. Not proof of
15 anything, not guilt or innocence, it is telling him we are
16 accusing you of doing this. To that he has plead not
17 guilty by reason of insanity. Until the State proves its
18 case, calls the witnesses, tried to prove the case Mr.
19 Jones is presumed innocent until the State finishes the
20 case, the jury considers and determines whether or not the
21 State has met the burden of proof called beyond a
22 reasonable doubt. So until a jury makes that decision and
23 the case has been proven beyond a reasonable doubt Mr.
24 Jones is presumed innocent, all the way through. Do you
25 understand that?

1 A Yes, sir.

2 Q He is presumed innocent sitting right there right
3 now. That is what the law considers and it is on
4 everybody. Now, the State must prove the elements of
5 murder beyond a reasonable doubt. So I will define murder
6 for you so, see if you can understand this. I want you to
7 understand some aspects of it, since this is a Capital
8 case which makes it slightly different than other cases.
9 Most criminal cases, crimes are charged, accused,
10 indictments, the State calls it and it goes to trial and
11 the jury decides guilty, not guilty. If it is guilty then
12 it is turned over to the Judge and the Judge decides what
13 they believe, after hearing everything, what the sentence
14 should be. That is in most cases. A Capital case is
15 different. In a Capital case the jury does both sides.
16 They do guilt or innocence and if it is a guilty finding
17 then they go to the sentencing side and they decide one of
18 two sentences, life without parole or death. One of the
19 two. Once guilt is determined there is only two sentences
20 available. Life without parole or death, the Judge
21 doesn't come in here and say, 50 years, life without
22 parole, you live the rest of your life in jail, locked
23 down. If it is death then it is death. Those are the two
24 available sentences that the jury decides. That makes a
25 difference, that is why we have got to be a little

1 different in seeking out jurors to sit on cases like this.
2 A little different, it is a little more involved, and
3 there is a lot of aspects of the case that are
4 misconceptions. Like I just told you, the jury does the
5 sentencing and they find one of two sentences. It is
6 misconception and do you understand that there are two
7 sentences available and the death penalty is not
8 automatic. Did you know that?

9 A No, sir.

10 Q You thought it was automatic?

11 A Yes, sir.

12 Q So we don't have any facts in this case. Do you
13 understand?

14 A Yes.

15 Q So in a traditional case the State calls the case and
16 it decides guilt or innocence. This is five cases or
17 murder. The State goes first and it is just on the
18 murder. Okay?

19 A Yes.

20 Q The State has got to try to prove its case beyond a
21 reasonable doubt. They present evidence, testimony,
22 trying to meet that burden. And a jury then considered
23 whether they have done that or not. Now, in this case Mr.
24 Jones has entered a plea of not guilty by reason of
25 insanity which is slightly different and adds another

1 aspect of the case. When a person does that that is an
2 available affirmative defense. I am going to describe
3 some defenses to you that in the guilt or innocence
4 portion of the case, if it is not guilty of the murder the
5 case ends. It stops. If it is guilty it goes forward with
6 the second stage, that is when the jury decides what their
7 sentence should be. Okay. Now, in the second stage the
8 State is not entitled to ask for the death penalty unless
9 they prove an aggravating circumstance beyond a reasonable
10 doubt. I will list those for you, a few of them, not all
11 of them, the killing of a police officer, rape of a
12 murder, kidnapping with a murder, killing a child,
13 multiple victims. Those are some aggravating factors.
14 The State has got to prove at least one of those to the
15 jury beyond a reasonable doubt before they can say, we are
16 seeking the death penalty and that is done in the
17 sentencing side, it is not in the guilt or innocence side.
18 Okay.

19 A Yes, sir.

20 Q Did you know that?

21 A No, I didn't.

22 Q That is part of my job, I get, as part of my job is
23 to instruct on the law. That is what I do, tell the jury,
24 the law of South Carolina is thus and so. I am doing it
25 here right now. Anyway, that is my job, the jury's job is

1 to listen to the facts and evidence, consider it, give it
2 meaningful consideration to the facts and evidence, do
3 that according to the instructions provided by the Court
4 because obviously here today I have talked to you about a
5 couple things about the law that you weren't aware of.
6 And so there are many things in the law or people think
7 the law is this and it is actually not so. And so part of
8 the instruction in the oath you take is, Judge, I agree to
9 accept the law as you instruct it. And if I have a
10 misunderstanding of what it was I am going to accept it as
11 you are giving even if I disagree with it. You might not
12 like it, it is the law, we have got to follow it. That
13 will be your oath, you have got to follow the law as
14 instructed by the Court. And so if I get the law wrong
15 somebody will deal with that at another time. I instruct
16 it as I believe it to be. You can see the statutory books
17 behind me, that is what the General Assembly, they
18 organize all the law, those are the laws that you hear on
19 the news. And the general Assembly can pass a Bill to do
20 such and such. Okay. Now, in the guilt or innocence
21 phase, the State has got to prove the murder or murders
22 beyond a reasonable doubt. There are defenses available
23 to people that you may hear evidence of. I want to know,
24 can you give consideration to those defenses if the facts
25 support it and the instructions are consistent with those.

1 Those potential defenses would be, identification,
2 accident, involuntary intoxication, suicide, self-defense,
3 necessity, insanity, guilty but mentally ill, defense of
4 habitation, entrapment, duress and alibi. Those are
5 potential defenses available that may be shown by the
6 facts. So if those are presented could you give
7 meaningful consideration to any testimony and evidence
8 which may support those defenses in this case. Can you do
9 that?

10 A Yes, sir.

11 Q Okay. I told you that Mr. Jones has elected to enter
12 a plea of not guilty by reason of insanity and so that
13 gave a little different verdict form rather than just
14 guilty or not guilty. It gives four forms on the guilt,
15 phase one, four potential verdicts. Guilty, guilty but
16 mentally ill, not guilty by reason of insanity or not
17 guilty at all. Can you give meaningful consideration to
18 the law as I instruct it, weigh the evidence, whatever it
19 is, aspects of the defenses, aspects of the circumstances
20 of the crimes, elements the State has got to prove,
21 consider all of the evidence. Can you consider all of
22 that consistent with my instructions and give meaningful
23 consideration to each and every one of those potential
24 verdicts.

25 A Yes, sir.

1 Q Is there any one of those potential verdicts that you
2 couldn't reach a verdict on, like couldn't make a finding
3 on, not guilty, not guilty by reason of insanity, I am
4 sorry, guilty but mentally ill or guilty. Any one of
5 those you could not, if the facts support it, the law is
6 instructed, you would consider each and every one of those
7 verdicts?

8 A I would.

9 Q Okay. Now, if it is not guilty the case is over. If
10 it is guilty but mentally ill or guilty the case goes into
11 phase two and that is when the State has got to prove
12 aggravating factors. Now, some aspects of the testimony
13 will overlap in both phases. But phase two the State has
14 got to prove aggravating factor beyond a reasonable doubt,
15 the jury has to make a unanimous decision on an
16 aggravating factor. The jury has also got to make a
17 decision on what sentence to give. Now, aggravating
18 factors, I think I gave some, I gave some to you already,
19 killing a police officer, children, multiple victims,
20 rape, murder, that kind of thing. Those are aggravating
21 factors. There is also something called mitigating
22 factors. And those are reasons not to give the death
23 penalty, but to give life without parole. I want to list
24 off some of the mitigating factors. Okay.

25 A Yes, sir.

1 Q A Defendant has no significant history of prior
2 criminal conviction, use of violence against another
3 person. The murder was committed while the Defendant was
4 under the influence, mental or emotional disturbance, the
5 victim was a participant in the Defendant's conduct and
6 consented to the act. The Defendant was an accomplice to
7 the murder and his participation was minor. The Defendant
8 acted under duress and the domination of another. The
9 capacity of a Defendant to appreciate his criminality of
10 his conduct or conform his conduct, requirements was
11 impaired substantially. The age or mentality of the
12 Defendant at the time of the crime and the Defendant may
13 have been below the age of 18 at the time the crime was
14 committed. The Defendant had mental retardation at the
15 time of the crime. Those are statutory mitigating factors
16 and you can consider other mitigating factors on the list
17 like how he came along when he grew up, how he was raised,
18 childhood, that sort of thing. You are not limited by
19 these statutory ones, you can consider any mitigating
20 factors you want, jury's can. So phase two, the guilt has
21 been proven, the State has got to prove an aggravator
22 beyond a reasonable doubt, at least one. The jury can
23 also consider mitigating factors. Now, can you, knowing a
24 case like this, it is pretty lengthy testimony, may be
25 graphic testimony, may be some very unpleasant exhibits to

1 see regarding the death of these victims. Is testimony
2 and evidence of a subject matter of that sort going to
3 create an issue for you where you can't be fair and
4 impartial to both the State and the Defense?

5 A Yes, sir.

6 Q It would be?

7 A Yes, sir.

8 Q Do you think that would create an issue for you?

9 A Yes, sir.

10 Q And you couldn't, that would affect your ability to
11 be impartial?

12 A I am afraid it would, yes sir.

13 Q That is the candor I am looking for. Okay. No wrong
14 answers. I want to know this right now than half way in.
15 Okay. If it is going to affect you I understand. Any
16 objection to me excusing her?

17 MR. YOUNG: No, Your Honor.

18 MR. HUBBARD: No, sir.

19 Q You are from Greenwood?

20 A No, my mother is having surgery in Greenwood.

21 Q Oh.

22 A I live, my legal address is [REDACTED] Lexington.

23 Q I saw where you, in Greenwood, is that where you grew
24 up?

25 A Can I see. That is where I was born, yes.

1 Q Okay. Thank you for coming and you are free to go.
2 (Whereupon, Martha Edwards was excused from the
3 courtroom.)

4 THE COURT: Let's bring in 432, Kandy Thivierge.

5 KANDY THIVIERGE, being
6 first duly sworn, testified as follows:

7 CLERK OF COURT: State your name and spell your first
8 and last name, please.

9 JUROR: Kandy, K-A-N-D-Y; Thivierge,
10 T-H-I-V-I-E-R-G-E.

11 EXAMINATION

12 By The Court:

13 Q My name is Eugene Griffith, I introduced myself over
14 in the big courtroom Monday. And you are under oath now
15 and you were under oath then. So I want to know, this is
16 an opportunity for us to get to know you and see if you
17 are eligible and don't have any reasons to not be
18 qualified as a Juror. And so there are no wrong answers.
19 I want candid and truthful answers. Okay. The first
20 question, I told you, please don't discuss the case with
21 anybody. Have you discussed this case with anybody?

22 A No.

23 Q Has anybody tried to discuss it with you?

24 A No.

25 Q Have you seen any of the media reports?

1 A No.

2 Q Did you see any before you took the oath?

3 A Yes.

4 Q Did those media reports cause you to form an opinion
5 as to what happened or who is right or wrong?

6 A I really don't know what happened, it was just bits
7 and pieces when it did happen, I would turn the channel.

8 Q Fair enough. You live out in Gilbert?

9 A Yes.

10 Q You or a member of your immediate family a member of
11 any type of organization which advocates for victims such
12 as Mother's Against Drink Driving, Students Against Drunk
13 Driving, Citizens and Violent Crime?

14 A I have sent money to that, to MADD.

15 Q So you have contributed to MADD before?

16 A Yes. It has been years.

17 Q Years, okay. Now, would that contribution, a very
18 nice charity to give to, would that affect your ability to
19 be fair and impartial in this case. I don't want you to
20 come in here and this is not a driving against the
21 influence case.

22 A Right.

23 Q That would be a good example of, are you a member of
24 Mothers Against Drink Driving, can you fairly consider a
25 driving case. That is what the lawyers are listening for.

1 This isn't a driving case.

2 A Right. It would not affect.

3 Q And you gave a contribution, you didn't go to regular
4 meetings or anything?

5 A No.

6 Q Okay. Now, you or your family give donations to the
7 Troopers Association, Law Enforcement Association?

8 A I have done that before, yes.

9 Q Would that affect your ability to be fair and
10 impartial knowing a lot of police officers may testify?

11 A No.

12 Q You can consider their testimony and evaluate it?

13 A I can evaluate, yes.

14 Q Now, are you connected, any of your immediate family
15 connected in any way to any of the lawyers?

16 A No.

17 Q Know any of them?

18 A No, sir.

19 Q You connected in any way to Mr. Jones or his family?

20 A No, sir.

21 Q Now, I am going to give you, kind of streamline some
22 of my questions. But I have got to give you kind of a
23 brief summary, explanation of some of the criminal
24 procedures and a few of the criminal laws and kind of
25 explain some things to you because that is what I get to

1 do as a Judge is instruct on the law.

2 A Okay.

3 Q And part of my job is to help impanel a fair and
4 impartial jury and then rule on the case and presentation
5 and then instruct the jury at the very end, after they
6 have heard all of the testimony, the law in South Carolina
7 is thus and so. And so one of my request, question of
8 you, there is a lot of misunderstood out there. And I am
9 tasked with knowing the correct law. And so I am going to
10 give you instructions, I am hopeful and very intent on
11 giving you the correct law. And so if I give you
12 instructions are you going to be able to follow the law?

13 A Yes, sir.

14 Q Even if you disagree with it?

15 A Yes, sir.

16 Q You might disagree with it. There are some laws that
17 I might disagree with. But yet again, they are still our
18 laws and we have got to follow it. Do you understand
19 that?

20 A Yes, sir.

21 Q Okay. Now, in this case, let me tell you a couple of
22 things, in every crime, a criminal process, a person is
23 presumed innocent until they have been convicted of the
24 crime they are accused of beyond a reasonable doubt, in
25 front of a jury or they decide to plead guilty, until that

1 time they are presumed innocent. And that presumption
2 stays with them all the way through the accusations, all
3 the way through the trial until a verdict has been found.
4 Did you know that?

5 A Yes.

6 Q Now, Mr. Jones has plead not guilty, entered a plea
7 of not guilty and asked for a jury trial, we will get more
8 to his plea in a moment, but he is presumed innocent
9 sitting right there right now. And you are aware of that?

10 A Yes.

11 Q Now, the State has made indictments for five counts
12 of murder. Murder is defined as killing of another person
13 with malice aforethought. That is what the State has got
14 to prove, each of those elements. Malice is defined as
15 hatred, ill-will, hostility, intent on wrong doing. It is
16 a depraved heart. That is malice towards another, the
17 killing took place under those circumstances. That is
18 what murder is defined as. That is what the State has got
19 to prove, those elements, beyond a reasonable doubt before
20 a conviction of guilty can be found against Mr. Jones.
21 That is what the State has got to do.

22 A Can I ask a question?

23 Q You may.

24 A Did he not say that he was guilty when he did this
25 murder?

1 Q You know, that is part of a thing is, I am going to
2 get to that in a minute. But he may have given some
3 communications with law enforcement. That is not before
4 the Court right now. And so that is part of my question
5 is, you come across that information from some factor.
6 Would that affect your ability to be fair and impartial in
7 this case?

8 A It would not affect me to be fair, I mean not fair.
9 But when it comes from somebody that has been accused by
10 their mouth.

11 Q Let me, I am going to keep going and maybe my further
12 explanation may make you understand what he has plead, he
13 plead not guilty. He actually plead not guilty by reason
14 of insanity. That is a little different.

15 A Okay.

16 Q So here is what happens when that occurs. This is a
17 Capital case. The State has elected to tell Mr. Jones
18 that they intend to seek the death penalty for these
19 crimes. That makes the case a little specialized and it
20 is a two part case if guilt is found by the jury. So
21 there is part one which is guilt or innocence. Part two
22 is sentencing phase. I am going to discuss part one first
23 and foremost.

24 A Okay.

25 Q In cases, under our law there are several, the State

1 has got to prove the elements of the crime by a reasonable
2 doubt, the jury finds its verdict unanimously. Okay. A
3 person accused of a crime, I am going to give you all the
4 defenses. The statute in the criminal books over here,
5 there are some defenses that a person elects to claim.
6 And if the facts support it and the jury understands it
7 then these defenses can be claimed by a person accused.
8 Here they are. Identification and some of these might not
9 be applicable but I am going to read them all to you.
10 Okay. Identification, accident, involuntary intoxication,
11 suicide, self-defense, necessity, insanity, guilty but
12 mentally ill, defense of habitation, entrapment, duress
13 and alibi. Those are potential defenses. So depending on
14 how the evidence and testimony goes as to whether one of
15 those defenses can be shown. Now, in this case, the guilt
16 or innocence phase, Mr. Jones, as I just told you, entered
17 a plea of not guilty by reason of insanity. It is just a
18 little different than just not guilty. Because of that
19 there are four potential verdicts in the guilt or
20 innocence phase. The first part of the trial, there is
21 guilty, guilty but mentally ill, not guilty by reason of
22 insanity and not guilty at all. Four potential options for
23 the jury to consider. Now, depending on the facts that
24 are presented at trial, evidence presented at trial,
25 whatever it is, whichever source, can you meaningful

1 consider, follow my instructions on the law which I will
2 describe these four potential verdicts, how to evaluate
3 the evidence and testimony, give the appropriate
4 consideration you think it is given due under my
5 instructions. Could you consider each and every one of
6 those potential verdicts if you were selected as a Juror?

7 A Under your instruction, yes.

8 Q Okay. Now, having shown you the defenses, the
9 defenses are considered and some of them are kind of, all
10 considering is mitigating factors in the second half, in
11 the punishment phase. But the first phase of the case,
12 guilt or innocence. One of those four, if it is not
13 guilty or not guilty by reason of insanity the case stops,
14 over with. Guilty but mentally ill or guilty the case
15 goes to phase two. In phase two the State has to prove an
16 aggravating factor. In a normal, I am going to call it a
17 plain vanilla murder. Somebody kills another with malice
18 in their heart. The State proves it, the Judge determines
19 the sentence, it is not the death penalty because it is
20 not available on a plain vanilla murder. In order for the
21 State to seek the death penalty there must be proven
22 beyond a reasonable doubt an aggravating factor. There
23 are numerous aggravating factors and they are listed in
24 the statutes also, I will list off a couple to you.
25 Killing a police officer, rape and murder together,

1 kidnapping and murder together, multiple victims, child
2 victims. Those are potential aggravating factors and the
3 State has got to prove those in the punishment side of the
4 case for our jury to be able to consider the punishment.
5 In a Capital case, I didn't explain this to you so we will
6 go back and hear this. First half is guilt or innocence.
7 The second half is strictly punishment. The jury decides
8 the punishment in a Capital case. The death penalty is
9 not automatic. The jury has two options. Life without
10 parole or death. Those are the jury's two options in a
11 Capital case. And the State has got to prove in that, the
12 aggravating factor beyond a reasonable doubt. But also
13 the jury gets to consider any mitigating factors that
14 could have been presented during the trial. And in this
15 case there is going to be a lot of testimony, a lot of
16 evidence presented. Mitigating factors can be this.
17 There is a statutory list, I will give you a list of
18 mitigating factors. The Defendant has no significant
19 history of prior criminal conviction against violence of
20 another person, never been in trouble before. The
21 Defendant, the murder was convicted while the Defendant
22 was under the influence or emotional disturbance. The
23 victim was a participant of the Defendant's conduct and
24 consented to the act. The Defendant was an accomplice to
25 a murder which was committed by another and his

1 participation was minor. Some of these don't apply but I
2 will give them all to you just in case you will understand
3 some mitigating factors. The Defendant acted under duress
4 or under the domination of another. The capacity of the
5 Defendant to appreciate the criminality of his conduct,
6 conform his conduct to the requirements of law was
7 impaired. The age or mentality of the Defendant at the
8 time of the crime. The Defendant was provoked by the
9 victim committing the murder. The Defendant was below the
10 age of 18. The Defendant had mental retardation at the
11 time of the crime. There are also non-statutory
12 mitigating factors such as how he was raised and childhood
13 and troubling, education, all sort of things that jury's
14 can consider if those factors, mitigating factors, the
15 testimony is presented. So those are mitigating factors
16 and those are reasons to not give the death penalty, give
17 life without parole. Any one of those are potential
18 things jurors can consider in imposing the punishment.
19 And those two choices, life without parole or the death
20 penalty. So jury's can consider aggravating factors and
21 they also hear mitigation factors. The State has got to
22 prove the aggravating factors beyond a reasonable doubt.
23 The mitigation factors are just presented. Now, can you
24 give meaningful consideration to all of those factors,
25 when we got to the sentencing stage, consider aggravating

1 factors, if the State has proven, mitigating factors, can
2 you consider all the evidence, my instructions on the law,
3 evidence of defenses, evidence of anything, can you
4 consider that in reaching a verdict in this case, I am
5 sorry, a sentence in this case, we are in the sentencing
6 phase, reaching a sentence.

7 A Yes.

8 Q Okay. Now, I am going to come back and ask you some
9 more questions. I also provided to you a sheet with types
10 of jurors and this is, there are basically three types of
11 jurors. Type one, this presumes guilt has been found and
12 it presumes that an aggravating factor has been found and
13 it presumes there are mitigating factors in the case.
14 Everything is in there. Type one Juror considers
15 conviction is guilty, aggravating factor, I don't need to
16 hear any more, I vote the death penalty, always, every
17 time. That is what happens. A type two person, kind of
18 the other, they found him guilty. Yes, there are
19 aggravating factors. I can't sign my name to a verdict of
20 death. I am the type two, I want life without parole
21 because that is where my personal belief falls. Type
22 three, guilty, aggravating factor, mitigation, I don't
23 have my mind made up. I want to consider everything that
24 is presented, whether it is mitigation, whether it be
25 aggravation, whether it be anything whatsoever, I want to

1 hear everything and then decide a sentence to impose.

2 Where do you find yourself, what type of Juror do you see
3 yourself in?

4 A Type one.

5 Q Okay. Any doubt about that?

6 A No.

7 Q Okay.

8 A The word in there, proof.

9 Q Right. So if the State proved guilt and proved the
10 aggravating factors you are on one?

11 A Yes.

12 Q Very good. You made it easier on me because we are
13 done with your questions. That is why I said, good, you
14 get to go home.

15 A Okay.

16 Q And thank you for your patience.

17 A No problem.

18 (Whereupon, Juror 432, Kandy Thivierge was excused
19 from the courtroom.)

20 THE COURT: You want a short break. We will take a
21 couple of minutes.

22 (Whereupon, a short break was taken.)

23 THE COURT: The next one is number 91, Arthur Chavis.

24 (Whereupon, number 91, Arthus Chavis entered the
25 courtroom.)

1 ARTHUR CHAVIS, being
2 first duly sworn, testified as follows:

3 CLERK OF COURT: Spell your first and last name for
4 the record.

5 JUROR: Marion, M-A-R-I-O-N; Chavis, C-H-A-V-I-S, Jr.

6 EXAMINATION

7 By The Court:

8 Q All right, Mr. Chavis, my name is Eugene Griffith and
9 I met you Monday.

10 A Yes, sir.

11 Q You are a Clemson man?

12 A Yes, sir. Somebody got to be around here.

13 Q That's right. I graduated South Carolina, you are
14 not going to hold that against me, are you?

15 A No, sir.

16 Q I have got to ask you some questions and you are
17 under oath. When you left the courtroom Monday I said,
18 here is your oath, come back when I call you back. Thank
19 you for your patience.

20 A Yes, sir.

21 Q Have you followed my oath?

22 A Yes, sir.

23 Q Have you talked to anybody about the case?

24 A No, I just told the Old Lady why I had to come today
25 and I told where I work at that I had to come in today.

1 Q You didn't talk to them about the case?

2 A He wanted to and I said, no, can't talk about it.

3 Q So people have asked you but you have not responded?

4 A I ain't said nothing.

5 Q Fair enough. Have you read any news media, there
6 have been some reports out on the television, news paper?

7 A No.

8 Q Didn't pay attention to those?

9 A No, because in the morning time my wife sleeps, she
10 works on the weekends and she keeps the grandbaby so I
11 don't turn the TV on. I get home at 7:00, 7:30 and I am
12 out at my man shed by the pool. I mean I watch TV but the
13 news is already off by then.

14 Q All right. Now, this is, I have got to ask you some
15 questions. There is no right or wrong answer, it is like
16 you pull for Clemson or Carolina, can't go wrong.

17 A Well, yeah.

18 Q Okay, I will give you that. That is a fun opinion
19 and anyway, some of these questions I am going to ask you,
20 it is going to be an opinion. My personal opinion is thus
21 and so. And it is not like I own a red truck or a black
22 truck, that is fact.

23 A Yes, sir.

24 Q Ask what kind of truck you drive and you don't say
25 Chevrolet. You drive a Chevrolet?

1 A No, Ford.

2 Q Okay. Now, in this case any member of your family, a
3 member of your immediate family, a member of any
4 organizations that supports victims rights like Mothers
5 Against Drunk Driving, Students Against Drunk Driving?

6 A No, sir.

7 Q Citizens Against Violent Crimes?

8 A No, sir.

9 Q Bikers Against Child Abuse, any groups such as that?

10 A No, sir.

11 Q You or a member of your immediate family had
12 donations, organizations such as the Sheriffs Association,
13 Troopers Association, Law Enforcement Association?

14 A No, sir.

15 Q None. You connected in any way to any of these seven
16 attorneys here in the courtroom?

17 A No sir, not that I know of.

18 Q Don't know them personally?

19 A No, sir.

20 Q Do you know any member of the Jones' family?

21 A No, sir.

22 Q His family at all?

23 A No, sir.

24 Q Okay. Now, I am going to give you a thumbnail sketch
25 of some criminal procedure and aspects of the criminal

1 law. As you know, this is a murder case, there are five
2 indictments that have been handed from the State to Mr.
3 Jones accusing him of murder. An indictment is just an
4 accusation. It doesn't prove anything, it doesn't
5 disapprove anything. It is merely the State, Lexington
6 County saying, Mr. Jones, we are accusing you of murder
7 and we will set it for trial. Now, he is going for a jury
8 trial which means the State has got to prove their case.
9 He has asserted an affirmative offense. He has entered a
10 plea of not guilty by reason of insanity. Now, there are
11 numerous defenses available to people, you may have heard
12 some of them. But potential defenses, I didn't ask you
13 this. Have you got anything on your schedule personally
14 for next month if you are selected as a Juror.

15 A No, I am kind of simi-retired. I work at a metal
16 shop, I work there Monday through Friday and a half day on
17 Saturday but I can get off.

18 Q You don't have anything upcoming.

19 A My wife is a nurse.

20 Q Like Clemson is going to the National Championship
21 game or anything?

22 A We will have to talk about that one.

23 Q Well, I don't think we will go that far.

24 A No.

25 Q But if you are selected you could sit as a Juror?

1 A Yes, sir.

2 Q Okay. Getting back to the criminal law. The State
3 has to prove its case beyond a reasonable doubt. They
4 have got to present the facts, testimony, evidence to
5 convince a jury of all aspects of the offense of murder
6 which is defined, the killing of another person with
7 malice aforethought. Malice is hatred, ill-will,
8 hostility, a depraved heart against someone else and that
9 is why you kill them. That is what murder is. The State
10 has got to prove all of those elements beyond a reasonable
11 doubt in order to sustain a conviction. Now, Mr. Jones
12 has presented a plea of not guilty by reason of insanity
13 and therefore he has asked for a jury trial. The State
14 has also suggested to you, they intend to seek the death
15 penalty. What that means is, the State says that because
16 of the nature of your crime and an aggravating
17 circumstance which we understand we have got to prove we
18 are seeking the death penalty. Now, the state has got to
19 prove an aggravating factor beyond a reasonable doubt
20 during the process and it comes in phase two. Okay?

21 A Okay.

22 Q So phase one is just guilt or innocence. Up or down,
23 the jury finds not guilty, not guilty by reason of
24 insanity the case stops. It is over. If a unanimous
25 verdict of guilt is found it goes to phase two and the

1 jury determines punishment if the State can prove the
2 aggravating factor. And the parties also present
3 mitigating factors, some are defined by statute.
4 Mitigating factors would be reasons you assign to not give
5 a death penalty such as a hard childhood, I will read them
6 off to you later but he has got no significant history of
7 a crime of violence against another person. There is
8 eight or ten mitigating factors some of which may be
9 proven and shown at the trial. And so I kind of want to
10 ask you this in broad terms, a big broad brush because you
11 have not heard anything other than the accusations, five
12 murders, children, he has plead not guilty by reason of
13 insanity. So hypothetical, sent you a list, I am sorry,
14 type of jurors. I have not given you any of the facts. I
15 am going to go further with questions and ask you some
16 other definitions to you later but I want to ask you in
17 broad terms, my job as a Judge is to instruct you on the
18 law during the trial, during the jury selection but most
19 particularly at the very end. I say, ladies and
20 gentlemen, you understand, you need to understand the law
21 of South Carolina is thus, thus and thus. That is my job
22 as the Judge. And so I instruct you on the law and you
23 have an understanding of what the law is, you have got to
24 disregard your misunderstanding and accept it as I give
25 it, even if you disagree with it, you have got to set the

1 disagreement aside. Do you think you can do that?

2 A I think.

3 Q Okay. Now, the law requires that the aggravating
4 factor has been proven by the State and the mitigation
5 factors be considered during the sentencing phase. The
6 Courts have found and other people have found that there
7 are generally three types of jurors. They kind of fall in
8 one of three categories, that is presumed. The guilt is
9 found, aggravating factor, at least one aggravating factor
10 is found. A type one Juror, after guilt is found and a
11 aggravating factor is proved by the State that regardless
12 of mitigating factors or any other evidence, they say the
13 death penalty, that is just how I feel. A type two Juror
14 is a little different. The State has proven guilt beyond
15 a reasonable doubt, proven on the sentencing side and a
16 aggravating factor is present also. A type Juror says,
17 you know what, I can't impose the death penalty, I have a
18 personal belief that it shouldn't be done because I am
19 just against the death penalty. So I don't care what they
20 say, how bad it was, I am going for life. The State has
21 proven the guilt, proven the aggravating. Type one is
22 always death penalty, type two, always life. And a type
23 three person is kind of in the middle. The State has
24 proved guilt of murder, the State has proved an
25 aggravating factor or one or more of them, the jury has

1 been presented testimony and evidence, mitigating factors,
2 potential defenses, potential anything. A mitigating
3 factor can be anything. It can be, you can consider how
4 he was raised up, how his childhood was, came from a
5 broken home, whatever, anything can be considered a
6 mitigating factor. Mitigating factors are reasons to give
7 life without parole rather than death. That is what a
8 mitigating factor is. Now, knowing you haven't heard a
9 word about this case and there is a lot out there, there
10 is, you haven't heard anything. The State proves murder,
11 aggravating factor, what type of Juror do you see yourself
12 being?

13 A Right now, I would have to listen to what all went on
14 and before and after. I don't know. I mean,--

15 Q I am kind of putting you on the spot because you
16 don't know any of the facts other than, there is Mr.
17 Jones, he has plead not guilty by reason of insanity,
18 there are five kids, the State is accusing him of killing
19 them.

20 A I would have to know what happened like before and
21 afterwards and remorse or anything.

22 Q Now, I am going to give you some more procedures. In
23 a Capital case, this is kind of important. You understand
24 this, this is a Capital case and the State has told Mr.
25 Jones that they intend to seek the death penalty so they

1 are going to attempt to prove the murders. And then if
2 they do, if they don't prove the murders the case is over,
3 it stops. If they do prove beyond a reasonable doubt then
4 there is the sentencing phase. In most cases, most cases
5 I hear, it is called for trial, the State calls the case,
6 the State has got to prove their case because they are
7 making the accusation. A person sitting here doesn't have
8 to prove or disprove a thing, presumed innocent. That
9 presumption stays with them all the way through until the
10 presumption is removed from a finding of guilt beyond a
11 reasonable doubt. So Mr. Jones sitting right there is
12 presumed innocent in a regular trial, whatever, armed
13 robbery, a plain vanilla murder. A conviction is had, the
14 Judge sentences. The crime, the facts, the Judge decides
15 I am going to give him this much punishment and whatever
16 that is the Judge gives it. In a Capital case it is kind
17 of unusual, in a Capital case the jury imposes sentence.
18 And there are two sentences available to the jury. So we
19 have presumed that guilt has been found. We go into phase
20 two of the trial. The State has got to prove an
21 aggravating factor. There are two available verdicts for
22 that jury. Life without parole or the death penalty. One
23 of the two, nothing else, no in between. There is no
24 getting out on good behavior, life means you die in jail,
25 you serve the balance of your life in the jail. That is

1 the jury's choice, one of the two. Okay. Now, when the
2 jury gets to that stage they can consider, I am going to
3 read the mitigating factors to you now. A Defendant has
4 no significant history of prior criminal conviction of use
5 of violence against another, murder was committed by the
6 Defendant under the influence of mental or emotional
7 disturbance. A victim was a participant with the
8 Defendant's conduct and consented to the act. A Defendant
9 was an accomplice in the murder committed by another
10 person, the Defendant acted under duress and the
11 domination of another. The capacity of the Defendant to
12 appreciate the criminality of his conduct and to conform
13 his conduct to the requirements was impaired
14 substantially, the age or mentality of the Defendant at
15 the time the crime was committed. The Defendant was
16 provoked by the victim in committing the murder. The
17 Defendant was below the age of 18. Some of these wouldn't
18 apply, Mr. Jones is not below 18. I tailor my
19 instructions to the jury depending on how the testimony
20 comes out because I don't know exactly what the testimony
21 is going to be presented. So I have got kind of a general
22 instruction at the end, ladies and gentlemen, this is
23 what, that wouldn't be something that I would charge
24 because it wouldn't apply. So I would tailor my
25 instructions consistent with the testimony and say, jury,

1 y'all consider these factors. Here is the law of South
2 Carolina. And the last, the Defendant had mental
3 retardation at the time of the crime. And those are
4 statutory mitigators meaning those are reasons you give
5 life without parole and not impose the death penalty.
6 There are others, like I say, how he was raised up and bad
7 childhood, any reason whatsoever, mercy. That is a reason
8 to not give the death penalty. Those are mitigating
9 factors. You get to the sentencing phase, that is what
10 the jury gets to consider. Okay. Now, considering, can
11 you give meaningful consideration to mitigating factors,
12 whether it is statutory or not, potential defenses,
13 aggravating factors. Can you give consideration to all of
14 those things consistent with testimony, some of the
15 testimony may be disputed. That is kind of what the jury
16 does, they sort out the testimony and figure out what
17 exactly happened after hearing everything. Can you give
18 meaningful consideration to my instructions on the law,
19 the testimony and evidence which has been presented,
20 consider the mitigation, aggravation evidence, affirmative
21 defense evidence and regular defense evidence. Whatever
22 it is, can you give meaningful consideration to all of
23 that evidence and reach a fair and impartial verdict in
24 this case?

25 A I think I can.

1 Q You have not come into court today with your mind
2 made up of what happened?

3 A I don't know what happened.

4 Q Do you have your mind made up as to what punishment
5 ought to be?

6 A Not yet.

7 Q Okay. Now, do you have any personal belief, moral or
8 religious belief which would prevent you from considering
9 the death penalty?

10 A No, sir.

11 Q Do you have any moral, personal, emotional belief
12 that you couldn't impose life without parole sentence?

13 A No, sir.

14 Q You could do that also?

15 A Yes.

16 Q Depending on the facts?

17 A Depending on what you hear.

18 Q Now, you understand now, some people don't, do you
19 understand now the State has got to prove guilt and you go
20 to sentencing. The death penalty is not automatic, did
21 you know that?

22 A No.

23 Q Did you think it was automatic?

24 A I kind of thought it was automatic.

25 Q That is part of my job, look, here is what we have

1 got to have and this is the procedure. The State has got
2 to prove guilt first and we go find the guilt. And then
3 we go to stage two, sentencing. The jury has got two
4 choices, life without parole, death. Here is the
5 testimony, here are my instructions, can you fairly weigh
6 and consider, deal with, my instructions of the evidence
7 and make a decision. Can you do that?

8 A Yes.

9 Q Now, I told you Mr. Jones has plead not guilty by
10 reason of insanity. So in the first phase there is a not
11 guilty and guilty side. There are four potential
12 verdicts. There is guilty, guilty but mentally ill, not
13 guilty by reason of insanity and not guilty at all. Four
14 potential forms of the verdict. Do you have any
15 preconceived notion or any reason whatsoever that you
16 couldn't give consideration to any of those, each and
17 every one of those potential verdicts?

18 A No, sir.

19 Q You can do it, you can follow my instruction and
20 consider all four?

21 A Yes, sir.

22 Q Now, I am working with my notes and I changed them
23 earlier today and this is a question I forgot to ask you.
24 This case involves the death of children, five deaths
25 accused, presumed innocent. There are going to be some

1 graphic testimony, maybe some very, the photographs may be
2 hard to look at, maybe some unpleasant testimony. There
3 is going to be some very harsh things said and shown.
4 Subject matter such as harsh photographs, victims bodies,
5 that type of subject matter. Is that type of subject
6 matter going to prevent you from not being able to
7 consider fairly the evidence in giving Mr. Jones a fair
8 trial and the State a fair trial. Is that subject matter
9 more than you can manage?

10 A No, sir.

11 Q You can manage that?

12 A I was a paramedic for 20 something years.

13 Q You were a paramedic?

14 A Yes, sir.

15 Q You have seen a lot?

16 A Yes, sir.

17 Q Can you think of any reason whatsoever you couldn't
18 give both the State and the Defense a fair trial?

19 A No, sir.

20 Q Okay. This is the witness list, you looked over
21 that?

22 A Yes, sir.

23 Q Are you connected to any of those witnesses?

24 A Marty Longshore, he was an EMT up there in Batesburg
25 and now he works for the Sheriffs Department. If it is

1 the same Marty Longshore.

2 Q Yes, the same one. Are you close friends with him?

3 A No, I just know him from when I was running on the
4 ambulance and everything and he was up in Batesburg.
5 Sometimes I would talk to in-service at Batesburg Rescue
6 Squad sometimes.

7 Q Would your relationship with him cause you not to be
8 fair and impartial?

9 A No, I ain't seen him in a couple of years.

10 Q Okay. Who else?

11 A John Moore. He is the Investigator for Lexington
12 County. He was on the JET team with me.

13 Q What is a JET team.

14 A Joining Enforcement Team, they put a paramedic, a
15 firefighter and a police on a shift together down in
16 Pelion. And he was down there with me.

17 Q He was on your shift some?

18 A No, he was on another shift. We all like swapped.

19 Q He was on a different team?

20 A We were all down there at the same thing. He was on
21 a different shift, he was a supervisor on his shift and I
22 was a paramedic supervisor on mine.

23 Q Would your relation to him, the fact that you are
24 friends, coworkers--

25 A I ain't seen him in a couple of years, since when I

1 left the County.

2 Q You are not working with the County now?

3 A No, sir. I work with Price Metal Shop Welding.

4 Q You told me that. And who else you got?

5 A Mel Seboe, Colonel Seboe.

6 Q What does he do?

7 A He is a Colonel, he works with the Sheriffs
8 Department.

9 Q Do you know him?

10 A Yes, because him and his step-son, Charlie Smith, me
11 and him played ball together.

12 Q Baseball or softball?

13 A Basketball. I have been knowing him since I was
14 little.

15 Q Would the fact that you grew up, what is his name,
16 Seboe?

17 A Yes, Melvin Seboe.

18 Q Would that create an issue for you to be fair and
19 impartial, would that be difficult for you?

20 A No sir, because I ain't seen him in a coon's age
21 neither.

22 Q Now, but any other potential witness you are
23 connected to?

24 A No, that is the only three that I recognize.

25 Q And you worked for Lexington County for 30 years?

1 A Twenty something years.

2 Q And now retired. How long ago did you retire?

3 A Me and wife started an ambulance company, that was
4 five years ago. I have been working the metal shop for
5 two years. Probably about eight or nine years ago.

6 Q Since you worked for the County?

7 A Yes, sir.

8 Q Now, the fact that Lexington County is involved in
9 this case, the Sheriffs Department is involved in the
10 investigation of this case, does that create an issue for
11 you to be fair and impartial?

12 A No, sir.

13 Q You got any, with your ambulance service, you got any
14 contracts or anything?

15 A She got out of that, she is a nurse at Lexington
16 Hospital.

17 Q Okay. Fair enough. I didn't ask him about the
18 potential defenses, did I. Did I skip defenses?

19 MR. YOUNG: I thought you went over them. I think
20 you did.

21 Q I think I ask you about the insanity defense?

22 A Yes.

23 Q Self-defense, I discussed those with you early on?

24 A Yes, sir.

25 Q You will consider whatever term is there,

1 instructions fairly?

2 A Yes, sir.

3 Q And you will follow my instructions?

4 A Yes, sir.

5 Q Okay.

6 THE COURT: Mr. Young, your opportunity.

7 EXAMINATION

8 By Mr. Young:

9 Q Good afternoon, Mr. Chavis.

10 A Howdy.

11 Q Thank you for your patience and bearing with us.

12 A Yes, sir.

13 Q This is an opportunity for you and I just to have a
14 conversation about your feelings about a bunch of
15 different stuff. Okay?

16 A Yes, sir.

17 Q If you don't understand anything or if I confuse you
18 please just let me know.

19 A All right.

20 Q Fair enough?

21 A Yes, sir.

22 Q I want to start where the Judge sort of left off
23 right then. You know that Mr. Jones is charged with five
24 counts of murder of his children, right?

25 A Yes, sir.

1 Q And he has plead not guilty by reason of insanity?

2 A Yes, sir.

3 Q And not guilty by reason of insanity means, in the
4 law it means that somebody said I have a mental disease or
5 defect such that I am not able to understand the legal or
6 moral wrongfulness of my action. Do you understand that?

7 A Yes, sir.

8 Q Now, some people say I can't consider that as a
9 verdict, it just sort of is letting somebody off. And my
10 question is, is that you or is that not you?

11 A Say that one more time.

12 Q Sure. Some people think that not guilty by reason of
13 insanity is just an excuse, it is just letting somebody
14 off and it is not a verdict that they could really give
15 meaningful consideration to.

16 A No, sometimes people just loose their marbles
17 sometimes on certain situations.

18 Q I understand being a paramedic you probably dealt
19 with people who are mentally ill before?

20 A Yes, sir.

21 Q And I think, you understood the Judge to explain to
22 you what murder is, right?

23 A Yes, sir.

24 Q The intentional killing of another with malice
25 aforethought. He talked to you about what malice was,

1 right?

2 A Yes, sir.

3 Q So we have had that first trial, the guilty, not
4 guilty, not guilty by reason of insanity, guilty but
5 mentally ill of murder, right?

6 A Yes, sir.

7 Q Are you with me on that?

8 A Yes, sir.

9 Q And if the Defendant was found guilty or guilty but
10 mentally ill then we would have a second trial?

11 A Yes, sir.

12 Q Where the death penalty or life without the
13 possibility of parole would come into play. Are you with
14 me on that?

15 A Yes, sir.

16 Q And just a couple of more setups. Guilty of murder
17 and I am pretty sure you understand this but that means it
18 wasn't self-defense, it wasn't an accident, the person
19 knew what they were doing, knew the difference between
20 right and wrong, chose to kill an innocent person. Right?

21 A Yes, sir.

22 Q My question to you is, at that point and time,
23 guilty, guilty of murder, what are your feelings about the
24 death penalty as the only appropriate punishment for that
25 guilty murder?

1 MR. GRAHAM: Objection, Your Honor, that is not the
2 situation.

3 THE COURT: Add the aggravating factor in.

4 Q Sure, my apologies.

5 A Yes, sir.

6 Q You have got the guilt of murder. Do you understand?

7 A Yes.

8 Q And the State has proven an additional factor, the
9 murder of multiple children.

10 A Yes, sir.

11 Q You have got guilty of murder, multiple children.
12 What are your feelings about the death penalty as the only
13 appropriate punishment for that guilty of murder?

14 A It kind of all depends. Like I said, I told the
15 Judge, it all depends on the situation before, afterwards.

16 Q I don't want to put any words in your mouth and I
17 need you to help me just sort of, you are talking about,
18 what exactly happened because we have decided guilty,
19 guilty, right. You are clear on that?

20 A I am talking about like remorse, what did he do
21 afterwards. I mean, do you know what I am saying?

22 Q Yes sir, I do. Those things would make you think
23 that maybe life without the possibility of parole could be
24 an appropriate punishment?

25 A Could be.

1 Q Okay. You are not closed off to one way or the
2 other?

3 A No, sir.

4 Q If you were Governor of South Carolina and you got to
5 decide do we have a death penalty or we not have a death
6 penalty. Do you, which way do you think?

7 A There are some bad people out in the world and I
8 think we need the death penalty in certain situations, I
9 do. I mean there are some really bad people out there in
10 the world. You know what I am saying.

11 Q I do. And for those--

12 A Certain situations, yes.

13 Q Okay. I think I understand where you are coming
14 from. You would, you think the death penalty for the
15 worst of the worst?

16 A The worst of the worst.

17 Q It should be an option?

18 A It should be, yes.

19 Q And am I understanding you correctly, do you think
20 that life without the possibility of parole is also a
21 substantial punishment for somebody who has been found
22 guilty of murder?

23 A I believe it is because, you know, being locked up
24 twenty-four hours a day and first, you have got to think
25 about what you did the whole time. I like getting in my

1 pool and everything and I am pretty sure in jail for the
2 rest of your life ain't no better roses at all.

3 Q Right. Mr. Chase, do you have an opinion about
4 whether or not we use the death penalty too much or not
5 enough or too little, do you have an opinion about how
6 often it gets used, we should use it more?

7 A There is, I don't know how many people are on death
8 row right now but it takes 15 or 20 years, you know, to
9 finally execute the sentence of whatever. And there ain't
10 been nobody executed in a while.

11 Q That's true. And do you think that we should make it
12 faster?

13 A I think we should make it faster. Once, you know,
14 all the appeals and everything go and everything.

15 Q Do you have any concern that if you were a Juror and
16 you voted for the death penalty, do you have any concern
17 that it wouldn't be carried out?

18 A That is up to the State.

19 Q And the Judge would tell you you have to presume that
20 if you vote for the death penalty the Defendant will be
21 executed?

22 A It is going to be carried out, I assume, yes.

23 Q Do you have any questions about that or any concerns
24 about that?

25 A No, sir.

1 Q And you understood the Court to say that life without
2 the possibility of parole means that you would die in
3 prison?

4 A Yes, he wouldn't get out.

5 Q Right. Mr. Chavis, let me talk to you about, let me
6 check in real quick. Mr. Chavis, one question that I want
7 to go back to, this sort, there is some real bad people
8 out there. Could you think about a really bad person that
9 would make you think that maybe life would be an
10 appropriate punishment for that really bad person?

11 A It all depends on what they have done, you know what
12 I am saying.

13 Q So even if you thought somebody was really bad could
14 life still be an appropriate punishment?

15 A It could be, like I say, it all depends on like
16 remorse, what he did afterwards.

17 Q Yes, sir. I think I understand where you are coming
18 from. Thank you for sharing your opinions. I want to
19 talk to you a little bit about sort of how this process
20 works. And we have talked some about guilty, not guilty
21 by reason of insanity, guilty but mentally ill, not guilty
22 of murder, right?

23 A Yes.

24 Q And we talked about statutory aggravating
25 circumstances and the Judge has told you that the State

1 has the burden of proving statutory aggravating
2 circumstances beyond a reasonable doubt and all the jurors
3 have to agree that it is proof. Are you with me on that?

4 A Yes, sir.

5 Q And then we talked about mitigating factors the jury
6 could also consider?

7 A Yes, sir.

8 Q Mitigating factors are different than aggravating
9 factors, not just in that, they lean a person towards a
10 life sentence but they also don't have a burden of proof
11 on that. Do you understand what I am saying on that?

12 A Yes, sir.

13 Q So each Juror, for himself or herself, decides what
14 is a mitigating factor to them. Okay?

15 A Yes, sir.

16 Q And they can give whatever value they want to. If a
17 Juror says, I saw this about a Defendant's background and
18 I think based on that factor I think I would give that the
19 value of life without the possibility of parole, I am
20 going to vote for life based on that factor. And another
21 Juror says, I didn't see that but I saw he had a
22 relationship with his family and based on that I am going
23 to vote for life without parole. And that is okay that
24 they don't have the same mitigating factor. Am I making
25 sense?

1 A Yes, sir.

2 Q I feel like it is late in the afternoon and I feel
3 like I am just talking. You with me on that?

4 A Yes, sir.

5 Q Don't have the burden of proof?

6 A Yes, sir.

7 Q And jurors don't have to agree on whether or not it
8 is proven or not. Makes sense?

9 A Yes, sir.

10 Q And a Juror can say, I don't have any reason at all
11 but based on who I am and my sense of mercy I feel like to
12 vote for life?

13 A Yes, sir.

14 Q Don't have to have any reason. Can you respect that?

15 A Yes, sir.

16 Q Can you respect a Juror who says, I don't have any
17 reason, this is my decision and I am going to vote for
18 life for no reason at all.

19 A That is his decision?

20 Q Right. Could you respect that decision?

21 A Yes, sir.

22 Q What we call this decision, I am sorry, this concept
23 of mercy and we call this, a lot of people call a verdict
24 for no reason a mercy verdict. Do you understand that?

25 A Yes, sir.

1 Q Based on who you are do you think that mercy is
2 something that a person earns or do you think that it is
3 something that is freely bestowed on another?

4 A Mercy is bestowed on somebody because, just like you,
5 I can have mercy for you and you can have mercy for me.

6 Q Right. It is like, if I understand you correctly, it
7 is sort--

8 A It is given by somebody else to somebody.

9 Q Right. I understand. This decision that we talk
10 about whether a person lives or dies, the Supreme Court
11 calls it individual moral judgment. Are you with me on
12 that?

13 A Yes.

14 Q And moral judgment, we make these judgments every day
15 in our lives, right?

16 A Yes, sir.

17 Q And you have made your own individual moral judgment
18 about what faith is right for you, right?

19 A Yes, sir.

20 Q And you recognize other people may have made
21 different decisions about what faith is right for them?

22 A Yes, sir.

23 Q And you expect people to respect your choice about
24 your faith?

25 A Yes, sir.

1 Q And you likewise respect their choice, their
2 individual moral judgment about what is right for them?

3 A Yes, sir.

4 Q And if you saw somebody being bullied or harassed
5 into changing as to what they arrived at as their
6 individual moral judgment would you stop it?

7 A I think I would. That person has got a right to
8 think whatever they want to. That is his advantage.

9 Q And at the end of the day when we are talking about
10 individual moral judgments it is okay to agree to
11 disagree?

12 A Yes.

13 Q Do you understand that as a Juror, at the end of the
14 day making an individual moral judgment, agreeing to
15 disagree is not a failure of the jury?

16 A Yes.

17 Q Do you understand that?

18 A Yes, sir.

19 Q Thank you, Mr. Chavis.

20 EXAMINATION

21 By Mr. Graham:

22 Q Mr. Chavis, my name is Shawn Graham, I am a Deputy
23 Prosecutor. How are you?

24 A Howdy.

25 Q I appreciate you coming up here and answering some

1 questions for us.

2 A Yes, sir.

3 Q If I understand right you are a type three Juror.

4 That is the one that says you want to listen to everything

5 before you make a decision and after listening to

6 everything you can either do a sentence of life without

7 parole is appropriate or death is appropriate?

8 A Yes, sir.

9 Q You understand that if, maybe you don't understand,

10 if you as a jury, all twelve of you decide that death is

11 the appropriate sentence you would actually sign your name

12 to a piece of paper.

13 A Yes.

14 Q Some people have a problem, they will say something

15 out loud but they won't sign their name. If you and the

16 rest of the jury decided that death was the appropriate

17 sentence after hearing all of the testimony would you be

18 willing to sign your name to that document?

19 A Yes, sir.

20 Q Okay. One of the questions I had whenever you, your

21 questionnaire that you filled out said that you were a

22 Mason, I think, is that right?

23 A Yes.

24 Q Can you tell what Lodge you belong to?

25 A I am a member of Swansea Lodge, 133. And I am also,

1 I live in Pelion, so I am a member at Elmore Lodge, 288
2 also.

3 Q So 133 is where you started and 288 is where you are
4 now?

5 A Yes. Well, I am still a member of both of them.

6 Q You are a member of both?

7 A It is called Dual Membership.

8 Q Okay. Thank you, Mr. Chavis.

9 MR. YOUNG: Nothing further, Your Honor.

10 THE COURT: Do y'all want to be heard?

11 MR. YOUNG: No, sir.

12 THE COURT: Mr. Chavis, based upon your answers and
13 your responses and my questions and the lawyers questions
14 I find you qualified to be a Juror. You have got to check
15 in, you have got access to the internet?

16 JUROR: Yes sir, I checked it last night.

17 THE COURT: You are now a qualified Juror. There is
18 a number of y'all that will be qualified. Once the Court
19 gets enough qualified jurors then I am going to put a
20 message on that board that says, all the qualified jurors
21 please report back to the Court House on such and such
22 day. You will come back in that day and we will select a
23 jury. So you are a potential Juror, not a member of the
24 actual jury yet. That is another step. Until that time
25 you are still under oath and do not talk about the case,

1 do not do any research, do not pay attention to news media
2 reports. The news media has got to do their job and they
3 have got to report this. I don't want you to be
4 influenced by their stories, I want you to be influenced
5 and to make your decision on what is said in the
6 courtroom. I have got your oath on those issues.

7 JUROR: Yes sir, I ain't going to jail.

8 THE COURT: You are free to go. Thank you for your
9 patience.

10 JUROR: All right.

11 THE COURT: Let's bring in number 368, Sara Russo.

12 SARA RUSSO, being
13 first duly sworn, testified as follows:

14 CLERK OF COURT: State your name and spell your name.

15 JUROR: Sara, S-A-R-A; Russo, R-U-S-S-O.

16 EXAMINATION

17 By The Court:

18 Q Good afternoon, Ms. Russo.

19 A Hi.

20 Q And thank you for your patience, this process is
21 moving a little slower than I had hoped. Most of that has
22 been getting started. You are the last one to do today.
23 My name is Eugene Griffith, I introduced myself Monday to
24 you and when we left the courtroom I said, placed you
25 under oath, I want you to accept the oath, do not talk

1 about the case. Has anybody talked to you about the case?

2 A My husband.

3 Q Did he ask you if you were on jury duty?

4 A Well he knew I was going to jury duty, he asked me if
5 that was what it was.

6 Q Did you tell him?

7 A Yes, I did.

8 Q Anything else?

9 A No.

10 Q Did you talk to anybody else about the case?

11 A No.

12 Q Now, this is an opportunity for the lawyers and for
13 the Court to get to know you better and want to see if you
14 are going to be qualified as a Juror or not. We are
15 looking for an end result, we want people with an open
16 mind, don't know anything about the case, can be fair and
17 impartial. That is what I am looking for in the end
18 result, that is what the lawyers are looking for, unbiased
19 people who don't know anything about it and follow
20 instructions, that is what we are looking for. Now, have
21 you, you or a member of your immediate family members of
22 any organizations to support victims rights like MADD
23 Mothers, SADD Students, Citizens Against Violent Crimes,
24 Bikers Against Child Abuse, any advocacy groups like that?
25 A No, sir.

1 Q You or your husband, you got children?

2 A I have four step-children.

3 Q Okay. You or a member of your immediate family give
4 any contributions to the Troopers Association, Sheriffs
5 Association, Law Enforcement Association, any law
6 enforcement groups?

7 A No, sir.

8 Q And are you connected to any of the lawyers?

9 A No, sir.

10 Q Know them in any way?

11 A No, sir.

12 Q Are you connected in any fashion to Mr. Jones or his
13 family?

14 A No, sir.

15 Q I sent you a list of potential witnesses, a lengthy
16 list?

17 A Yes.

18 Q I am required to ask the lawyers to call potential
19 witnesses. They are not required to call them all, they
20 are required to tell me potential witnesses with hopes
21 that we can ask jurors, do you have any connection to any
22 of them so if they are called would it create an issue for
23 you. Do you know anybody on the list?

24 A I believe I do.

25 Q Who do you think is a potential connection?

1 A I believe I know James McConnell, Shawn Spivey and
2 especially David Stonecypher.

3 Q The fact that you said his name, what does he do?

4 A He works at Intel.

5 Q Do you work at Intel?

6 A No.

7 Q Okay. How do you know Mr. Stonecypher?

8 A I grew up with him.

9 Q Did you grow up in this area?

10 A Yes.

11 Q Are y'all friends, are you still friends with him
12 now?

13 A I am not close friends with him.

14 Q Okay.

15 A I know his family.

16 Q Tell me the other two folks?

17 A James McConnell, if it is the same person, I believe
18 is a former student or family of my husband and my music
19 lessons school. The same for Shawn Spivey, if that is the
20 person I am thinking of, I believe that they are parents
21 to some of our students.

22 Q The fact that you are connected potentially with
23 these potential witnesses, would that put you in a
24 difficult position or can you be fair and impartial in
25 spite of a prior friendship, knowledge, whatever the

1 relationship is, can you, would it make it difficult for
2 you if they had to testify in front of the Court and you
3 had to consider their testimony. Can you still be fair
4 and impartial to both the State and Mr. Jones?

5 A Yes, sir.

6 Q Now, this case, the jury selection process will be
7 finished up early next week, the trial will start some
8 time after that, a day or so. The trial is predicted to
9 last a couple of weeks maybe. Do you have anything
10 personally scheduled, vacation, anything planned that is
11 already locked in, paid for that would create a hardship
12 for you if you were picked as a Juror?

13 A My work would be a hardship for me if I was picked.

14 Q What do you do?

15 A I teach voice lessons.

16 Q You teach at the school?

17 A I teach at a private music lesson school that my
18 husband owns.

19 Q And so you have got lessons scheduled that would
20 interfere with?

21 A Yes, I have to pay someone else to do them, to
22 substitute teach for me.

23 Q Okay. Now, other than that, anything else going on?

24 A I have a, this Saturday, a music performance that I
25 am under contract for.

1 Q That won't be a problem?

2 A I have got a student rehearsal day the following
3 Saturday and a student performance the following Sunday.

4 Q Okay. Other than those three things and the voice
5 lessons and whatnot?

6 A That is it and my teaching.

7 Q I am going to give you kind of a thumbnail sketch of
8 criminal procedure because part of what we do here is a
9 little bit different than traditional, the criminal
10 process is not known by everybody. In South Carolina,
11 part of what I do as a Judge, I instruct on the law, I
12 rule on evidence, rule on things during the trial,
13 admissible, inadmissible, fair question, unfair question,
14 that kind of thing. And I also at the very end of the
15 trial instruct the jury, jury, you are to consider the
16 evidence presented. The law of South Carolina is thus and
17 so and I instruct the law so one of your oath's will be,
18 if I instruct the law you agree to accept it as I instruct
19 it even if you disagree with it, think it is not fair.
20 You have got to accept the law as instructed by the Court.
21 Do you understand that?

22 A Yes, sir.

23 Q Okay. Now, I am going to go over certain aspects of
24 this because in every criminal case a person is presumed
25 innocent, that presumption stays with them, they are

1 presumed innocent all the way through the trial until the
2 verdict is reached. They don't lose that presumption
3 until the State presents its case through witnesses and
4 evidence and a jury deliberates and reaches a verdict.
5 And that verdict, if he is found guilty then the case is
6 found guilty. As he sits here today, Mr. Jones is sitting
7 right over there, is presumed innocent. Do you understand
8 that?

9 A Yes, sir.

10 Q Now, the State has made accusations through
11 indictments, those are accusations, there are five
12 indictments that they are accusing him of committing
13 murder, five times over. The State has got to prove those
14 accusations beyond a reasonable doubt. They have got to
15 prove each and every element of a murder charge in order
16 to sustain a conviction. The verdict has got to be
17 unanimous, it is beyond a reasonable doubt which is the
18 burden of how hard, how difficult it is to prove. That is
19 the State's responsibility. Mr. Jones doesn't have to
20 prove a thing in a traditional case. Now, you understand
21 that until the State presents its case he is presumed
22 innocent. Do you understand that?

23 A Yes, sir.

24 Q And in most criminal cases, this is a little
25 different, this is a Capital case, in most criminal cases

1 the State makes an accusation of a crime against a person,
2 the case is called for trial, the jury hears the testimony
3 and evidence, the Judge instructs them and they make a
4 decision. If it is guilty then the punishment is left to
5 the Judge, the Judge has to impose the sentence of
6 whatever the Judge believes is appropriate under the law.
7 A Capital case is different. The jury decides guilt or
8 innocence. If guilt is found it goes to a second stage.
9 In stage two the jury gets to decide the punishment, not
10 the Judge. So in stage one it is called guilt or
11 innocence, so you decide whether they are guilty or
12 innocent. That is the issue. If not guilty is the
13 verdict the case is done, you don't go to stage two. If
14 guilty is found by the jury beyond a reasonable doubt of
15 the murders accused then the stage two which is the
16 sentencing side, the sentencing phase of the trial. If it
17 gets to stage two then the State has got to prove, because
18 on plain vanilla murders, the sentence can be 30 years to
19 life. In a Capital case the State has got to prove the
20 murder and then they also have to prove an aggravating
21 factor. The statute, these books behind me, they list the
22 aggravator factors and I will name off a couple of them to
23 you. The killing of a police officer, killing of
24 children, multiple killings, rape of murder, kidnapping of
25 murder, those are the aggravating factors and the State

1 has got to prove an additional aggravating factor for at
2 least one of the aggravating factors in order to be able
3 to request a jury to issue punishment of the death
4 penalty. So that is the second and the State has got to
5 prove that beyond a reasonable doubt. The jury has got to
6 make one of two decisions in the punishment side. Life
7 without the possibility of parole or death. Two decisions
8 they make, one of the two, no in between. The death
9 penalty is not automatic. One of the two decisions. So
10 death penalty, life without parole. They consider the
11 aspects of any testimony, I will describe some of the
12 testimony to you but the State has got to prove that
13 additional aggravating factor. You also get to hear a lot
14 of mitigating factors. Mitigating factors, I will give
15 you some defenses too, potential defenses that may have a
16 play in the testimony presented. Potential defenses, now
17 all of these don't fit. I am going to tell you, my
18 instructions on the law are tailored to the individual
19 cases and I have got to wait until the testimony comes
20 through and it is presented to the jury to say, okay, the
21 instruction on this will be appropriate. Some of these
22 are not appropriate and I wouldn't put them in the
23 instruction but I am going to list them to you anyway.

24 Okay?

25 A Yes, sir.

1 Q Potential defenses to a murder would be
2 identification, accident, involuntary intoxication,
3 suicide, self-defense, necessity, insanity, guilty but
4 mentally ill, defense of habitation, entrapment, duress
5 and alibi. Those are potential defense and you may hear
6 testimony about those. Can you give meaningful
7 consideration to testimony and evidence which may or may
8 not support those defenses in this case whether it is
9 presented on either side of the case. Can you do that?

10 A Yes, sir.

11 Q Okay. Now, mitigation is a little different. We are
12 in the sentencing phase, guilt has been found, we get to
13 the mitigation. Mitigation are reasons to give life
14 rather than death. Perhaps some mitigation facts, these
15 are statutory. A Defendant has no significant history of
16 criminal conviction involved in the use of violence
17 against another person, he hasn't done anything like that
18 before. The murder was committed while the Defendant was
19 under the influence of mental or emotional disturbance. A
20 victim was a participant in the Defendant's conduct and
21 consented to the act. A Defendant was an accomplice in
22 the murder committed by another and his participation was
23 relatively minor. The Defendant acted under duress or the
24 domination of another. The capacity of a Defendant to
25 appreciate the criminality of his conduct, to conform with

1 his conduct to the requirements of law was substantially
2 impaired. The age or mentality of the Defendant at the
3 time of the crime was committed. The Defendant was
4 provoked by the victim in committing the murder. 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 statutory ones, there are others,
8 perhaps the Defendant came from a broken home, had a hard
9 life, things of that nature, personal issues with him.
10 Those are mitigating factors. And so in the sentencing
11 phase you consider all of that.

12 A Okay.

13 Q Instructions of the Court. Now, I hand you a sheet--

14 A The types of jurors?

15 Q Yes, the types of jurors. Type one, so this is
16 presuming a couple of, you don't know any of the facts of
17 this case other than the accusations. That is going to be
18 all presented to you. But for the sake of your
19 conversation right now, the State proves murder. The
20 State proves aggravating circumstances beyond a reasonable
21 doubt, unanimous to the jury. Evidence presented
22 regarding mitigation. A type one Juror would be a Juror
23 to say, you know what, the State proved its case beyond a
24 reasonable doubt, they proved the murder, the State also
25 proved an aggravating circumstance beyond a reasonable

1 doubt. Certainly there is mitigation here but I don't
2 care, the appropriate sentence is always going to be the
3 death penalty. Type two Juror, a little bit different.
4 The State has presented its case, proved the murder beyond
5 a reasonable doubt, proved the aggravating circumstance
6 beyond a reasonable doubt, presented mitigation from
7 whichever source. There is really no burden of proving
8 mitigation, mitigation is just shown and you just hear it
9 and consider it so the State doesn't have to prove
10 mitigation or disprove it, there it is. Type two Juror
11 says, you know what, I have got a moral or personal belief
12 that I can't impose the death penalty no matter what.
13 That is just my belief and I am not going to do it. I
14 don't care what they show, I don't care what happens. The
15 sentence is always going to be life for me. Type three,
16 kind of in between the two. The State proves the murder,
17 the State proves beyond a reasonable doubt the aggravating
18 circumstance, the jury is presented mitigating facts, all
19 the facts, all the circumstances, the Judge instructs the
20 law. Type three Juror says, I want to hear and decide
21 what I think would be the appropriate punishment. Whether
22 it be life or death, I can't make up my mind until I hear
23 everything. How would you describe yourself?

24 A Type two.

25 Q So you, one of the requirements of a Capital case is

1 the jurors, if they make a decision to impose the death
2 penalty, all the jurors have to sign the sentence form.
3 Could you do that?

4 A Can you clarify the question.

5 Q Here is what it is. You tell me type two which means
6 you think life in prison is the appropriate punishment no
7 matter what.

8 A Correct.

9 Q In a death case, if the jury decides death, members
10 of the jury has to sign the sentence form. You are
11 telling you could or could not do that?

12 A I could not do that.

13 Q Okay. You remember, I told you there are no right or
14 wrong answers, no wrong answers.

15 A Okay.

16 Q I want candor, that is what I need.

17 A That is the truth.

18 MR. MCGUIRE: Nothing from the Defense, Your Honor.

19 THE COURT: Anything?

20 MR. HUBBARD: Nothing from the State.

21 THE COURT: Ms. Russo, you will not be qualified.

22 Thank you for your patience.

23 JUROR: Thank you.

24 (Whereupon, Ms. Russo was excused from the
25 courtroom.)

1 THE COURT: See y'all at 9:00.

2 MR. HUBBARD: Yes, sir.

3 (Whereupon, the trial will resume at 9:00 am the next
4 morning.)

5 May 2, 2019.

6 THE COURT: Are y'all ready?

7 MR. YOUNG: Number 24.

8 THE COURT: Number 24.

9 (Whereupon, Juror 24, Kristiana McGill came into the
10 courtroom.)

11 KRISTIANA MCGILL, being
12 first duly sworn, testified as follows:

13 CLERK OF COURT: State your name and spell your name.

14 JUROR: Kristiana, K-R-S-T-I-A-N-A; McGill,
15 M-C-G-I-L-L.

16 EXAMINATION

17 By The Court:

18 Q Good morning Ms. McGill.

19 A Good morning.

20 Q My name is Eugene Griffith, I introduced myself to
21 you on Monday and at that time we went through the initial
22 bunch of questions, I sent y'all on your way and y'all
23 took an oath to not talk about the case, not allow people
24 to talk to you about the case and try to minimize your
25 media review. Since your oath, only truthful answers, we

1 are going to get on some other questions and some of those
2 are opinions. There is really no right or wrong answers,
3 truthful, candid, that is what I am looking for. Anybody
4 try to contact you or talk to you about the case?

5 A No, sir.

6 Q Did you talk to anybody about the case?

7 A No, sir.

8 Q And the media reports, some things have been going on
9 over the weekend, there is a lot of media contact, have
10 you seen any of that?

11 A No, I try to avoid it.

12 Q Very well. Did you see any media before I put you
13 under oath?

14 A Yes, I did. Monday, actually before coming to jury
15 duty, originally on Monday I saw like just a article on
16 Facebook. I didn't read the article, just the headline.

17 Q And so what I am trying to do, I want jurors to come
18 in with no preconceived notions or biases, kind of open
19 mind and open book and they are ready to listen to both
20 sides and be fair to both sides. That is what I am
21 looking for. If something you have seen or been involved
22 with, read, whatever, heard on the news that has caused
23 you to form an opinion I need to know about that. So is
24 there anything like that?

25 A Not really.

1 Q You have heard some of the facts about the case, but
2 haven't seen anything about the case. Because I gave you
3 some facts when I read the indictments?

4 A That is pretty much all of my knowledge.

5 Q Okay. Fair enough. Now, any member, you or your
6 immediate member of your family a member of any
7 organizations like the advocates, victims rights like MADD
8 Mothers, Students against Drunk Driving, Citizens Against
9 Violent Crimes, groups such as that. Anybody a member of
10 something like that?

11 A I don't think so.

12 Q You or a member of your immediate family contribute
13 to the Troopers Association, Sheriffs Association, Law
14 Enforcement Association?

15 A No.

16 Q I showed you when you came in this long list of
17 potential witnesses. Both sides have to provide me
18 potential witnesses. They are very likely not to call all
19 of these but they have got to tell, we may call, here are
20 our potential witnesses so everyone can be ready and know
21 who they are. Particularly for a Juror I need to ask you,
22 do you know any of them?

23 A I am not sure but I am a bartender so I may know the
24 face and not the name. None of the names stick out for me
25 so I didn't recognize anything.

1 Q If you are selected on the jury and somebody comes
2 forward and the face is, you recognize it, would you tell
3 me at that time?

4 A Yes.

5 Q And I am a much more of a facial recognition person
6 too, so you put the name and the face together you know
7 them?

8 A Yes.

9 Q But you don't know any of the names here?

10 A No.

11 Q Firsthand. I am going to give you kind of a broad
12 brush, it is not detailed, it is an overview of criminal
13 procedure and a little bit of the criminal justice system.
14 When a case is brought to trial by an indictment like this
15 one has, a plain vanilla case, brought to trial by an
16 indictment. An indictment is just a notice document, it
17 is basically telling a person they are being accused of a
18 crime and the particulars of that crime they are being
19 accused of. It doesn't prove anything, it is just an
20 allegation. This case has five of those indictments which
21 are five allegations. A person who wants a jury trial
22 pleads not guilty and they get a trial. The State has got
23 to prove their case at trial to a proof called burden, I
24 am sorry, beyond a reasonable doubt. But a person that is
25 accused is presumed innocent all the way through the trial

1 until the jury reaches a verdict, the presumption stays
2 with them. The State has got to overcome that presumption
3 with their burden beyond a reasonable doubt. Now, this
4 case has that same process, it has a few extra facets to
5 it that I want to go over with you that you may be not
6 aware of. In a traditional case, armed robbery, murder,
7 whatever, plain vanilla case the State makes the burden of
8 proof, if they prove their case beyond a reasonable doubt
9 then the sentence is imposed by the Judge. Now, this case
10 is slightly different, it is a Capital case meaning the
11 first part of the case, there are two phases, the guilt or
12 innocence phase which the State has got to prove its case
13 beyond a reasonable doubt. Then if the guilt is found
14 then it goes to phase two which is the sentencing phase.
15 So in a Capital case it can be a two step process. If
16 guilt is not found, there is a not guilty verdict, the
17 case is over, you don't go to phase two.

18 A Okay.

19 Q Everybody, the case ends right there. But if guilt
20 is found you go to phase two and that is called the
21 sentencing phase. Now, in a Capital case, what is
22 different about it is, the jury determines the sentence.

23 Okay?

24 A Yes.

25 Q Once it goes to sentencing phase and I am going to go

1 back and kind of fill in some pieces, remember, this is a
2 broad picture and you don't know many facts at all. But
3 the jury determines the sentence and they have got two
4 choices, life without parole, never get out or death.
5 Those are the two choices in a Capital case. Now an
6 additional requirement is that during the sentencing phase
7 the State has to prove an aggravating factor and there are
8 listed in the statutes, aggravating factors and I will
9 give you a couple of them. For instance, multiple
10 murders, killing of a police officer, rape of murder,
11 kidnapping of murder, murder of children. Those are
12 aggravating factors. A plain vanilla murder, somebody
13 shoots somebody in a fight, not entitled to go for the
14 death penalty, the State can't say I seek the death
15 penalty on a, just a murder, it has got to have something
16 aggravating. And the State has got to prove that
17 aggravating factor beyond a reasonable doubt before the
18 death penalty can be considered. Okay?

19 A Okay.

20 Q That is kind of the big picture. So during the
21 entire trial you will hear all sorts of testimony from a
22 variety of witnesses. During that trial, you may hear
23 some defenses that the Defense is presenting and those are
24 listed by statute and I will go over those with you. But
25 some of those are self-defense, involuntary intoxication,

1 insanity, guilty but mentally ill, defense of habitation,
2 duress, alibi, those are some of the defenses that can be
3 considered by the jury during the trial. In this case
4 there is an added defense too, broad picture. Also there
5 is testimony, after guilt or innocence. So the jury makes
6 a determination there is a guilty verdict then it goes to
7 sentencing. Also the jury considers because they will
8 hear things about the background of the parties and it is
9 called mitigating evidence. Mitigating evidence comes in
10 many forms too. And there is some statutory mitigating
11 factors and I will name a few of them and come back to
12 them. But the Defendant has no significant history of
13 prior criminal conviction, use of violence against
14 another, the murder was committed while the Defendant was
15 under the influence of mental or emotional disturbance,
16 the victim was a participant in the Defendant's conduct or
17 consented to the act. The Defendant was an accomplice to
18 a murder committed by someone else, his participation was
19 minor. These are mitigating factors, they kind of lessen
20 their reasons to impose a sentence of life, is what they
21 are. Now, there is a wide variety of mitigating factors
22 listed in the statute, I didn't quite read them all but I
23 will just for the purpose of the record. The Defendant
24 acted under duress, the capacity of the Defendant to
25 appreciate the criminality of his conduct was

1 substantially impaired, the age or mentality of the
2 Defendant at the time of the crime. The Defendant was
3 provoked by the victim in committing the murder. The
4 Defendant was below the age of 18 and the Defendant had
5 mental retardation. Those are the statutory ones and
6 there are others like his childhood experiences, he came
7 from a broken home, things like that. In the sentencing
8 phase the jury gets to consider all of that, mitigation
9 factors, aggravation factors. The State has got to prove
10 the aggravating factors beyond a reasonable doubt.
11 Defenses are heard during the guilt or innocence but some
12 of the defenses are also, have some commonality to the
13 mitigating factors, they are similar evidence I guess.
14 Now, I want to ask you, the big picture, you have not
15 heard any facts other than the accusations that there is
16 the murder of five kids. Mr. Jones has plead not guilty
17 by reason of insanity on this. Big picture. I want to
18 talk about where you think you might fall under a
19 hypothetical type of Juror. I sent those three types of
20 jurors back to you. A type one juror--

21 MR. YOUNG: Your Honor, may we approach real quick?

22 THE COURT: Yes.

23 (Whereupon, a bench conference was held in the
24 presence of the Juror but out of the hearing of the
25 Juror.)

1 THE COURT: The lawyers told me I forgot to tell you
2 something that I didn't actually give. The accusation of
3 murder, what the State has got to prove and I didn't get
4 into that. Murder is defined in South Carolina as the
5 killing of another person with malice aforethought.
6 Malice is kind of defined by our laws as hatred, ill-will,
7 hostility, depraved heart, a black heart is what malice
8 is. The State has got to prove the killing of another
9 with malice beyond a reasonable doubt in the guilt or
10 innocence. Okay?

11 A Yes, sir.

12 Q Then in the sentencing side, if the guilt is found of
13 the murder we go to the sentencing portion, then that is
14 when the aggravating factors has got to be proved. Okay.
15 Now, you review the three types of jurors, the sheet I
16 sent for you to review before you came in.

17 A Yes.

18 Q A type one Juror, I am going to presuppose the facts.
19 Type one Juror is this. The State has proved the murder,
20 they proved the murder, malice, the jury considers it
21 beyond a reasonable doubt, the jury found unanimously
22 guilty of murder. Then getting to the sentencing phase,
23 the State proved the aggravating factor, whichever one it
24 was, it doesn't matter. Assume the State proved the
25 aggravating factor in this case. That type of Juror,

1 well, the State proved its case beyond a reasonable doubt
2 of the murders, the State proved the aggravating factor
3 beyond a reasonable doubt of the aggravation, the
4 appropriate punishment in those cases always is death, no
5 matter the mitigation, no matter the other circumstances.
6 A type two Juror is a little different. The State proved
7 its case beyond a reasonable doubt of the murder. Go to
8 the sentencing phase, proof beyond a reasonable doubt of
9 an aggravating factor. There is mitigating factors there
10 and this type of jurors says, I understand there are
11 mitigating factors but in my moral sense I cannot sign my,
12 find a verdict of the death penalty, I am going with life
13 every time, always. That is the appropriate sentence and
14 I won't consider the death penalty. I will only consider
15 life. So type one, only death. Type two, the same facts,
16 only life. A type three person is one that, the same
17 factors, guilty of murder, beyond a reasonable doubt
18 proven the aggravating factor, and there is all the
19 testimony of the defenses, the mitigating factors, the
20 aggravation, the State has proved that. That type of
21 Juror, not sure, they want to hear the testimony. I tell
22 you all of this because I am going to instruct you on the
23 law, how to evaluate this, what is what and how to
24 consider, meaningful consider the evidence. So I am kind
25 of presupposing that on you too. But type three Juror

1 wants to hear everything and then make a decision. Can
2 you, with that big broad brush, can you identify yourself
3 as one of those three types of jurors.

4 A Probably type three.

5 Q Type three?

6 A Yes.

7 Q Okay. So that means you don't have a preconceived
8 notion, the murder is proven, aggravating circumstances,
9 one sentence or the other is the only thing you are going
10 to go for?

11 A Yes.

12 Q That is, you want to hear the rest?

13 A Yes.

14 Q Okay. Now, I should have asked you this upfront and
15 this is another the lawyers and I talked about over there
16 momentarily is, if you are selected as a Juror in this
17 case, I am hopeful to have the jury, I am looking for
18 qualified jurors and then we will go through that,
19 eliminate some because they have reasons to excuse. I
20 need about 45 or 50 qualified jurors to select one. If
21 you are selected as a Juror, the case will last two weeks,
22 not sure, depending on the number of witnesses they call.
23 Do you have a preplanned vacation that is paid for, some
24 personal obligation that you have already committed to
25 that if being selected that would interfere with your

1 plans.

2 A I am suppose to be going to the beach with my in-laws
3 next week. But, I mean, it is from Saturday to Saturday.
4 So I don't know, whenever it starts I guess I can just
5 come back.

6 Q Once you are done today it is going to be the middle
7 of next week before I get done with the other jurors. If
8 you are qualified, I would have y'all to check the
9 internet when to come back in. I can't envision getting
10 through the entire process by Wednesday. You will be able
11 to go with them without any trouble before I may need you
12 back in there. Other than that could you do it?

13 A Yes. So I just have a couple of questions since I am
14 a bartender, I work for tips. Would I still be able to
15 work during the trial. I wasn't sure how it works.

16 Q That is a good question.

17 A Most people still get paid because this is an excuse
18 to not be at work. But I work for tips so I don't get
19 paid if I am not there.

20 Q I would say less people get paid then you think. So
21 most of the time it is an inconvenience of the jurors,
22 money wise and imposing on your time. The trial will be
23 conducted during the daytime hours on the days. So if you
24 work in the evenings and night, I can't tell you it is a
25 final decision of mine. Ideally, right now is, much like

1 the oath I put you under, I don't want anybody to talk to
2 anybody about the case, I don't want you to talk to
3 anybody about the case, I don't want you perusing media,
4 social media, looking for facts, doing independent
5 research. I want you to consider the case on what is
6 presented in the courtroom, not outside.

7 A Okay.

8 Q Everybody is going to have that oath to do that and
9 if you can live up to that oath then you can work in the
10 evenings because we will probably be done with court at
11 5:30, 6:00 o'clock each day. If you could still work some
12 like that, as long as you are willing to listen and keep
13 an open mind, I think you will be okay with that. The
14 main thing is, yes, sequestering is the word for when you
15 get put up in a motel. My intent is not to do that but
16 part of the bargain is jurors have to live up to their
17 oath to the Court, we won't let anything influence us
18 outside of the courtroom. That is probably the biggest
19 thing the jurors have to focus on is listening but not
20 gathering information outside the courtroom. That is the
21 biggest agreement and oath we have to have. Does that
22 answer your question?

23 A Yes, sir.

24 Q Let me get back to what I was asking you questions
25 on. In this case, let me describe to you, the State can't

1 ask for or seek the death penalty unless they believe they
2 can prove an aggravating factor.

3 A Okay.

4 Q The State has got to prove beyond a reasonable doubt.
5 In this case the State has brought five indictments of
6 murder against Mr. Jones, he is presumed innocent sitting
7 right there and he will stay in that position, presumed
8 innocent all the way through the trial until the jury
9 reaches a verdict and decides one way or the other, guilty
10 or not guilty. He has entered a plea of not guilty by
11 reason of insanity and that adds yet another possibility
12 of verdicts to the verdict form. Normally it is guilty,
13 not guilty. When you enter a plea of not guilty by reason
14 of insanity the verdict form changes a little bit, it gets
15 bigger. Four potential verdicts should be presented to
16 the jury, guilty, guilty but mentally ill, not guilty by
17 reason of insanity, not guilty at all. Four potential
18 verdicts. I will instruct the jury, at the close of the
19 evidence, okay, you are about to consider guilt or
20 innocence, there is four choices. I just named them off
21 to you. The law of South Carolina is, proof of murder,
22 killing of another with malice, and thus and so. You are
23 to consider the evidence that has been presented to you,
24 your verdict must be unanimous, that type of thing. I
25 give the instructions then. Do you know of any reason

1 right now that you can't give meaningful consideration to
2 each and every one of those four potential verdicts?

3 A No.

4 Q So you can give meaningful consideration to all of
5 those potential verdicts?

6 A Well, I guess, like just for what I have heard and
7 briefly on social media before coming in here--

8 THE COURT: That is what I am looking for,
9 preconceived notions, maybe, maybe not, that is what I
10 want to know about.

11 A I just, I don't see the insanity all together.

12 Q You don't see the insanity thing?

13 A I feel like that is kind of like a gray area, like I
14 don't think anybody in their, that is mentally healthy
15 could do what he is accused of. But I don't think it is
16 an excuse to not to be guilty at the same time.

17 Q And there is some confusion about guilty but mentally
18 ill or not guilty by reason of insanity. And that is part
19 of my job to try explain to you where those two areas
20 fall. So you have got confusion about that too?

21 A Yes.

22 Q Well, that is part of my job to instruct the jury at
23 that time. But could you, if explained properly under the
24 law, I don't know how the testimony is going to go but
25 there is going to be testimony about that from both sides

1 for the jury to consider, can you give meaningful
2 consideration about those issues, the mental issues,
3 whatever they are regarding Mr. Jones, from whomever it
4 comes from and understand the instructions, consider my
5 instructions, the testimony you hear and give meaningful
6 consideration to either of those two potential verdicts,
7 actually there are four potential ones but I kind of
8 narrow it down to the middle two. Could you do that?

9 A I think once it is better explained with examples and
10 everything I think I could, yes.

11 Q See, that is part of the State's burden of proving
12 its case, they have got to say, here is the story, this is
13 what happened, they lay off, I am laying out bones for
14 you, they are going to put meat on the bones. Likewise,
15 the Defense team has that same responsibility to fill in
16 these gaps for you too and explain what the insanity is
17 and they have got to show you that. That is their job and
18 those questions will be filled in with testimony and then
19 my explanation on the law, then the jury decides where it
20 falls. Can you give consideration to all of those
21 factors?

22 A Yes, sir.

23 Q Okay. Do you know of any personal, moral, religious
24 belief that you may have which would prevent you from
25 finding a verdict, considering the verdict for death in, I

1 am sorry, the punishment, I am already past the guilt or
2 innocence phase. You and I were just talking about guilt
3 or innocence. That is the first phase, if a verdict of
4 guilt is found then it goes to phase two. Presuming phase
5 one is guilty, if it is not guilty the case is over with.
6 Okay. Phase two when the jury decides a life or death.
7 Do you have any reason, personal belief, moral belief,
8 anything like that that would prevent you from finding the
9 death penalty?

10 A No.

11 Q Do you have any personal or moral or religious belief
12 that would prevent you from considering a life without
13 parole sentence?

14 A No.

15 Q Now, you understand, in cases like this death penalty
16 is not automatic, that is a common misconception. The
17 State proves the murder, has to try to prove the
18 aggravated assault, if they do then you would consider one
19 of the two. One is not automatic, there are both on the
20 table in sentencing. It is the jury's decision on that.
21 Now, can you give meaningful consideration to all the
22 testimony in the sentencing phase, all of the testimony,
23 mitigating, aggravating evidence, affirmative defenses
24 that they are presenting, defenses that are presented, can
25 you give meaningful consideration to all of that, those

1 factors, the law that I am going to instruct and consider
2 all the testimony from where ever it comes and be fair and
3 impartial in this case?

4 A Yes, sir.

5 Q Now, I should have asked this up front too. This
6 case involves the death of children and so the testimony
7 is going to involve some graphic descriptions, there may
8 be some photographs that may be graphic in nature and I
9 think we characterized it with enough prior jurors, it may
10 be very unpleasant to see, to hear. Would testimony of
11 that type subject matter create an issue for you where you
12 couldn't be fair and impartial to both sides. I am
13 telling you, no one is, it has been unpleasant for
14 everyone. We understand that. But is that going to
15 create an issue for you hearing testimony and seeing
16 evidence of that type of subject matter, would that make
17 it difficult for you to be a Juror.

18 A I don't think it would be difficult to be like, to be
19 in here. But I think just in general seeing those things
20 and hearing those things might be.

21 Q It is not going to be easy?

22 A No.

23 Q Notwithstanding that, can you still consider evidence
24 and testimony of that type and be fair and impartial to
25 both sides?

1 A I would like to think so, I would like to think that
2 I can do that.

3 Q Okay. Fair enough. Do I need anything else?

4 MR. YOUNG: Not that I can think of.

5 THE COURT: Mr. Young, your witness.

6 EXAMINATION

7 By Mr. Young:

8 Q Good morning, Ms. McGill.

9 A Hi.

10 Q Thank you for your continued patience, we are sort of
11 getting a slow start on this process. Okay. Right now is
12 time for you and I just to sort of have a conversation,
13 your only oath is to just share your opinions, your honest
14 answers. Okay?

15 A Okay.

16 Q You can tell me anything, you can't give a wrong
17 answer. Okay.

18 A Okay.

19 Q And I am going to ask you questions and I just want
20 to know what your thoughts are, okay.

21 A Yes, sir.

22 Q I noticed and I looked at your questionnaire that
23 you, you were a witness to some murders at a bar here in
24 Lexington?

25 A It was the Frayed Knot in Chapin in 2016, I believe.

1 Q And you and your husband were there?

2 A At the time we were just dating but, yes, I was a
3 bartender and he was the barback. And some drug dealer
4 open fired on a couple of Marines that were trying to stop
5 him from beating up his girlfriend and he killed the two
6 Marines.

7 Q Did you witness those murders?

8 A Yes.

9 Q Is there anything having gone through that experience
10 or and that case didn't go to trial?

11 A No.

12 Q But is there anything about that experience that you
13 think might impact your ability to be fair and impartial
14 in a murder case?

15 A I am not sure because I try not to think about it, it
16 was a traumatizing event.

17 Q It was.

18 A Yes.

19 Q I can't imagine. And I think being a Juror in a case
20 like this could be another traumatizing event. And I just
21 need to know from you, is this something you can do or
22 something you can't do?

23 A I would like to think that I can.

24 Q Okay.

25 A I feel like someone has to.

1 Q Right. So you are going to give it a shot?

2 A Yes.

3 Q Okay. Fair enough. The other thing I want to talk
4 to you about is you work at the Irish Pub over here on
5 Main Street?

6 A Yes.

7 Q Which is sort of between the Court House and the
8 closest hotel?

9 A Yes.

10 Q So there is a lot of lawyers from court in and out of
11 there?

12 A Yes, sir.

13 Q I don't know if you know any of them in the courtroom
14 or not?

15 A No, I have been making sure that I don't know any of
16 them.

17 Q Okay. I live over in Columbia so I am not over here
18 a lot. But I know a lot of witnesses and people are going
19 to be at the hotel and you are sort of right between the
20 hotel and the Court House. And I don't know what kind of
21 system you would come up with. If you couldn't work that
22 would be a problem for you?

23 A Yes.

24 Q And I don't know, I guess if we had, I don't know, I
25 guess we could try to make O'Hara's off limits for

1 witnesses, I don't know what court, if the Court has any
2 ideas about that?

3 THE COURT: I don't have any ideas yet but that may
4 be a solution. We could figure that out.

5 A I don't know, I guess I could work only a little. I
6 don't know how to make, I would have to work so I don't
7 know, I would have to talk to my boss about it to see if I
8 could work a different position, not just be in the front
9 of the restaurant, not be a bartender, not a face, back at
10 the house and maybe like a expeditor of the food or food
11 runner so my face isn't seen as much. But you would have
12 to allow me to talk to my boss about that or if y'all want
13 to talk to my boss about it. I don't know, he is pretty
14 nice.

15 Q But and here is my concern. My witness comes in,
16 sits down, they are talking about the case, you are at the
17 table, is that something that you would feel comfortable
18 like telling them, look, I might be a Juror, I am going to
19 see if we can get you another server or telling the Court
20 like I was at work last night. The witness who was on the
21 stand yesterday was there. I am just letting the Court
22 know.

23 A Yes, I could report it back to y'all or I could
24 always, I mean I am at the bar so I could not really serve
25 that person if they sit at my bar. If there is another

1 bartender I could let them know, like I need to avoid this
2 person but I still have to do my job as a bartender. I
3 can't just avoid a guest because they are sitting at my
4 bar.

5 Q And you can see where my concern is that you get
6 influenced by some information that wasn't in court?

7 A Yes sir, I understand.

8 Q Okay. And I just don't know how we would do that. I
9 am going to talk to you a little bit about your views
10 about the death penalty. Okay.

11 A Okay.

12 Q Can you tell me what your views, if I just ask you in
13 general what do you think about the death penalty, what
14 would you tell me?

15 A I don't really know because I don't know, like too
16 much about it. What I have seen when I see other cases
17 where the person did get the death penalty, it is like,
18 okay, maybe. But at the same time I don't feel like that
19 is my, I am just a bartender. I am kind of like, I feel
20 like it is not my part to choose if a person lives or
21 dies. But I would, I don't know the whole case because I
22 just read the articles on Facebook or the news or
23 something.

24 Q Right.

25 A So I think it is I am uneducated about what actually

1 happened, social media can just turn it to where you think
2 a person deserved it or however.

3 Q Right. So you think if you heard it yourself you
4 could make that decision?

5 A Yes, sir.

6 Q Are there any types of cases where you think the
7 death penalty is the, demand the death penalty, the only
8 appropriate punishment is the death penalty?

9 A So, I am originally from Las Vegas, Nevada. My
10 friend, Megan, her sister, Melissa, was murdered in 2011.
11 She was raped, tortured and murdered by a guy who actually
12 graduated high school with me. And I think because I had
13 a personal opinion, like a personal like relationship with
14 the family of the victim, he ended up getting the death
15 penalty and I agreed with that. I think it is because I
16 had a personal relationship with the victim's family.
17 That is all I really can think of off the top of my head.

18 Q Can you think of anything about that guy that you
19 could have heard that made you think that like, maybe the
20 death penalty wasn't the only appropriate punishment?

21 A I don't think so but at the same time I also heard it
22 from biased, I heard like from the victim's mom and stuff
23 that he, he also admitted to three other rapes and stuff
24 like that. It was just, I don't know, nothing to me
25 seemed to, I agreed but I also had that personal

1 relationship. I was too close and too biased.

2 Q Let me ask it this way. Do you think that the life
3 without the possibility of parole is a substantial
4 punishment for murder?

5 A Yes. So I think that sometimes the death penalty is
6 also like, it is also not fair because it is almost like a
7 copout for them. But also I feel like you don't know what
8 their life is going to be life in prison for life. I
9 don't know, I am type three because I don't know how I
10 feel about it because it is not fair that they just, I
11 mean obviously they are dieing but it is almost like it is
12 not substantial enough sometimes for what they did.

13 Q For some murders the death penalty is just too easy?

14 A Yes, exactly.

15 Q Where it might be better to let them rot in prison?

16 A Yes.

17 Q And have to live with it?

18 A Yes, sir.

19 Q I am going to talk to you about a murder case. And
20 the Judge told you what murder is, it is the intentional
21 killing of an innocent person with malice aforethought.
22 Are you with me on that?

23 A Yes, sir.

24 Q And the Judge talked to you about some defenses but
25 in order to be found of murder it is not self-defense, it

1 is not an accident, we know who did it. Are you with me
2 on all of that?

3 A Yes.

4 Q And as the Judge has explained to you, Mr. Jones has
5 plead not guilty by reason of insanity. Okay?

6 A Okay.

7 Q And I know you had some questions about that and I
8 want to try to clarify that for you. Not guilty by reason
9 of insanity is where somebody says, I did it, I did the
10 actions but because of a mental disease or defect I was
11 unable to appreciate the legal or moral wrongfulness of my
12 actions. Do you understand that?

13 A Okay. I think.

14 Q It is a little bit confusing. Basically it is
15 talking about, who did the killing would say, I didn't
16 know it was wrong. I thought I was morally justified in
17 doing what I did.

18 A Okay.

19 Q Does that make sense to you?

20 A Yes, sir.

21 Q I mean, that is what the legal definition is, okay.

22 A Okay.

23 Q And when you were talking to the Judge about not
24 guilty by reason of insanity, some people think that that
25 is just sort of an excuse, that it is not really an option

1 for me in a case involving the murders of five children
2 and I just need to know from you, is that you or do I have
3 that wrong?

4 A I think you have it right. I just, I am kind of
5 like, I don't understand the difference between guilty
6 with mental illness or not guilty with insanity. I don't
7 understand the difference between those two, they kind of
8 seem to go hand in hand because, I think, if I am
9 understanding you right, what you just said was, not
10 guilty with insanity is admitting that you did it, you
11 just thought you were morally right. But wouldn't that be
12 guilty with mental illness.

13 Q Here is the difference. Not guilty by reason of
14 insanity means that they did not know the difference
15 between legal or moral right from wrong.

16 MR. GRAHAM: Objection. I apologize for objecting.
17 I guess if we are going to instruct on the law I ask that
18 Your Honor do it.

19 MR. YOUNG: I have the statute right here.

20 MR. GRAHAM: I think yesterday I passed up the NGRI
21 and I can pass up the copy of the--

22 THE COURT: -- y'all come up here.

23 (Whereupon, a bench conference was held in the
24 presence of the Juror but out of the hearing of the
25 Juror.)

1 Q Ms. McGill, the Judge is going to tell you what the
2 statute says.

3 THE COURT: This is kind of what I would instruct at
4 the very end, after you hear all the testimony. Here is
5 the definitions. I will start with not guilty by reason
6 of insanity. A Defendant at the time of the commission of
7 the act constituting the offense, the Defendant has the
8 result of a mental disease or defect, lacked the capacity
9 to distinguish moral or legal right from moral or legal
10 wrong. I want to recognize that a particular act charged
11 was morally or legally wrong. Now someone can be found
12 guilty but mentally ill if at the time of the commission
13 of the act he had the capacity to distinguish right from
14 wrong, recognize his act as being wrong. But because of a
15 mental disease he lacked the capacity sufficiently to
16 conform his conduct to the law.

17 A Thank you.

18 THE COURT: He is going to try to ask you another
19 question.

20 Q The distinction between the two, is whether or not
21 the person knew what they were doing was legally or
22 morally wrong. Does that make sense to you?

23 A Yes, sir.

24 Q If you find that they had a mental disease or defect
25 that affected their actions but they could distinguish

1 legal and moral right from legal and moral wrong, that is
2 what is called guilty but mentally ill?

3 A Okay.

4 Q Okay. If the Juror finds guilty or guilty but
5 mentally ill we go to the punishment phase. Are you with
6 me on that. Not guilty or not guilty by reason of
7 insanity the trial is over. Do you understand that?

8 A Okay.

9 Q So I am back to my question, I think you told me that
10 maybe not guilty by reason of insanity might not be on the
11 table for you.

12 A Yes, I don't think so just because, I just, I
13 understand there is like a definition difference but like,
14 I personally don't see a difference with the not guilty
15 with insanity and guilty but mentally ill.

16 Q Okay. Fair enough. A lot of people share that view,
17 I am not trying to change your mind, this is for you to
18 tell us how you feel. Okay.

19 A Okay.

20 Q I am going to talk to you about a couple of more
21 things. Okay?

22 A Okay.

23 Q Where we had that first trial, guilty, not guilty by
24 reason of insanity, guilty but mentally ill on the case of
25 murder. And the jurors have found the Defendant guilty or

1 guilty but mentally ill, we will go to the punishment
2 phase. Are you with me on that?

3 A Yes.

4 Q In that phase the State has the burden of proving
5 what the Judge talked to you about, aggravating
6 circumstance.

7 A Okay.

8 Q And in a case like this they have alleged children.
9 Are you with me on that?

10 A Yes.

11 Q Now, some people think that for me and who I am, if I
12 am deciding punishment life without the possibility of
13 parole is not a significant enough punishment for a case
14 like that.

15 A Okay.

16 Q You know some people are like that?

17 A Yes.

18 Q Where somebody would say death is the only
19 appropriate punishment. Is that you or where do you fall
20 on that?

21 A I would, I think I would need to, I think it depends
22 on the, both sides of the case. And I feel like I have
23 answered that, I am type three so I am kind of that middle
24 ground where it just, I think it depends on the trial and
25 the evidence and the testimony and everything like that.

1 And I think that would depend on how I personally decide.

2 Q And if I understand you correctly and you tell me if
3 I am wrong. But you would be a Juror who says, I need to
4 hear about the Defendant's background, what his life was
5 like, what his mental status is, what his mental health is
6 like, where he came from. Those types of things could
7 make a difference to you in deciding whether or not a
8 person lives or dies?

9 A Yes.

10 Q Okay. And the Judge read you a list of statutory
11 mitigators, right?

12 A Yes.

13 Q And those are things you would give meaningful
14 consideration to in deciding what the appropriate
15 punishment was?

16 A Yes, sir.

17 Q And you understood the Judge tell you that there is
18 also non-statutory mitigator circumstances?

19 A Yes.

20 Q Are you with me on that?

21 A Yes, sir.

22 Q And that would be any reason that a Juror thought
23 that life was an appropriate punishment. Are you with me
24 on that?

25 A Yes, sir.

1 Q So how this whole thing works, if we were to get that
2 far in the case and I am not saying that we would but if
3 we did it would be up to each Juror for himself or herself
4 to determine what mitigation is, if they found it. Okay?

5 A Okay.

6 Q And unlike the aggravating circumstances which have
7 to be proven unanimously to the jury beyond a reasonable
8 doubt, you understand what that means, right?

9 A I am sorry, can you repeat that?

10 Q Aggravating circumstances have to be proven to each
11 Juror to unanimously, all the jury has to agree that the
12 aggravating circumstances have been proven beyond a
13 reasonable doubt.

14 A Yes.

15 Q Are you with me on that?

16 A Yes, sir.

17 Q Mitigating circumstances are different. Okay. Each
18 Juror decides for herself what is or is not a mitigating
19 circumstance?

20 A Okay.

21 Q And they don't have to agree. Are you with me on
22 that?

23 A Yes.

24 Q This Juror can I say, I saw him have a relationship
25 with his family and for me that is mitigating. And if the

1 Juror so chooses they can give that mitigating
2 circumstances the value of life. Are you with me on that?

3 A Yes.

4 Q And number two can say, I see, I didn't see that. I
5 don't agree that that is a reason to vote for life penalty
6 but I saw a mental issue and I think that that mental
7 issue for me, for who I am, entitles me to vote for life.
8 Are you with me on that?

9 A Yes.

10 Q And Juror number three can say, I don't have any
11 reason, I didn't see any mitigation, but I feel like life
12 is the appropriate punishment for me and I am going to
13 vote for life. Okay?

14 A Okay.

15 Q So any reason or no reason at all. And that no
16 reason at all is what we call, a lot of people call it a
17 mercy verdict. So your concept and who you are, do you
18 think that mercy is something that is sort of earned or is
19 it something that is sort of freely bestowed on another?

20 A I don't know. I have never, I don't know how to
21 answer that.

22 Q Okay. The decision that we are talking about, this
23 ultimate decision about whether or not another person
24 lives or dies is what the Supreme Court refers to as an
25 individual moral judgment. Okay?

1 A Okay.

2 Q So there is no right or wrong answer. Are you with
3 me on that?

4 A Yes.

5 Q You have made individual moral judgments in your
6 life, right?

7 A Yes.

8 Q We make them daily. Like you, the best way to
9 describe it is like, you have chosen what is appropriate
10 for you. And you recognize that other people have made
11 different choices for themselves?

12 A Yes.

13 Q And you expect them to respect your right to your
14 individual moral judgment?

15 A Yes.

16 Q And you respect their right to have their own
17 individual moral judgment?

18 A Yes.

19 Q And it is right for you. And if you saw somebody
20 that was being bullied and told that their individual
21 moral judgment was wrong, their opinion was wrong, would
22 you stop them?

23 A Yes.

24 Q And if you had to, you would send a note out to the
25 Judge and say, Judge, things are suppose to be conducted

1 with respect and they are not being respectful. Could you
2 do that?

3 A Yes.

4 Q At the end of the day if twelve jurors make their own
5 individual moral judgment and they all agree that death is
6 the appropriate punishment then Mr. Jones would be
7 executed. Do you understand that?

8 A Yes.

9 Q Any questions about that?

10 A No.

11 Q In fact at the end of the twelve individual moral
12 judgments agree that life is the appropriate punishment,
13 he could be sent to prison for life without parole. Do
14 you understand that?

15 A Yes.

16 Q Any question about that?

17 A No.

18 Q Do you understand that that means he will die in
19 prison, he never comes out?

20 A Yes.

21 Q But when we are talking about individual moral
22 judgments, would you agree with me that it is okay to
23 agree to disagree?

24 A Yes.

25 Q And jurors who agree to disagree on their individual

1 moral judgments, it is not a failure of the jury. Do you
2 understand that?

3 A Yes.

4 Q The jury still has done its job that they agree to
5 disagree.

6 A But what does that mean in the trial, if those jurors
7 agree to disagree. What does that mean?

8 Q I have got to ask the Judge if I can tell you that.

9 THE COURT: The Judge makes the decision.

10 A Okay.

11 Q Fair enough?

12 A Fair enough.

13 Q Thank you, Ms. McGill.

14 EXAMINATION

15 By Mr. Graham:

16 Q Ms. McGill, how are you?

17 A Good, how are you.

18 Q My name is Shawn Graham, I am the Deputy Solicitor
19 for the Prosecutor's Officer here in Lexington. You had
20 indicated on your form that you and your boyfriend or
21 fiance at that time worked at Frayed Knot?

22 A Yes.

23 Q Did you give statements to law enforcement?

24 A I did just, it was real brief just because once I
25 witnessed the first shooting my immediate, like thought

1 was to get my guests safe. So we started closing down the
2 shutters on the bar and I was shoving people into my bar
3 to make sure they were safe. So it was a brief thing.

4 Q You were in the main bar?

5 A I was at the sand bar, it was the Tiki bar where it
6 happened.

7 Q Did you, other than the initial statement that you
8 gave to the police did you talk to anybody else about
9 that?

10 A I did get a phonecall about a year or two ago, I
11 guess when they were going to go to trial, about
12 potentially being called up as a witness but after I got
13 that phone call nothing happened.

14 Q So you never talked to any of the prosecutors?

15 A No.

16 Q Anything about the fact that you were present when
17 that happened, would that stop you from being fair and
18 impartial about this case or a different case?

19 A No, I would like to believe that it wouldn't.

20 Q You would agree with me when we start talking about
21 guilty but mentally ill or insanity, that is confusing, I
22 think it is confusing?

23 A Yes.

24 Q Is it something that you really spent much time
25 thinking about before?

1 A No.

2 Q So in this case Mr. Jones has entered a plea of not
3 guilty by reason of insanity. That means that there will
4 be four verdicts in a normal trial and there would have
5 been guilty and not guilty but in this case it adds two
6 more. It is not guilty by reason of insanity and also
7 guilty but mentally ill. Even after the Judge read them
8 to you and Mr. Young asked you questions is it still
9 confusing?

10 A I understand like the definitions that make the
11 difference, it is just like morally I don't see, like
12 personally.

13 Q Let me ask you a question then. If there was
14 evidence offered by the Defense that their client did not
15 know, wasn't able to because of some mental disease or
16 defect or not able to understand right from wrong, either
17 legal right from wrong or morally, they didn't think it
18 was wrong when they did it, that is not guilty by reason
19 of insanity.

20 A Okay.

21 Q And that is a possible verdict that could come down
22 if the evidence was able to support it.

23 A Okay.

24 Q Guilty but mentally ill says they knew the difference
25 but because of a mental disease or defect they couldn't

1 stop themselves.

2 A Okay.

3 Q So knowing that the law allows for those defenses and
4 that there is proof that has to be offered, are those
5 verdicts that you could consider or is it just because you
6 think it is a copout and it shouldn't be considered now
7 that you understand the definitions and what it means, do
8 you understand what it means?

9 A Yes, I understand.

10 Q Now that you know, for instance, not guilty by reason
11 of insanity, you have heard evidence and you would have to
12 believe that the person did not know right from wrong,
13 legal right or moral right, that they truly didn't
14 understand right from wrong because of a mental disease or
15 defect. If that evidence was presented to you is that a
16 verdict that you could find, not guilty by reason of
17 insanity?

18 A No.

19 Q Okay.

20 A I just don't, I, personally I don't see the
21 difference, because they are still admitting to doing it.
22 So I don't understand how that is not guilty.

23 Q So they admitted they did it is not the same thing as
24 saying they are guilty of the crime. The act is one part
25 of it and the guilt is a legal process.

1 A Okay.

2 Q So it is not a question of not guilty by reason of
3 insanity but if he, in this case, killed a child or
4 multiple children. That is my question. The question
5 would be is even though he did that did he have a mental
6 disease or defect that stopped him from being able to
7 understand or appreciate that it was legally wrong or
8 morally wrong. That is where that other verdict comes in.

9 A Okay.

10 Q And if you can't, I mean if you think it is just
11 guilty or not guilty and that is not a valid type of
12 verdict, that is okay, that is your opinion. So I am not
13 trying to make you change your mind. I am just asking
14 you, since it is new and we haven't talked, this is the
15 first time you really had to hear about it, now that you
16 know that it is a legal defense and even though the facts
17 would be that, yes, he killed one or more children.

18 A Okay.

19 Q That doesn't necessarily make him legally guilty and
20 that is what exactly what a Juror would have to do, would
21 have that open mind to determine, okay, I understand that
22 the acts has been done and he admitted that he did the act
23 but is he legally guilty, not guilty by reason of
24 insanity, guilty but mentally ill or not guilty.

25 A And I might not be able to answer yet but like, when

1 people are not guilty by insanity, like roam the streets,
2 are they just like free to go. That is my thing, when you
3 hear not guilty it is like, but he still admits to doing
4 the crime, that is what I have a problem with. To me,
5 innocent or not guilty means they are just free and ready
6 to go, like walk down the street.

7 THE COURT: I am pretty comfortable this is a copout.
8 I think that probably is where I would find it.

9 MR. GRAHAM: Can we approach?

10 THE COURT: Yes.

11 (Whereupon, a bench conference was held in the
12 presence of the Juror but out of the hearing of the
13 Juror.)

14 THE COURT: Ms. McGill, we had a little sidebar
15 conversation. I think that your opinions are yours and
16 they are fine. That is what I want is candor. The
17 verdict form is something I had to go over with you. And
18 so I believe, based upon those, I am going to find you not
19 qualified, I am not going to let you sit as a jure. That
20 doesn't mean you are wrong. You just, other people have
21 other similar views but if someone can't consider
22 everything then that is what I am looking for. I had
23 people yesterday, I can't consider that, I can't consider
24 this and they are excused. And that is why I have a big
25 pool.

1 (Whereupon, Ms. McGill was excused from the
2 courtroom.)

3 THE COURT: All right. She was clearly caught in the
4 middle of understanding the mental issues and not certain
5 she could distinguish between those. I think a copout was
6 her characterization. Both sides had issues with her. I
7 want to address two things. We are getting back into a
8 Juror who says, what if we can't reach a decision then
9 what happens. The appropriate response is, then the Court
10 has to make a ruling on the law. How are we going to
11 answer that.

12 MR. HUBBARD: The questioning went too far, we should
13 not have gotten to that point where she had a question.
14 That is my first answer is that, instead of saying, all
15 right, people can agree to disagree and jurors can just
16 disagree with one another. That lends itself to a
17 reasonable Juror saying, well, what's next. I think it
18 needs to stop that everybody is entitled through their own
19 views. And it is what the Judge always charges anyway.
20 Even in an Allen charge, you need, without and here is
21 what the law is. You are entitled to your views, you are
22 not required to give them up but you are suppose, as a
23 Juror, listen to the views of others and consider what
24 they say and reconsider your views but also you should
25 expect them to consider your views. I think we leave it

1 at that because that is the law. That is what you charge
2 in an Allen charge. I think if we go beyond that and say
3 that we agree to disagree, if I am a Juror I will go, then
4 what happens. And that is the problem because you are in
5 the position now speaking as the Court--

6 THE COURT: How about this. How about we do this, if
7 somebody asked that question again, then the Judge will
8 give you further instructions on how to deal with that.

9 MR. YOUNG: Just tell them the truth, Judge, just
10 tell them what the statute says, the truth.

11 THE COURT: I know, I don't want that because I don't
12 want them to go back there if we don't agree then it is on
13 the Judge. I don't want them thinking that.

14 MR. YOUNG: If one person votes for life it is a life
15 penalty. That is what our argument has been, tell the
16 jurors, one vote for life, one Juror votes for life it is
17 a life penalty. If there is twelve votes for life it is a
18 life penalty, if one votes for life the Judge takes the
19 case and sentences to life. And to not tell them the
20 truth violates Simmons versus South Carolina, Shafer
21 versus South Carolina.

22 THE COURT: Slow down, you are really going fast for
23 Joy.

24 MR. YOUNG: Simmons versus South Carolina, Shafer
25 versus South Carolina and Kelly versus South Carolina.

1 MR. HUBBARD: And, Your Honor, my response to that is
2 this. Back when we were reinstituting the death penalty
3 way back when, if you recall there was that controversy
4 about a Juror simply recommending that that moral weight
5 for them, giving a decision was really just, look, they
6 didn't really have to worry about because ultimately it
7 wasn't theirs. The Judge can do whatever. And so we had
8 a lot of debate back when we were battling over that but
9 ultimately here, regardless of how States do it, we
10 determine that each and every Juror needs to one-hundred
11 percent of the time feel the full weight of this. That it
12 is their decision and whatever they decide is going to
13 happen. The minute the Court says I can intervene and
14 take that off of you, we are done. We just popped the
15 ballon, all the air is out of the jury, the responsibility
16 is gone and that absolutely undercuts everything.

17 THE COURT: Here is what I am going to do. If we get
18 to that question again. We haven't had it until this
19 witness. Now, Mr. Young went through it about four times
20 with the individual moral judgment, then he went back
21 through it again. This girl asked a lot of questions, she
22 was a lot more engaged in talking back and forth, she took
23 longer. But a person is entitled to individual moral
24 judgment, I think y'all can speed it up by just giving two
25 rather than three. Give just two, any reason. And a

1 person is entitled to that. You can respect somebody else
2 and they respect yours, that line of questioning you keep
3 doing and it is okay if y'all have different reasons. You
4 can agree to disagree and leave it there. That needs to
5 stop there, but y'all giving three, it takes an extremely
6 long time to get through all three. If the Juror ask the
7 question again, what happens then, then the Judge will
8 give you further instructions on the law then.

9 MR. HUBBARD: Judge, may I, for the State's
10 perspective, say that if even, say agree to disagree we
11 are creating a position where a Juror, we now have seen
12 it, we don't want this question asked again. So here is
13 what I would suggest. We know the law like right out of
14 your Allen charge, should be on both sides when we are
15 talking about this, they have a right to explore, can you
16 hold your position, can you come to a conclusion, it is
17 your personal decision. That is right. But they also
18 have a duty as a Juror to consider the opinions of others.
19 That is right, that is their duty. And they don't have to
20 relinquish that opinion but they are to consider the
21 opinions of others and they should consider--

22 THE COURT: All right, I understand your argument.
23 What helps me a lot and what you can do is say, Judge, I
24 would think these three questions rather than giving me
25 those broad things. I need some help with suggestions. I

1 agree with you on both sides, y'all are both giving me the
2 law but y'all are not giving me solutions.

3 MR. HUBBARD: Here is what I would ask.

4 THE COURT: I want solutions suggestions.

5 MR. HUBBARD: You can ask like three questions. You
6 can ask a Juror, do you understand you have a right and a
7 duty to reach your own personal decision. You understand
8 you have eleven other jurors.

9 THE COURT: You are arguing, make a suggestion. I am
10 not, write them down for me. I want some help, I am ready
11 for a little break.

12 MR. HUBBARD: We will write them down in a break,
13 Your Honor, and give them back to you when you come back.

14 THE COURT: And I know it, the Defense has been
15 asking, I have that in my head. I want an alternate
16 suggestion that y'all want them to go to and I say okay or
17 not. That is what I want.

18 MR. YOUNG: We are comfortable with where we are. We
19 would renew our motion is to instruct the jurors about the
20 results of the not guilty by reason of insanity verdict.
21 It was clearly, somebody who says, I don't know what
22 happens. Are they just back out on the street. And I
23 think the Judge fully instructed the jury on the law, if
24 somebody is found not guilty by reason of insanity, they
25 are sent to a State Mental--

1 THE COURT: I am not going to give that instruction,
2 that is too much. And you are protected on the record but
3 I am not going to go there.

4 MR. YOUNG: Just note my objection.

5 THE COURT: It is there. We will stand down for a
6 few minutes and come back.

7 (Whereupon, a short break was taken.)

8 THE COURT: Regarding the issue of how we are dealing
9 with the individual moral judgment and that line of
10 questioning, what suggestions have you, Solicitor?

11 MR. HUBBARD: I have got three proposed questions.
12 First one is, do you understand that as a Juror you have a
13 duty to reach your own decision. Second one, do you
14 understand as a Juror you have a duty to consider and
15 respect the views and the opinions of other jurors. The
16 third one, are you willing and able to do this. And I
17 have typed that up and I will go ahead and pass that up, I
18 know Your Honor has heard it and it is in the record. But
19 that is a working sheet, obviously I know Your Honor is
20 trying to find out what both sides want. My opinion is,
21 if we do this, my position is we are not going to end up
22 having the questions we have had in this last Juror and we
23 shouldn't have to have those questions. Because that puts
24 Your Honor in a very awkward position and I think it
25 covers everything lawfully that we need to cover.

1 THE COURT: Mr. Young.

2 MR. YOUNG: Your Honor, I have no objection to the
3 State asking those questions.

4 THE COURT: All right. Here is what I am trying to
5 do. I am trying to advance a little faster because y'all
6 are going very slowly on 15, 16, 17 questions in your
7 moral judgment. Can y'all streamline that a little bit
8 because you were very, very lengthy that time, more so
9 than other prior jurors.

10 MR. YOUNG: Yes, sir. I can make it short.

11 THE COURT: I think when y'all go through and so you
12 will have your own individual moral judgment perhaps and
13 some will have theirs and another person will have theirs.
14 You can respect theirs and they can respect yours. That
15 is fine. That is what you are suppose to do.

16 MR. YOUNG: I don't want to confuse and I don't want
17 to be confused by two different things. One is mitigating
18 factors, reasons that a Juror finds for himself or herself
19 to vote for a life penalty. Because they are
20 non-unanimous each Juror can find their own and it can be
21 something presented, it can be something that the Juror
22 sees in court and each Juror is entitled to their own
23 opinion about their reason and they don't even have to
24 have a reason and all the jurors have to respect another
25 Juror who says, I don't have a reason but this is my vote.

1 I am having to cut that down to two examples as opposed to
2 three. I learned in law school you have, get triplets so
3 that is just the way I have always done, I am happy to cut
4 that down to two. The decision about the individual moral
5 judgment is the final decision and I don't think--

6 THE COURT: Isn't that the same decision. If you
7 find a mitigating factor you give life. That is your
8 individual moral decision. You are distinguishing, why
9 can't they be combined. You reach your decision on why
10 you think somebody deserves to be punished to life or
11 punished to death, that is your individual moral decision
12 whether it is based on mitigating factors or nothing, the
13 same thing.

14 MR. YOUNG: It is, Your Honor.

15 THE COURT: You are almost confusing thinking, well,
16 they have got to consider mitigating factors and they can
17 consider whatever they want and then they have got to make
18 a individual moral decision in addition to that and that
19 is not so.

20 MR. YOUNG: I think that is, I mean they have to
21 decide for themselves what is or is not mitigating. What
22 is or is not mitigating and then give whatever value they
23 want to any mitigating factor including and up to the
24 value of all the way an individual moral judgment. But
25 the individual moral judgment is the final decision made

1 after considering all aggravating factors and mitigating
2 factors. And I understand, I get confused about it too.

3 THE COURT: It is not confusing, you are making it
4 more confusing by making, here is what is confusing about
5 it. It is not wrong, it is just, mitigating factor is a
6 reason to vote for life. And your moral judgment is the
7 decision whether to vote for life or vote for death. And
8 whatever your basis is, is what your basis is. The way
9 you are describing is, there is more processes here,
10 decisions they got to make and to reach and that is
11 confusing to the Juror who doesn't really understand. For
12 instance, I am certain some of these jurors don't know
13 what mitigating means. But you say, can you think of a
14 reason to vote for life, you got remorse. We all know
15 that is a mitigating factor but in this juror's mind they
16 don't define it, okay, I have got to list mitigating
17 factors in my brain to not give the death penalty. That
18 is legalese that we are using here in the courtroom and
19 this Juror doesn't know what a mitigating factor is but
20 they can recognize one when they hear it. I would feel
21 sorry, sympathy, I would give life because of that, that
22 is mitigating factors. Jurors don't characterize, normal
23 people don't characterize, I have got a list of reasons
24 why I give life and they don't. We are making them do
25 that saying, hey, why are you here. Do you see what I am

1 saying.

2 MR. YOUNG: I think I understand the Court and my
3 difference is that, the ultimate decision, the ultimate
4 individual moral judgment about who lives or who dies
5 isn't aggregate of--

6 THE COURT: Considering everything.

7 MR. YOUNG: --various mitigating circumstances. And
8 you could think this is mitigating but that doesn't get
9 beyond the way to an individual moral judgment that life
10 is the appropriate penalty. You could think that this and
11 this are mitigating, they don't--

12 THE COURT: I don't think you need to get there. I
13 think you need to describe them together. And that would
14 speed things up because it is the same question. Once you
15 are in deliberation for the sentencing, potential Juror,
16 you have got to make the decision whether they live or
17 dies. And what is a mitigating factor or no reason
18 whatsoever, once you reach that individual moral judgment
19 that is what you are going to vote with, that is fine.
20 Somebody may disagree with you, somebody may have a
21 different reason from the reason they are going to vote
22 the same way. That is okay too. Can you respect another
23 person's reason for voting, whichever way they are going
24 to vote.

25 MR. YOUNG: And I understand the Court's concern--

1 THE COURT: You are making them identify as a
2 mitigating factor or individual moral judgment decision,
3 to me it is confusing to them.

4 MR. YOUNG: And part of Dr. Foglia's testimony
5 regarding her research on Capital jurors is that Capital
6 jurors don't often, don't understand that mitigating
7 circumstances or mitigating factors, don't have the burden
8 of proof and that they don't require all the jurors to--

9 THE COURT: You are not saying that at all.

10 MR. YOUNG: I am not saying that at all?

11 THE COURT: No. You are giving the legalese,
12 individual moral judgment and this and that. Y'all are
13 doing a terrible job of that, all of you. And here is
14 what is confusing. I have got a pretty lay on it and I
15 don't want to lecture you but mitigating factors is
16 presented throughout the entire trial. Aggravating
17 factors are going to be presented throughout the trial.
18 It is confusing to me to tell the jurors the State has got
19 to prove the aggravating factor in the sentencing side,
20 because they do, but it is impossible for the State to
21 present this case without showing them both in the guilt
22 or innocence. They have got to show them. That is
23 confusing to a Juror saying, how are we going to find
24 murder without, obviously they are both sides. The
25 testimony throughout the whole thing is going to be

1 considered by the jury because it is all interrelated
2 facts, opinions, testimony, whatever.

3 MR. YOUNG: When they get to the penalty phase, yes,
4 sir.

5 THE COURT: Until we get to the penalty phase. So I
6 think it is confusing for me to say, jury, the State has
7 got to prove the aggravating factor in the sentencing
8 phase. You prove it during the guilt or innocence, we
9 know that but we are not telling them that.

10 MR. YOUNG: I don't have an objection to the Court
11 saying, aggravators are going to be found, there are
12 multiple children murdered or multiple children killed is
13 going to meet the definition of aggravation found if you
14 find him guilty or guilty but mentally ill.

15 THE COURT: I don't want to comment too much on that
16 fact and that is my concern. I would love to say that but
17 then I get caught up in the, commenting on the facts.

18 MR. HUBBARD: Judge, I would like, if I can, to try
19 to simplify things because I think that is what Your Honor
20 is asking us to try to do. Shorten this process. The
21 three questions I had, which could be for general on all
22 matters, rather it is first phase, second phase. I
23 understand the Defense's desire and need to let
24 perspective jurors to know that they don't have to agree
25 on mitigating factors in order to give life. And so I

1 think we can just have a question like, you understand as
2 jurors you do not need to agree on mitigating factors in
3 order to give life. Do you understand jurors can give
4 life for any reason or no reason. It is simple, it is
5 short and that covers what they want to, what ultimately
6 their concern is, but it is short and it is not opening
7 other doors that are going to put Your Honor in a position
8 where you might have to answer questions.

9 THE COURT: All right. I want y'all's understanding,
10 this girl that we just had, she came in and I think that
11 mental issue, somewhere along in there, a question after
12 that, can we see that, was everybody pretty well on the
13 same page and she was going to be difficult to deal with
14 that, not to mention her observation of a murder and
15 connected to another close friend that was a victim. She
16 was problematic for a multitude of issues. I think she is
17 very nice but that would be one, we could have stopped
18 questioning her thirty minute before and all were in
19 pretty well agreement.

20 MR. YOUNG: I don't disagree but this is back to the
21 Defense's motion that if somebody says something that is
22 to disqualify we need the Court to say, all right, this is
23 my concern, I need you to ask this question to clarify
24 this issue for me or I have heard enough, I think the
25 Juror is potentially impaired. I am going to go ahead and

1 excuse him. I think that is the, it is the ultimate
2 decision for the Court but--

3 THE COURT: That is what I am asking.

4 MR. YOUNG: We have asked that the Court say, here is
5 an issue for me, I need this clarification or I have heard
6 enough, I think the Juror is substantially impaired.

7 THE COURT: I am certain y'all have numbered all of
8 your motions, it is in the record somewhere?

9 MR. YOUNG: Yes, sir.

10 THE COURT: You filed over one-hundred and I don't
11 have them up here, they are on my computer. But I have
12 got enough to do rather than to look up and see what
13 number it was.

14 MR. HUBBARD: From the State's perspective, we agree
15 with Your Honor and we will certainly agree to try to do
16 that.

17 THE COURT: I am glad you made the motion, I thought
18 that was just something we did. Sometimes y'all make
19 motions to do the obvious.

20 MR. YOUNG: Well the State contested the motion
21 saying, no, we have to go through everything and then try
22 and rehabilitate and then do rebuttal and we were asking
23 that that not be done.

24 MR. HUBBARD: Your Honor, what I would ask for, I am
25 trying to assist Your Honor, from the State's perspective.

1 Now obviously they can give whatever they want but I am
2 trying to shorten the number of questions.

3 THE COURT: I am too.

4 MR. HUBBARD: And so what I am offering again, the
5 three you have in front of you. But the second two on
6 mitigating I think resolve the issues, legitimate issues
7 raised by the Defense, that there doesn't have to be an
8 agreement among jurors on a mitigating factor. They can
9 either come up and use different ones or find life for any
10 reason so those other two questions, I think, are fine
11 too.

12 THE COURT: How about that, Boyd, that does not sound
13 unfair to me, once y'all get to the end of, you have got
14 to reach your own decisions, that is question number one.
15 And you have got to consider and respect the views of
16 others. That is question two that was handed up. Are you
17 going to be willing to do this and step in and stick by
18 your decision.

19 MR. YOUNG: Are you asking me if I will ask Mr.
20 Hubbard's questions?

21 THE COURT: No. I am asking if I limit you to those
22 questions, in your own words.

23 MR. YOUNG: I think I am giving those questions in my
24 own words.

25 THE COURT: But don't ask them four times.

1 MR. YOUNG: I won't ask them four times.

2 THE COURT: When I give you the eye that is meaning
3 you are getting close and I am going to stop you. Okay.

4 MR. YOUNG: Understood.

5 MR. HUBBARD: One thing I would like, before we start
6 this next witness or next Juror, and what I am trying to
7 do is make it quicker when we start going because, Judge,
8 I hate to keep standing up.

9 THE COURT: I know.

10 MR. HUBBARD: I think the problem is, when they ask
11 about not agreeing, can we agree to disagree--

12 THE COURT: I got you on that, I think we are there.
13 I have heard enough. I want you to stop when I say, stop.
14 I understand your issues.

15 MR. HUBBARD: I just didn't know your ruling, Your
16 Honor, I am sorry.

17 THE COURT: I am not saying, I don't want him to ask
18 that, I am not saying he can't. I think it is creating
19 problems but I am not going to say don't ask it until, if
20 we get another like this and we get another question, I am
21 going to stop it. Okay.

22 MR. YOUNG: Yes, sir.

23 MR. HUBBARD: Just making sure I knew where Your
24 Honor was.

25 THE COURT: I feel like we are beating a dead horse,

1 and y'all know when I get dead horses in courtrooms I get
2 a little bit frustrated with everybody.

3 MR. YOUNG: Yes, sir.

4 THE COURT: Juror 219.

5 PAUL JENNINGS, being
6 first duly sworn, testified as follows:

7 CLERK OF COURT: State your name and spell your first
8 and last name.

9 JUROR: Paul, P-A-U-L; Jennings, J-E-N-N-I-N-G-S.

10 EXAMINATION

11 By The Court:

12 Q Good morning, Mr. Jennings, how are you doing?

13 A Good, how about yourself.

14 Q I am doing good. I introduced myself Monday, I said
15 call back later, don't discuss the case, don't let anybody
16 talk to you about the case. Have you followed my oath?

17 A I have.

18 Q Followed the Juror oath that I asked you to follow?

19 A Yes, I have.

20 Q Anyone try to talk to you about the case?

21 A No, sir.

22 Q You talked to anybody about the case?

23 A No, sir.

24 Q Have you perused any of the media articles or
25 reports, have you seen any of that?

1 A No, sir.

2 Q Have you seen any reports prior to coming in the
3 courtroom Monday?

4 A No, sir. I don't watch no local news.

5 Q You are under oath to tell the truth. But there are
6 some questions I am going to ask you and some of the
7 questions that the lawyers is going to ask you is going to
8 be kind of an opinion. Kind of like going for a football
9 team, you are pulling for one or you like Chevrolet better
10 than a Ford, that is an opinion. That is just what you
11 do, not be a wrong answer. They have got to know a little
12 more about you. Now, any member of your family or you a
13 member of any organization which advocates the victims
14 rights like MADD, Mother's Against Drunk Driving, Students
15 against Drunk Driving, Citizens Against Violent Crimes,
16 Bikers Against child Abuse, any victims advocacy groups.
17 Are you a member of any of those?

18 A No, sir.

19 Q You or your family?

20 A No, sir.

21 Q A member of your immediate family or you contribute
22 to any associations like the Law Enforcement Officers
23 Association, Troopers Association, Sheriffs Association?

24 A No, sir.

25 Q Now, are you connected to any of the lawyers in the

1 courtroom?

2 A No, sir.

3 Q A lot of them in here, about everybody. Never been
4 involved with any of those lawyers?

5 A No, sir.

6 Q You or a member of your immediate family connected in
7 in way with the Jones' family?

8 A No, sir.

9 Q I sent a long list of potential witnesses and I can
10 tell you, not for certain but pretty well for certain, all
11 of these witnesses will not be called for trial. But
12 potentially they could be called. And the reason
13 potential witnesses are put on the list is so that we can
14 determine whether anybody has a connection that would
15 create an issue for them not to be able to consider
16 testimony from that person. It may be awkward like if
17 your brother-in-law was a witness. Now, you don't like
18 your brother-in-law and you think he is a liar that is a
19 problem. But if you love your brother-in-law and believes
20 anything he says, you have got to be disinterested from
21 the witnesses to consider their testimony. Do you
22 understand?

23 A Yes, sir.

24 Q Do you know any of the witnesses?

25 A No, sir.

1 Q Not a single one?

2 A No.

3 Q Fair enough. This case may take several weeks to get
4 together. We are going through jury selection, we are
5 close to the end of the first week. Likely it will be
6 into next week before I get a number, enough qualified
7 jurors to select a jury. So if you are qualified you are
8 in a group that could be a Juror on the panel. Knowing
9 this trial could go in close to June, maybe into June, do
10 you have any personal obligations, trips planned,
11 vacation, surgery, anything like that that may affect your
12 ability to serve?

13 A No, sir.

14 Q So you are able to go into June?

15 A Yes, sir.

16 Q Okay. This case, the State has made allegations
17 against Mr. Jones, he has plead not guilty by reason of
18 insanity. I will go through some of the criminal
19 procedures and criminal procedures and make some
20 definitions for you to understand, there is a lot of
21 misconception of the law because of different reasons. I
22 am going to give you some brief instructions on the law
23 and procedures so you will understand. But normally when
24 the State brings the case, plain vanilla case, armed
25 robbery, plain vanilla murder, they prove the killing of

1 another person with malice aforethought. A pretty simple
2 definition but it is a little more complicated. Malice
3 means somebody got killed while the actor had hatred,
4 ill-will, hostility, depraved heart in committing the act.
5 That is what murder is. It is not an accident, you don't
6 have a just cause or excuse for doing it, it is
7 intentional, wicked heart, killing somebody. That is the
8 definition of murder. The State has made that accusation
9 with five indictments to Mr. Jones. He is presumed
10 innocent right now, he sits right there.

11 A Yes, sir.

12 Q And that presumption stays with him all the way
13 through the trial until a jury reaches a verdict of guilty
14 beyond a reasonable doubt unanimously. And they have got
15 to prove those elements.

16 A Yes, sir.

17 Q The State has also told him that we intend to seek
18 the death penalty. And that adds an extra hurtle, burden
19 upon the State to prove because a murder of one person or
20 another doesn't entitle the State to seek the death
21 penalty on every case, it has got to be an aggravating
22 factor. Those are defined in the books behind you, there
23 is a list of them. For instance, rape and a murder,
24 kidnapping of a murder, killing of a police officer,
25 killing children, killing of multiple victims. Those are

1 perhaps aggravating factors. The State has got to prove
2 at least one of those before they can say, we are seeking
3 the death penalty. So they have got to the murder and
4 aggravating factors. Now, also throughout the entire
5 trial you hear testimony and facts throughout, the State
6 has got to prove this, some places legally the process has
7 got to prove that. But sometimes the testimony overlaps
8 like children. You will hear about children on both sides
9 of it and once you see and you know that children is a
10 fact they want to keep reproving the children because they
11 are children. Okay?

12 A Yes, sir.

13 Q You may hear it. In a Capital case there are two
14 phases to the trial. Phase one is just guilt or
15 innocence. Did he commit the murders. Phase two,
16 sentencing. So phase one is a not guilty verdict or not
17 guilty by reason of insanity the case stops, it is over.
18 The State has failed to meet its burden. If the jury
19 finds unanimously that the State has met its burden,
20 proven the facts of murder beyond a reasonable doubt with
21 malice the case goes to phase two. The jury then
22 considers the punishment. In a Capital case the jury
23 makes the decision on punishment. The Judge normally
24 makes the decision on punishment in all the other cases.
25 A Capital case is different. If there is an aggravating

1 factor is proved beyond a reasonable doubt and the murder
2 is proved beyond a reasonable doubt the jury makes the
3 decision on punishment. The jury has got two choices,
4 life without parole and death, nothing else, two choices.

5 A Yes, sir.

6 Q Nothing in the middle. Okay?

7 A Yes, sir.

8 Q The jury could find, the death penalty has got to be
9 unanimous. Life without parole, the jury issues the
10 sentence and they find unanimous life without parole that
11 is the sentence that is carried out. The balance of life,
12 they pass away, in jail locked down. The death penalty,
13 the jury finds unanimous of that penalty, that penalty is
14 carried out subject to the appeals and all of that. Do
15 you understand?

16 A Yes, sir.

17 Q Now, there are certain defenses that people can make
18 to murder like it wasn't me, it was somebody else, there
19 is an alibi.

20 MR. HUBBARD: Your Honor, may we approach real quick?

21 THE COURT: Yes, sir.

22 (Whereupon, a bench conference was held in the
23 presence of the Juror but out of the hearing of the
24 Juror.)

25 Q All right, back to what I was discussing with you.

1 The jury gets to consider the first half of the case, the
2 first phase, guilt or innocence only. That decision has
3 got to be made. Not guilty, not guilty by reason of
4 insanity, the case is over with, everybody goes home, the
5 case is over. Guilty, phase two comes in. The jury has
6 got two decisions to make, life or death, no in between.
7 Do you understand?

8 A Yes, sir.

9 Q Now, the jury's decision, once that is made that is
10 done. Okay?

11 A Yes, sir.

12 Q Nothing happens after that but carrying out the
13 sentences, okay?

14 A Yes.

15 Q Broad picture. Now I was going over the defenses
16 when we stopped talking. I named out a few. Here are the
17 defenses that people can elect to claim. And one has been
18 claimed in this case, the insanity. Guilty but mentally
19 ill, defense of habitation, duress, I said alibi, it
20 wasn't me, involuntary intoxication, self-defense,
21 accident. Those are some of the defenses and those may be
22 presented because right now we haven't gotten any
23 testimony, don't really know exactly what is coming but we
24 do know there is the defense of not guilty by reason of
25 insanity, testimony to that effect will be presented for

1 the jury to consider in the guilt or innocence. Now,
2 other facts will be presented through testimony that you
3 will hear and those are mitigating factors, those are
4 defined. What those are is, kind of reasons just happen,
5 things that the jury can consider to impose. Once we are
6 in the sentencing phase reasons to impose a life sentence
7 like did they have a troubled childhood, came from a
8 broken family. Those are mitigating factors. Other ones
9 include no significant history of crimes against violence
10 of other people before. The murder was committed while
11 the Defendant was under the influence of mental or
12 emotional disturbance, that is a mitigating factor. The
13 victim was a participant in the conduct or consented
14 to the act. Some of these don't apply but like I say, I
15 am giving you these preliminary instructions without the
16 benefit of testimony other than the accusations the State
17 has made, five counts of murder. Okay. We don't have any
18 other facts to consider but these are things that could be
19 presented. The Defendant acted under duress, the
20 Defendant was an accomplice of the murder committed by
21 someone else and his participations was minor. The
22 Defendant was provoked in committing the murder, the age
23 or mentality of the Defendant at the time of the crime,
24 the Defendant had mental retardation at the time of the
25 crime. And this wouldn't apply, the Defendant was under

1 18 when it happened. That wouldn't apply, that is a
2 mitigating factor. Okay

3 A Yes, sir.

4 Q My question to you is this, there is a wide variety
5 of testimony about defense, affirmative defenses,
6 mitigating factors, aggravating factors, huge array of
7 potential testimony that the jury will consider. Are you
8 going to be able to give meaningful consideration to all
9 that testimony subject to the instructions by the Court
10 because some of this is confusion, I instruct the law,
11 kind of like I am explaining it to you now. I instruct
12 the law to the jury throughout the trial but mostly
13 importantly at the very end. All right, y'all have heard
14 all the testimony, here is how you consider and evaluate
15 things. Are you going to be able to give meaningful
16 consideration to all of that testimony?

17 A Yes, sir.

18 Q Act fair and impartial?

19 A Yes, sir.

20 Q Still in the broad scheme, three types of Juror
21 sheet, like this?

22 A Yes, sir.

23 Q Now, I am going to give you some presumptions. Type
24 one Juror under my three types I have submitted to you. I
25 have done this to every Juror so this is not a test I have

1 given you and not no one else. Everyone is given the same
2 sheet. Type one Juror is typical, one who understands,
3 knows, the State has proven beyond a reasonable doubt the
4 murder. Secondly the State has proven beyond a reasonable
5 doubt the aggravating factor, whether it be killing
6 multiple children, killing a child, proven. Mitigating
7 testimony, defenses and whatnot has been presented. Type
8 one Juror says, you know what, a murder like this and the
9 aggravating factor, the State has proven its case. I
10 don't think there is anything but the death penalty. That
11 is just kind of my moral compass points, that is always
12 going to be the punishment, that is appropriate. Type two
13 jurors, the State has proved beyond a reasonable doubt the
14 murder, the State has proved beyond a reasonable doubt the
15 aggravation. I understand there is mitigating factors out
16 there. I am not signing the death penalty verdict, I
17 think life without parole is the only appropriate
18 punishment. That is what I am going to vote, always. A
19 type three Juror is kind of in between those two. The
20 State has proved the murder and the aggravation, the
21 testimony is the same thing, all the testimony, wide
22 array, mitigation, offenses, affirmative offenses. I want
23 to hear all of that, I want to hear everything first and
24 consider everything and then I will make my decision on
25 which of the two I am going to go with. You only got two

1 choices, life or death. I can't make them ahead of time,
2 I want to hear it all. How would you describe yourself of
3 the three types?

4 A I am the third one.

5 Q Third one?

6 A Yes, sir.

7 Q Now, this case, as I told you, Mr. Jones has entered
8 a plea of not guilty by reason of insanity and so that
9 adds an extra aspect of the law. By that plea there is
10 going to be some testimony presented about mental capacity
11 and issues of that type. And, again, I have described a
12 wide array of potential testimony for the jury to
13 consider. The defenses, the affirmative defenses which
14 insanity is an affirmative offense which means they have
15 got to show you more. The elements of the murder, the
16 crime itself and the aggravating factors. Now, the
17 testimony kind of overlaps when the other half, the first
18 half, the guilt of innocence, the State is trying to prove
19 the murder, that is when the plea of not guilty by reason
20 of insanity comes to play because the guilt or innocence
21 is determined in phase one. Do you know of any reason,
22 the verdict form will be this, guilty, guilty but mentally
23 ill, not guilty by reason of insanity, not guilty. Four
24 potential verdicts for that. And I will instruct you on
25 the law what constitutes not guilty but mentally ill, not

1 guilty by reason of insanity and guilty but mentally ill.

2 There is a difference, the Court instructs that to the
3 jury. Can you give meaningful consideration to all four
4 of those different verdict forms in reaching your verdict
5 in phase one which will be the guilt or innocence phase.

6 Can you do that?

7 A Yes, sir.

8 Q I mean you could consider the instructions of the
9 Court, the law as it is applicable in South Carolina in
10 evaluating, meaningful, all the evidence and testimony
11 presented?

12 A Yes, sir.

13 Q Okay. Now, presuming this, a guilty verdict is
14 reached and the sentencing phase begins, it starts a day
15 or so after the first phase. And the same jury considers
16 both sides, okay. Do you have any religious, moral,
17 ethical reason that you could not find or consider the
18 death penalty?

19 A No, sir.

20 Q Likewise, do you have any religious, moral or ethical
21 belief that would prevent you from imposing a life without
22 parole sentence?

23 A No, sir.

24 Q And you understand, the death penalty is not
25 automatic?

1 A Yes, sir.

2 Q You understand that. Now this case is going to
3 involve testimony about the death of children, the
4 testimony is going to be graphic, unpleasant, probably
5 difficult to hear at times. And that subject matter will
6 be a lot of the subject matter which we will, during the
7 trial, get to evaluate. Would that subject matter create
8 an issue for you being fair and impartial in this case?

9 A No, sir.

10 Q You can consider that type of testimony?

11 A Yes, sir.

12 Q What we are looking for is a fair Juror, open and
13 listen to the State and equally be a fair and impartial
14 Juror to listen to the Defense testimony, Mr. Jones. You
15 have to listen to everything, evaluate fairly, evaluate
16 the testimony presented to us and consider the
17 instructions, particularly instructions of the Court. Can
18 you do that?

19 A Yes, sir.

20 THE COURT: Did I get everything, I think I did.

21 Q Mr. McGuire is going to ask you a few questions and
22 then one of the other lawyers from the State will ask you
23 a few questions.

24 EXAMINATION

25 By Mr. McGuire:

1 Q Is it Mr. Jennings?

2 A Yes, sir.

3 Q My name is Bill, Bill McGuire, I am one of the
4 lawyers in the case and this is the time where the Judge
5 lets us talk about your views about the death penalty.
6 Okay.

7 A Okay.

8 Q If you were Governor of South Carolina for a day and
9 there was a Bill on your desk, we could have the death
10 penalty or not have the death penalty, which way would you
11 sign?

12 A Probably not.

13 Q Do you have an opinion that the death penalty is
14 perhaps misused in some cases or applied too often, why
15 would you say not?

16 A I am not sure that I have an answer for you on that.

17 Q That is fair enough. And again, as the Judge said,
18 no right or wrong answers. But I am going to talk to you
19 about the kind of case that brings us here. There are
20 some folks who might say that there are some cases that
21 just so bad the death penalty should pretty much be
22 automatic like a police officer being killed in the line
23 of duty, a rape murder, killing multiple children, that
24 sort of thing. These are types of cases. Are you with
25 me?

1 A Yes, sir.

2 Q And I want to ask you about one of them. If a person
3 intentionally kills innocent children, it is not an
4 accident like a car accident or anything, intentionally
5 deliberately kills multiple children, in that situation do
6 you think that that case calls out for or demands the
7 death penalty?

8 A I don't think so.

9 Q Okay. And when you say you don't think so, I just
10 want to make sure, well, I think I will skip that. I
11 think you have answered that very fairly. With regard to
12 this plea that the Judge talked to you about, not guilty
13 by reason of insanity, that is the verdict that you could
14 consider?

15 A Yes, sir.

16 Q Some people might say it is too soft, it is like let
17 somebody go. Is that you or you can really consider that?

18 A No, I can really consider that, people do things for
19 reasons maybe they didn't do, you know, they didn't mean
20 to do this.

21 Q Okay. And the Judge was talking to you about the
22 first phase, that is the person guilty, is he not guilty,
23 do they have the right guy, kind of like the typical trial
24 we see on TV. Are you with me?

25 A Yes, sir.

1 Q Okay. And the Judge talked to you about if there is
2 a guilty verdict or a guilty but mentally ill verdict then
3 the jury would go to a second phase and sit on the second
4 phase of the trial and that would be the punishment phase.

5 A Right.

6 Q And that is where each individual Juror has to make
7 up their own mind as to sentence. And it is not a group
8 think decision, everybody has a duty and obligation to
9 come to what the law describes as their own individual
10 moral judgment. Does that sound fair?

11 A Yes, sir.

12 Q And you would expect some disagreement in the case so
13 grave, so important, whether it be human being, a fellow
14 human being dies, you would expect some--

15 A I would think so, yes.

16 Q Okay. And each individual Juror has a duty and
17 obligation to keep and stay with their individual moral
18 judgment and they can't give it up to join the majority
19 just for the sake of joining the majority.

20 A Correct.

21 Q And that is a principle you believe in?

22 A Yes.

23 Q And talking about this individuality, different
24 jurors can have all kind of different reason to vote for
25 the life penalty if they want to. Does that sound fair?

1 A Yes.

2 Q One person could say I saw a mental health issue.
3 Somebody else could say I say something redeeming about
4 his relationship with his family. And those two people
5 could have completely different reasons and that is fine
6 and that is fair and the law respects that. Is that a
7 principle you could go with?

8 A Yes, sir.

9 Q And the whole jury doesn't have to agree that these
10 mitigating circumstances or these reasons exists.
11 Everybody has a right to have their own reason?

12 A Correct.

13 Q If you were to be on the jury you would take a Juror
14 oath and your Juror oath would require that everybody
15 stick with their conscious or individual moral decision.
16 If you were on the jury and you saw somebody saying, you
17 know, we want to get a majority here, we want you to come
18 over to our side and we want you to give up your
19 individual moral decision, that would be wrong. If you
20 saw it getting coercive could you stop that?

21 A I think I would say something, yes sir.

22 Q And you can say, Mr. Foreman, pass a note out to the
23 Judge, it is getting beyond civil discourse here, it is
24 getting coercive and they are trying to get someone to
25 give up their individual moral judgment. I am going to

1 send a note out saying, Judge, can you stop that kind of
2 coercive behavior. You could do that?

3 A Yes, sir.

4 Q Thank you, sir.

5 EXAMINATION

6 By Mr. Hubbard:

7 Q Mr. Jennings, I have a few questions. I am Rick
8 Hubbard, Solicitor. I appreciate you being here today.
9 Have you ever served on a jury before?

10 A No, sir.

11 Q This is a little different, isn't it?

12 A Yes, sir.

13 Q You were asked by the Defense, if you were Governor
14 for a day?

15 A Yes, sir.

16 Q And you had two Bills on your table, one that said we
17 are going to have the death penalty and one that said we
18 are going to have life, which one did you say you would
19 feel more comfortable signing?

20 A The life.

21 Q Does that mean you would feel more comfortable not
22 having the death penalty if you were in charge?

23 A I think I would, yes.

24 Q I am sorry?

25 A I would.

1 Q You would?

2 A You would not.

3 Q You would not have the death penalty?

4 A Yes, sir.

5 Q Is that because you have some issues with the death
6 penalty or how it is handed up?

7 A No.

8 Q Can you tell me why, if you were in that position?

9 A I am not sure if you take a life, should take someone
10 else's life.

11 Q Okay.

12 A I mean I don't think, personally I am not sure if
13 that is the right answer. For instance if someone is
14 guilty of arson, are you going to burn their house, do
15 whether or not.

16 Q That is a fair statement.

17 A Or rape, if someone rapes someone, are you going to
18 go rape them. I kind of think they all kind of fit
19 together. That is my opinion.

20 Q So if someone were to take a life you think it would
21 be just as inappropriate to take that person's life too,
22 following that same thinking?

23 A That is the way I think, yes.

24 Q Now, I know when we went over the types of jurors, no
25 matter what, you want to be fair?

1 A Yes.

2 Q And you want to hear things?

3 A That's correct.

4 Q And you want to consider everything?

5 A Yes.

6 Q But when it comes down to actually making a decision
7 if it were, if death were on the table that would be one
8 you would not be comfortable making that decision?

9 A No, you asked me if I were to sign a Bill.

10 Q Okay.

11 A I mean I consider the law as it is right now.

12 Q Okay. That is a good point, I needed to have that
13 clarification for me.

14 A That is why I answered, you asked me if I was making
15 the law. I don't think the law, I am not the one. Right
16 now as the laws are, you got to consider all aspects of
17 the case, all the testimony and everything and then make
18 your decision.

19 Q And just to and I know you haven't been in this
20 position before?

21 A No.

22 Q We are just learning a little bit about you and also
23 letting you know where the law is and the process. So we
24 want to be fair to you and get your thoughts and your
25 opinions so that we don't misunderstand. And I appreciate

1 you for letting me know that. So since the law today says
2 jurors in a case can sometimes get life but they can also
3 have the option of death you accept that that is the law.

4 A Yes, sir.

5 Q But based on your personal feelings, when you become
6 a Juror your opinions at that point, as was discussed
7 earlier, are your own, correct?

8 A Yes, sir.

9 Q And you would hold your opinions and not just give
10 those up because other people are doing, disagree with
11 you?

12 A Correct.

13 Q And I just want to make sure I understand so I am not
14 misunderstanding you and, again, you haven't been in this
15 situation. If, as a Juror, after hearing all the case and
16 you had the option of life and death, do you believe you
17 could actually, not just consider but give death?

18 A I would have to hear everything, all the evidence and
19 make my decision, I would make a decision, yes.

20 Q And say the decision was death, just so understand
21 too, instead of just one person signing that indictment
22 saying this is our verdict or the verdict form, in that
23 case all twelve people have to sign for death. Could you
24 sign, as a Juror, depending on the facts, death?

25 A Yes, sir.

1 Q So even though you have some concerns about that as a
2 sentence you would be willing to sentence somebody to
3 death based on facts and circumstances?

4 A Based on, yes, yes sir.

5 Q And I am just wanting to make sure I have got
6 everything clear so that when I sit down I understand Mr.
7 Jennings, that I don't have a false concept in my head?

8 A Yes, sir.

9 Q So that is the pause. So if it were up to you we
10 wouldn't have the death penalty?

11 A No, you asked me if I was Governor.

12 Q And if you were the Governor or a law maker, we
13 wouldn't make that as an option?

14 A I think yes on that, we wouldn't have that.

15 Q We would not?

16 A But as the laws are written today we have to follow
17 them, you have to consider everything that is in a case in
18 order to make a decision.

19 Q And you understand you don't have to give death. So
20 the law doesn't require you to?

21 A No, no, I understand that, yes.

22 Q That is why I wanted to, because, I guess what I want
23 to make sure I understand, Mr. Jennings, without just
24 really getting overly personal with you, since if you were
25 the Governor and would not have the death penalty--

1 MR. MCGUIRE: Your Honor, we are plowing the same
2 ground, asked and answered.

3 THE COURT: I will let him rephrase it one time.

4 Q Since you said as Governor, you would take death off
5 as an option, you would have life, I just want to
6 understand that you would, knowing as a Juror death is not
7 required?

8 A Yes, sir.

9 Q You would still personally feel, based on evidence,
10 you could actually give death and sign a death verdict?

11 A Yes, sir.

12 Q Okay. Thank you.

13 MR. MCGUIRE: Your Honor, we have no further
14 questions for Mr. Jennings.

15 THE COURT: Mr. Jennings, thank you for your patience
16 with me. The Court will find you as a qualified Juror.
17 What that means, look on the website--

18 JUROR: I have no Facebook, no social media, no news.

19 THE COURT: You ever go on the internet?

20 JUROR: No, just personal.

21 THE COURT: Can you watch the Lexington Website for
22 jury information, can you do that?

23 JUROR: Oh yes.

24 THE COURT: You are now a qualified Juror and the
25 once we get a sufficient number of those from that ground

1 the parties will select a jury being impaneled. So you
2 are not on the jury, a qualified Juror means you are
3 eligible and they can consider you. Look on that website
4 and look for qualified Juror for your information. Now,
5 you are under oath and you are going to be easy to make
6 the oath because you don't study the internet. Don't talk
7 about the case, don't let anyone talk to you about the
8 case, don't do any independent research, don't read any
9 media reports of what is going on. What you need to
10 decide the case you will hear in the courtroom.

11 (Whereupon, the Juror was excused from the
12 courtroom.)

13 MR. HUBBARD: Your Honor, I do believe he is
14 qualified based on his answers. I might not like them but
15 I believe he is qualified. I do have that one issue, that
16 is the Caldwell issue. I would request this, that
17 although the Defense team can say that is not a problem
18 for them, I really think it is a question for the
19 Defendant, himself. So discussing the matter with his
20 lawyers he is okay with this Juror being qualified and he
21 understands the issue, I am perfectly fine at that point.
22 I just want, from my standpoint, because I know on down
23 the road should something happen with this case, I am
24 going to be looking at a different team of lawyers. And I
25 just want to cover that.

1 MR. YOUNG: Your Honor, I object the State asking Mr.
2 Jones to be personally questioned about each Juror to
3 qualify them or not qualify them.

4 THE COURT: Okay. Here is the thing. In a Capital
5 case, y'all know as good as anybody, better than anybody,
6 a Capital case, everything is ramped up one more step and
7 cases have been reversed because a lawyer said, please,
8 are you okay and talk to your client. And the Court
9 didn't say, Mr. Jones, you understand. That is the issue
10 that they are looking at and I understand it because--

11 MR. YOUNG: Mr. Jones understands and he is fine, the
12 decisions that his defense team has made.

13 THE COURT: All right.

14 MR. HUBBARD: That was not sufficient, Gene Tony
15 Cooper and a host of other cases, the Defendant has to
16 speak, like Your Honor says.

17 THE COURT: Michael Charping, I was a law clerk in
18 that one and that is why it got reversed because Judge
19 Moore did not ask him directly.

20 MR. YOUNG: About Juror qualification.

21 THE COURT: No, I am going a little overboard
22 probably. Mr. Jones, you understand the issue?

23 MR. MCGUIRE: Judge, if you could give me one more
24 second.

25 THE COURT: Sure. Go ahead.

1 (Whereupon, Mr. McGuire talks to Mr. Jones off the
2 record.)

3 MR. JONES: Mr. McGuire has explained to me what has
4 happened and I agree with what he has done.

5 THE COURT: And so the court is going to make the
6 determination that Mr. Jennings is qualified and you
7 understand that was subject to a comment the Court
8 misstated, you are okay with finding him qualified?

9 MR. JONES: Yes sir, I am.

10 THE COURT: Okay, fair enough.

11 MR. HUBBARD: One final thing. Your Honor, on the
12 types of jurors, we had a final and it is not correct.
13 You see how the first two on the type one, type two, that
14 we have not at that point proven an aggravating
15 circumstance. I think the whole point is that we have
16 proven murder. But now in the second phase we have to
17 prove aggravating and mitigating or there is talk of
18 mitigation. So I would like to clarify that so it is a
19 more accurate statement.

20 MR. YOUNG: No, sir.

21 MR. HUBBARD: We do not prove aggravating in the
22 first phase. That has been a question and an issue that
23 we have talked about.

24 MR. YOUNG: Your Honor, are we going to start voir
25 dire over.

1 MR. HUBBARD: No.

2 MR. YOUNG: We have got to requalify all, requalify
3 the jurors based on a new standard?

4 THE COURT: No, wait a minute. I want to make sure I
5 understand Mr. Hubbard because, maybe it is the way I am
6 explaining it in trying to hasten the pace. My
7 compliments to both sides, wonderful of dealing with him,
8 I was very, very impressed. When I asked, I think, in
9 this scenario, the murder has been proven and the guilt or
10 innocence. The State has proven the aggravating factor.
11 All of the stuff has been presented. That is an accurate
12 statement of the law, is it not.

13 MR. YOUNG: Yes, sir.

14 MR. HUBBARD: The first phase, murder has been
15 proven, nothing else.

16 THE COURT: Right.

17 MR. HUBBARD: The second phase, that is when we prove
18 aggravating circumstances so that is where type one, type
19 two on what Your Honor has in front of you has not been
20 accurate.

21 MR. YOUNG: No, sir.

22 MR. HUBBARD: If I can finish making a statement so
23 the Court can understand where I am. But type one for
24 instance, for the record, reads that once the crime of
25 murder and an aggravating circumstance has been proven by

1 the State this Juror will always get the death penalty.
2 The real thing about a type one is that once murder has
3 been proven they don't hear aggravating mitigating, they
4 have made up their mind. Once, and type two, once murder
5 has been proven they don't need to hear aggravating
6 mitigation, they have made up their mind. And I guess
7 what is happening is Your Honor, we put a lot on Your
8 Honor, that I am not hearing that part about jury's
9 already made up their mind doesn't need to hear
10 aggravating, mitigating but it gets confused too when it
11 sounds like aggravating has already been proven, it hasn't
12 been necessarily because they don't care. So I think
13 that's why, that has to be amended but I would ask Your
14 Honor to read it to make sure they are really
15 understanding. Because we worked hard, as Your Honor
16 knows, but the original one we handed up did not have that
17 language.

18 THE COURT: Right, I put it in there.

19 MR. HUBBARD: Right.

20 THE COURT: Right.

21 MR. HUBBARD: But an aggravating circumstance at the
22 point of the first phase has not been proven so that is
23 why, basically a type one is I don't need a second phase
24 because I already know what I want to do. They proved
25 guilt, he dies. Type two is I don't need the second phase

1 because I don't need to hear all of that because there is
2 no way in the world that I could ever give anything but
3 life. Type three is I need a second phase because I need
4 to hear the State, whatever evidence they have in
5 aggravation, they have to prove it and then I want to hear
6 whatever mitigation evidence there is and I am open to
7 both sentences.

8 THE COURT: Okay.

9 MR. YOUNG: No sir, the jurors are put in the point
10 and of time in which they would be able to make a
11 decision, guilty of murder and an aggravating
12 circumstances has been proven, do you think always death,
13 never death. And if you ask them about making a decision
14 at the point in which they are legally entitled to make
15 the decision then it is an incorrect statement of law.
16 The way Your Honor is doing it is appropriate, it is not
17 only that Your Honor is doing it appropriate, it is what
18 is required.

19 MR. HUBBARD: Actually, what we have presented
20 before, we have used multiple times and did not have that
21 for that very reason.

22 MR. YOUNG: Your Honor, we went through this in great
23 detail with Your Honor, we spent a day on it, ironing out
24 what the types were going to be. And this is what we have
25 done and we can't change it now.

1 MR. HUBBARD: The reason why I am bringing it up is,
2 Your Honor hasn't been reading this and I understand why.
3 We work real hard also on your instructions. And I
4 understand why Your Honor doesn't want to read this, it is
5 hard to sit and look at a person and read at them. So I
6 get that. But what I believe might be happening because
7 there was one Juror, I think she ended up being
8 disqualified, when you got to type three we didn't even
9 mention life or death in the type three question. It was
10 just could hear both sides. And I want to get back to the
11 original if we can, Your Honor. And I do believe that it
12 is, it is misstated and a misimpression and confusing if
13 we say, we have already proven an aggravator, aggravating
14 circumstance.

15 MR. YOUNG: Your Honor, if you change it now you
16 allow jurors, like the lady from yesterday who says, no, I
17 read it, I understood and it says like it is, it is
18 proven, for me it is death. And you allow those jurors to
19 hide behind, well, maybe they don't have aggravation, that
20 is not true. They are not allowed to make a decision
21 until after aggravation proven. The way that the Court is
22 doing it is appropriate, it is what the United States and
23 Morgan versus Illinois is what the United States Supreme
24 Court referred to at the point and time of decision
25 making, do they have biased, are they always death, are

1 they never death. And that is what Your Honor is asking
2 them, Your Honor is asking them the appropriate questions.
3 And to change it now would mean that we would have to
4 restart voir dire and we would have to requalify.

5 MR. HUBBARD: In the alternate, if Your Honor keeps
6 it as it is, if Your Honor keeps it as it is I would ask
7 that at least for these three types it would help if Your
8 Honor maybe just read them out and then explained as you
9 have been doing, that the second phase, aggravating and
10 mitigating are presented at that time. But if I could get
11 Your Honor to read this part I would be happy with that.

12 THE COURT: Read your version or my version?

13 MR. HUBBARD: No, the final version. As you did it,
14 if you do that--

15 THE COURT: No, no, my final version doesn't have
16 that, you struck it out. This is mine, I offered this.

17 MR. HUBBARD: Right. And what I am saying to clarify
18 what I am saying is, if you keep it as you had it, I am
19 fine with that but I would request two things. One, that
20 we actually read it for this part, type one, type two,
21 type three. And that you then follow-up as you have been
22 doing to clarify the second phase is where they are going
23 to hear about aggravating circumstances and mitigating
24 circumstances. And then my duty at that point. I am fine
25 with that but I would just ask, if that minimum that you

1 at least read this part. As uncomfortable as that might
2 make you feel, if you can read this because the other
3 issue I have seen slowly developing is that sometimes it
4 sounds like by the time you get to type three everyone is
5 going to be a type three which could benefit or hurt
6 either side because that is where somebody is going to
7 consider everything. And like I said, at one point it
8 wasn't even, there was not even mention of life or death
9 in that third type. And that is going to be
10 understandable, Your Honor is doing this person after
11 person. That is why I think this would probably help you
12 particularly as you go through a day and you get tired.
13 If Your Honor could at least read that I would be fine
14 with it. I know you are going to explain it.

15 THE COURT: So, if I read the one that is unedited to
16 the Juror when they are sitting in here, type one is
17 described as, type two is described as, type three, that
18 is what I have given you, you read it outside, can you
19 identify yourself in one of those three types.

20 MR. HUBBARD: Yes, sir. And then you go back to what
21 you have been doing, explaining when they are going to
22 hear those.

23 THE COURT: I will do that.

24 MR. HUBBARD: All right.

25 THE COURT: Okay. Anybody need a break.

1 MR. YOUNG: Yes, sir.

2 THE COURT: We will take a couple of minutes.

3 (Whereupon, a short break was taken.)

4 THE COURT: Number 421, Tamika Summers.

5 TAMIKA SUMMERS, being

6 first duly sworn, testified as follows:

7 CLERK OF COURT: Spell your first and last name for
8 the record.

9 JUROR: First name is spelled T-A-M-I-K-A. Last name
10 is spelled, S-U-M-M-E-R-S.

11 EXAMINATION

12 By The Court:

13 Q Ms. Summers, how are you doing. My name is Eugene
14 Griffith. I introduced myself Monday to you.

15 A Yes, sir.

16 Q In the big courtroom we asked a few questions then
17 and I asked you to, you were under oath and asked you to
18 not talk about the case, not let anybody talk to you about
19 the case. Have you followed my oath?

20 A I have.

21 Q Anybody tried to talk to you?

22 A No, sir.

23 Q You did not talk to anybody about the case?

24 A No, sir.

25 Q I tried to tell y'all to minimize if you saw any

1 media reports, try to minimize that. Certainly the media
2 has been around, I don't know what you do as far as news
3 or internet, whatever. Have you avoided the media
4 reports?

5 A I have.

6 Q Now, there were other media reports prior to that,
7 did you see any of those like prior to Monday?

8 A I did.

9 Q Okay. So you heard some reports from the media?

10 A Correct.

11 Q Now, have you formed an opinion about this case about
12 what happened?

13 A Say that again.

14 Q Have you formed an opinion about what you believe
15 happened in this case?

16 A Somewhat.

17 Q Now, understanding this, I am looking for fair and
18 impartial jurors to listen to what happened, testimony and
19 evidence and make a decision based upon what they hear in
20 the courtroom, witnesses and evidence shown. Do you
21 understand that?

22 A I do.

23 Q Can you do that?

24 A I can.

25 Q I mean, the media may have misreported something so

1 how long did you see that media report?

2 A It has been several months.

3 Q Okay. A lot of stuff the media reports are things
4 you are going to hear again accurately, firsthand is
5 easier for you to receive information. Do you agree?

6 A I agree.

7 Q Now, are you or a member of your immediate family a
8 member of any type of organization which advocates for
9 victims, Mothers Against Drunk Driving, Students Against
10 Drunk Driving?

11 A No, sir.

12 Q CAVE, Citizens Against Violence?

13 A No.

14 Q Any member or you contribute to the Sheriffs
15 Association, Sheriffs Association, Law Enforcement
16 Association?

17 A I have in the past.

18 Q And would that affect your ability to be fair in this
19 case?

20 A No.

21 Q Okay. Now, I gave you a list of witnesses, potential
22 witnesses. I have got to do that, the jury considers
23 testimony from whoever it is and it won't be somebody's
24 first cousin sitting there testifying and then that person
25 has to testify and puts you and that person in an awkward

1 position. Are you connected to anybody on the witness
2 list?

3 A I am not.

4 Q Do you know anybody on the witness list?

5 A I do not.

6 Q Do you, are you connected to any of the lawyers in
7 this case, not all of them are in the courtroom. Mr.
8 Graham is not here, he is the tall and slender with the
9 beard. Are you connected to any of the lawyers?

10 A No, sir.

11 Q Are you connected to Mr. Jones or his family?

12 A No, sir.

13 Q I am going to give you kind of a broad brush
14 introduction in the criminal procedure and ask you some
15 questions. Now, you are under oath. Some of these
16 questions I am going to ask will be asking for your
17 opinions. Okay. So there is not a right or wrong answer,
18 just your opinion, you can't get it wrong. In this case
19 the State has made allegations through an indictment,
20 every criminal case is brought into the courtroom through
21 an indictment. The indictment is just a piece of paper
22 that says the State is accusing you, we think that we can
23 prove the crime of, whatever it is. And that person is
24 presumed innocent until the State proves that case beyond
25 a reasonable doubt. That is how it works. Mr. Jones is

1 presumed innocent sitting right here. Everything the
2 State is accusing him of, he is presumed to be innocent.
3 The State, in order to convict him, is going to have to
4 present testimony and evidence on the offense of murder
5 which what the indictments are for, is murder, five
6 counts. The murder is defined as the killing of another
7 person with malice aforethought. That is a real short
8 definition. Malice means hatred, ill-will, hostility,
9 depraved heart when you committed the murders. So the
10 killing of another with ill-will, hatred in your heart
11 toward that person. That is how murder is defined. The
12 State has got to prove those elements, each and every one
13 of them, beyond the burden of proof called beyond a
14 reasonable doubt. Okay. If the State doesn't prove its
15 case beyond a reasonable doubt the result of the verdict
16 will be not guilty. If the State proves the case beyond a
17 reasonable doubt the result, the verdict will be guilty.
18 Okay. In a plain vanilla case the guilty verdict is
19 found, most times, just about every case except for
20 Capital case, the Judge imposes sentence. Okay. In a
21 Capital case, when the State intends to seek the death
22 penalty the jury becomes the sentencing body rather than
23 the Judge. Okay. So a Capital case is slightly
24 different. The case goes forward, evidence presented,
25 trying to prove a murder or the murders beyond a

1 reasonable doubt. Mr. Jones is presumed innocent all the
2 through that. When a verdict of guilty is found
3 understand then he is found guilty. The jury would then
4 consider, after that, in the sentencing phase other
5 things, consider mitigating evidence, aggravating
6 evidence, other types of evidence, perhaps some defenses
7 or affirmative defenses. I will get back to that in a
8 moment. In the sentencing phase the jury is given the
9 authority, the duty of sentencing. The jury has two
10 options, only two. Life without parole and death, nothing
11 in between, two choices. Do you understand that?

12 A Yes.

13 Q Now, so the State has got to have the burden all the
14 way through, Mr. Jones has entered a plea of not guilty by
15 reason of insanity and that allows him to claim a defense
16 to these acts. And there are several defenses and you
17 probably heard some of them, just in your every day life.
18 I will give them to you. Some defenses you may hear and
19 my job as the Judge is to instruct the law to the jury,
20 rule or rules in front of the lawyers as we go, to give
21 the instructions at the very end. That sort of thing.
22 And so on a case like this and I know the accusations and
23 the indictment of murder, I have an idea what murder is
24 and how to define it. But until the end, it is time to
25 instruct the jury I don't have a preplanned instruction, I

1 have a rough draft. I tailor to instructions, depending
2 on what testimony comes out. Some of these defenses may
3 not even apply. But these are available to a person
4 accused and Mr. Jones has claimed one of them, he has
5 presented one them. Potential defenses would be
6 identification, accident, involuntary intoxication,
7 self-defense, insanity, guilty but mentally ill, the
8 defense of habitation, duress, alibi. Those are some
9 defenses that are allowed and the jury gets to consider
10 them. Some of those factors can be considered also in the
11 sentencing phase. Okay. Now I have gave you a, I am
12 couching my questions to you, you have not heard anything
13 about the accusations, five counts of murder, children.
14 Mr. Jones is presumed innocent. I want to, it is kind of
15 a hypothetical question. If these facts were proven what
16 do you think that you would do and that was the type of
17 Juror question that I sent to you. I am going to read
18 that to you. Type one Juror, once a crime of murder and
19 the aggravating circumstances have been proven by the
20 State this Juror will always give the death penalty.
21 Noting here, the facts and circumstances and aggravation
22 and mitigation because the Juror feels that once the
23 murder has been committed the death penalty is the only
24 appropriate sentence. A type two Juror is a little
25 different. Once a crime of murder and an aggravating

1 circumstance has been proven this Juror will give the
2 sentence of life without parole and that Juror would not
3 need to hear the facts and circumstances and aggravation
4 or mitigation in the case because a Juror would
5 potentially feel that once a murder has been committed
6 that life without parole is the only appropriate sentence.
7 Type three Juror is typically the one that once the crime
8 of murder and an aggravating circumstances has been proven
9 this Juror would not have his, her mind made in advance
10 concerning punishment and that Juror will need to hear
11 facts and circumstances both in aggravation and in
12 mitigation to determine the appropriate punishment. And
13 this Juror could bring either verdict, life without parole
14 or death, depending on the facts. Now, I will add one
15 more definition. Mitigating facts. Some people
16 understand what that is, I will tell you what it is.
17 Mitigating factors are some outlined in the statute, there
18 are some that aren't outlined at all but the jury can
19 consider it. Mitigating facts would be a reason for life
20 as opposed to death. But mitigating, mitigating
21 circumstances can include, again, not all of these could
22 be proven because one of them is the Defendant was under
23 18 so that would be one, it is on the list. I am going to
24 read them all to you. The Defendant has no significant
25 history of a prior criminal conviction involving the use

1 of violence against another person. Murder was committed
2 while the Defendant was under the influence of mental or
3 emotional disturbance. The victim was a participant in
4 the Defendant's conduct and consented to the act. The
5 Defendant was an accomplice to the murder committed by
6 another and his participation was relatively minor. The
7 Defendant acted under duress or the domination of another
8 person. The capacity of the Defendant to appreciate the
9 criminality of his conduct or to conform his conduct to
10 the requirements was substantially impaired. The age or
11 mentality of the Defendant at the time of the crime could
12 be considered. The Defendant was provoked by the victim
13 in committing the murder. The Defendant was below the age
14 of 18, the Defendant had mental retardation at the time of
15 the crime. And those are the statutory, perhaps for any
16 other reason, had a rough childhood, came from a broken
17 home, whatever. The jury wants to consider the mitigated
18 and the reasons to give life without parole can be
19 considered by the jury. Now, going back to my original
20 question to you. Three types of jurors, this case gets
21 proven, murder, aggravation, what type of Juror do you
22 describe yourself as?

23 A I would have to say type one.

24 Q Type one. Now, is there any reason for you
25 whatsoever adhere to the aggravating factors or mitigating

1 factors, and they have explained why the event occurred,
2 you are a pretty solid type one?

3 A Pretty solid.

4 Q Okay. Any reason to go further?

5 MR. HUBBARD: Nothing from the State, Your Honor.

6 MR. YOUNG: No, Your Honor.

7 THE COURT: Thank you for your patience. You are
8 excused and you don't have to come back. Thank you,
9 Ma'am.

10 THE COURT: Keith Shirey.

11 KEITH SHIREY, being
12 first duly sworn, testified as follows:

13 CLERK OF COURT: State your name and spell your name.

14 JUROR: Keith, K-E-I-T-H; Shirey, S-H-I-R-E-Y.

15 EXAMINATION

16 By The Court:

17 Q Good morning, Mr. Shirey.

18 A Good morning.

19 Q I have got to ask you a few questions. My name is
20 Eugene Griffith and I am the Judge who introduced myself
21 to you Monday. I am going to ask you a few questions here
22 right now. The first thing here is to get to know you a
23 little bit, find out some information from you. You are
24 under the oath to tell the Court, the lawyers the truth.
25 Part of what I told you Monday is not to talk about the

1 case. Have you talked to any body about this case.

2 JUROR: A little bit in the jury room.

3 THE COURT: Back here. Were you discussing some
4 general things or what.

5 JUROR: Yes.

6 THE COURT: And there has been some media attention,
7 a lot of media attention in this case. And have you,
8 anybody question you about the case, about what you knew
9 about it?

10 A No.

11 Q Now, the nature of the conversation back in the jury
12 room, was that just what y'all seen on TV here recently or
13 several months ago?

14 A Recently.

15 Q Was that before. I am trying to minimize the--

16 A In the last few days.

17 Q Did you see some media reports?

18 A Yes.

19 Q Did you watch them or did you just saw they were on
20 TV?

21 A They were playing in the background. We have a new
22 house.

23 Q New house. Have you formed an opinion as to what
24 happened in this case based upon anything that you have
25 heard?

1 A Yes, I am sure I have.

2 Q And tell me what you think is happening. I would
3 like to know that?

4 A Well, there are children involved.

5 Q And there were children involved?

6 A Yes.

7 Q And the fact that children are involved, is that a
8 factor for you to consider?

9 A Yes.

10 Q Now, I gave you a sheet about potential jurors,
11 potential jurors. Just hypothetical, the State proves the
12 case, proves the murder, proves children were involved.
13 Did you identify yourself as one of those three types of
14 jurors?

15 A Yes, type one.

16 Q Type one, you are pretty solid on type one?

17 A Yes.

18 Q Okay. I understand. Thank you for coming. You are
19 free to go.

20 (WHEREUPON, the Juror was excused from the
21 courtroom.)

22 THE COURT: Do we have that third panel, are they
23 here yet?

24 MR. YOUNG: They are coming at 1:30.

25 MR. HUBBARD: Your Honor, I do have something. I do

1 think there needs to be some clarification. We have
2 qualified, I don't know how many people we have qualified
3 on that panel but I think it is incumbent upon us now, if
4 they talked, whoever is on that panel of 12 needs to be
5 brought back in and questioned.

6 THE COURT: I mean, he was candid.

7 MR. HUBBARD: He was.

8 THE COURT: I didn't know what to say.

9 MR. HUBBARD: It concerns me, obviously he is type
10 one so I am wondering if he spread that opinion and, you
11 know,--

12 MR. YOUNG: We move for a change of venue.

13 THE COURT: I want to inquire first before I consider
14 something like that.

15 MR. HUBBARD: Judge this is just one panel.

16 THE COURT: Yes.

17 MR. HUBBARD: And it may incumbent, I will offer this
18 too, that maybe a new panel coming in that they need to be
19 reminded, they cannot talk about this case.

20 CLERK OF COURT: The next panel comes in at 1:00.

21 THE COURT: The next one comes back at 1:00.

22 MR. MADSEN: Judge, the only thing was, the last
23 Juror that was up, he obviously said he and some other
24 jurors had talked about some things but no one inquired
25 exactly what did you hear. We asked, what, did you inform

1 an opinion in that. But he is the only one that said
2 that, you have questioned every one else and I think that
3 there has been some questions from both sides about the
4 pretrial publicity and they satisfied the Court. And now
5 we go back. You know, the one person that said that it
6 went on is gone and we didn't question him and I think
7 that that creates a problem.

8 MR. HUBBARD: Actually I don't and here is why. It
9 is not about necessarily of what they say, it is violating
10 your instruction.

11 THE COURT: Yes.

12 MR. HUBBARD: And that is the most fundamental
13 problem. If they can't follow that simple instruction
14 they don't need to sit on a jury whether they are type
15 one, two, three, whatever.

16 MR. MADSEN: And I just think we need specifics from
17 him, who did you talk to, what. Because if there is a
18 problem, obviously, we need to ferret it out. But Your
19 Honor has had equal and you have asked that question and
20 they have said, no, they told you--

21 MR. HUBBARD: I think with this, the Court, it is not
22 us. The Court wants to know that information and so
23 whoever is on that panel that was qualified, regardless
24 for which side, I don't even know how many we had on that
25 one.

1 THE COURT: Two.

2 MR. HUBBARD: I think you need to bring them back in.

3 THE COURT: No, no. Chavis yesterday, Jennings that
4 was the only one qualified this morning.

5 MR. HUBBARD: I think they need to be brought back
6 in.

7 THE COURT: I am not going to bring him back in today
8 but we will get him back in there.

9 MR. HUBBARD: And it is not so much of what this
10 gentleman may have said, it is really what the qualified
11 Juror heard and said.

12 MR. MADSEN: And the thing is that, he said on panel
13 and multiple people. It might have been only one. It
14 only matters what other individuals--

15 MR. HUBBARD: -- it only matters what the qualified
16 jurors.

17 THE COURT: That would be two. Mr. Chavis, the
18 Clemson guy that hadn't seen his friends in a coon's age.
19 That guy. And Jennings here this morning, the gentleman
20 that was earlier today.

21 MR. HUBBARD: Yes, sir.

22 THE COURT: Those two we will bring them back in and
23 ask a few more questions.

24 MR. MADSEN: And, Judge, obviously, our assumption is
25 that when we get to the end and where they are picked,

1 that is when it would be a question of Your Honor at the
2 end saying, hey, has anything happened in the interim.

3 THE COURT: We have got to. Yes, absolutely got to
4 do that. But, I mean, this could impact whether we keep
5 at home or not, whether keep them at home or keep them
6 together, sequester them. Sequestering in the jury room
7 obviously is a problem because they are not following my
8 instructions to not discuss the case.

9 MR. HUBBARD: Maybe we could do this or if Your Honor
10 could consider, my request is then the panel, the next
11 panel comes in, you bring them in and say while y'all are
12 waiting in the jury room you cannot talk about this case.
13 Send them out and maybe we can just do that for every
14 panel that is coming in.

15 THE COURT: I think they need to be warned.

16 MR. MADSEN: Obviously we would just renew our
17 request for a change of venue. Obviously we had the issue
18 yesterday with people coming in and seeing, you know, the
19 Lexington Chronicle paper and so we would just renew that
20 motion.

21 THE COURT: All right. At this time, respectfully,
22 that is going to be denied. I will see y'all back here in
23 about an hour.

24 (Whereupon, a lunch break was taken.)
25

1 (Whereupon, Court's Exhibits 68 through 71 were
2 marked for identification only.)

3 THE COURT: Are we ready for panel three?

4 MR. HUBBARD: Your Honor, I have something that I
5 would like to suggest.

6 THE COURT: Okay.

7 MR. HUBBARD: To try to make this shorter. One is, I
8 think it would behoove us in light of what panel two,
9 bring panel three in as a whole, let them know that they
10 can't be talking even while they are sitting back there.
11 Number two though, is the way to shorten this, why don't
12 we bring them in and you read your instructions to them,
13 we send them back and individually bring them in and then
14 you can start right off with three types, and they can
15 still have their full voir dire and we will have our voir
16 dire. Just shorten it that way. So one time, that is the
17 long part for you.

18 THE COURT: Can we read that to all eight?

19 MR. HUBBARD: Yes, sir. Because that part is your
20 discretion. Now, I understand it still gives each side
21 the opportunity to ask questions. So individual voir dire
22 is preserved.

23 THE COURT: What y'all think about that?

24 MR. YOUNG: I think we suggested that a long time
25 ago, where we were going to videotape you, you do it one

1 time and then play--

2 THE COURT: Let's give it try with all eight of them
3 after I tell them not to discuss the case.

4 MR. YOUNG: But you have got to move the, I don't
5 know where you put the types. You move the types to the
6 end.

7 THE COURT: The types are going to be this. I am not
8 going to tell the types, I am going to read this
9 instruction, send them back and bring them in one at a
10 time and then first question, here are the three types,
11 you have read it, what do you think. Right there, so we
12 are going to read this, send them back, call them in, the
13 first question or second question is what type are you.

14 MR. YOUNG: I would go ahead while they are all here
15 and do availability.

16 THE COURT: Yes, that is not a bad idea.

17 MR. HUBBARD: And I just wouldn't want them to answer
18 in front of the others. You might bring that up.

19 THE COURT: There is no need for me to cross educate
20 anybody about--

21 MR. YOUNG: I have a trip planned doesn't really
22 educate other people.

23 THE COURT: Bring them in here, the entire panel.

24 (Whereupon, the third panel came into the courtroom,
25 166, Conrad Gore; 172, Daniel Hall; 312, Laura

1 Nielson; 416, Kelly Stone; 283, Sarah McNeal; 405,
2 Phillip Smith; 231, Tiffany Kent; 293, Jessica
3 Miller.)

4 THE COURT: Y'all are panel three. Good afternoon,
5 welcome back to the courtroom, the new one. Thank you for
6 coming back. I am going to give you a few instructions.
7 I am going to read kind of a summary of broad, broad,
8 outline of a little bit of criminal procedures and some of
9 the accusations and whatnot. But first and foremost,
10 after I give you the instructions I will send you back in
11 the jury room and ask you not to talk about the case
12 amongst one another, sit back there and wait until you are
13 called in. Y'all will be placed under oath when you come
14 in here and ask questions. There are no right or wrong
15 answers, just opinions. Some of the things, be asking
16 your opinions about things. Your opinion, your opinion,
17 just need to know it, only candor and truthfulness. Okay.
18 Now, importantly, still don't talk about the case. Y'all
19 are going to learn some things like you did Monday. There
20 is five indictments, that sort of thing. Some things you
21 know, don't discuss it, talk about the weather, talk about
22 whatever you want but not about the case. And that is
23 kind of going to be a common instruction all the way
24 through, the whole process. Now, I am going to read you a
25 summary, kind of a preliminary instructions because my job

1 as a Judge is to instruct on the law, rulings during the
2 trial. Mostly is to help select a fair and impartial
3 Juror, rule on evidence and admissibility and technical
4 issue but lastly instruct the jury on what the law of
5 South Carolina is. Okay. What I am giving you is what I
6 believe, from my years of study and whatnot, is to be the
7 law of South Carolina and so that is what we have got to
8 follow. Now, after I read this I will send you to the
9 back and call you out one at a time. So, here you go.
10 Y'all have been summoned as a potential jury in the case
11 of Timothy Jones. I have introduced myself, my name is
12 Eugene Griffith. I will be the presiding Judge throughout
13 the trial. Mr. Jones is charged with five counts of
14 murder. And in South Carolina murder is defined as the
15 killing of any person with malice aforethought. Malice is
16 defined as a person with a wicked or depraved heart,
17 intent on wrongdoing, hatred, ill-will or hostility. The
18 definition of murder excludes any just cause or excuse for
19 the killing. Now, when the State alleges the defense of
20 murder combined with certain aggravating circumstances, in
21 that case the State can then seek the death penalty. Now
22 before and during a trial a person accused such as Mr.
23 Jones is presumed innocent of each and every element to
24 the crime which he is charged. The State must prove each
25 and every element of that crime charged by a standard of

1 proof called beyond a reasonable doubt. In most criminal
2 cases Judges determine the punishment upon a conviction.
3 In a Capital penalty case the jury determines punishment.
4 In a Capital case the trial is divided into two parts
5 potentially. The first part is the guilt or innocence
6 phase and then if necessary the punishment phase. In the
7 first part of the case the State must prove the
8 Defendant's guilt of murder beyond a reasonable doubt. If
9 a jury unanimously finds the accused guilty of murder then
10 the trial proceeds to the second phase. In the second
11 phase, if the State proves an aggravating circumstance
12 beyond a reasonable doubt then the jury considers
13 aggravating and mitigating evidence in deciding punishment
14 either life without the possibility of parole or the death
15 penalty. Now, our law in South Carolina does not allow
16 the State to seek that execution if a person is convicted
17 solely of murder. The State must prove the aggravating
18 factor, an aggravating factor. The State must prove at
19 least one of the statutory aggravating factors beyond a
20 reasonable doubt. Now even if the State proves murder and
21 an aggravating circumstance jurors are required to
22 consider any mitigating evidence or circumstances. Jurors
23 must consider any mitigating facts that would support a
24 sentence other than death. Even if no mitigating
25 circumstances exist jurors are not required to impose the

1 death penalty. In order for a sentence of death to be
2 imposed the verdict must be signed by all twelve jurors.
3 If jurors unanimously decides to sentence a Defendant to
4 life without parole sentence then a sentence of life
5 without the possibility of parole sentence is imposed.
6 Now in the case the State is indicted Mr. Jones with five
7 counts of murder and notified him that it intends to seek
8 the death penalty. Mr. Jones has entered a plea of not
9 guilty by reason of insanity. In this case you will hear
10 testimony and evidence showing or demonstrating many
11 different things. A wide variety of testimony and
12 evidence will be presented to you during this trial. I
13 will instruct you as to how to consider and evaluate the
14 testimony and whether it be defined as evidence of
15 aggravating factors, evidence of mitigation and mitigation
16 is for any reason or both for a life sentence without
17 parole. Evidence of any defenses, evidence of affirmative
18 defenses such as accident, guilty but mentally ill, not
19 guilty by reason of insanity. So until the testimony and
20 evidence is presented I am not able to tell you the exact
21 instruction I will give you on the law but can you accept
22 an oath to meaningful consider all the testimony and
23 evidence and apply it to the law as I instruct it to you
24 and consider all the evidence consistent with my
25 instructions. Those are my preliminary instructions to

1 you. And I ask you a question at the very end, when you
2 come back in or placed under oath, that is the question
3 you will be asked. Now, also when you are, remember my
4 instructions are kind of, I have got four separate
5 instructions I believe. Don't talk about the case, you
6 will be given a list of potential witnesses to see if you
7 know them or connected to them. I need to know that.
8 Three, you will be given types of Juror things to review
9 before you come in and talk. And then four, you will be
10 placed under oath and asked about that. But also I need
11 to know if you have got anything potential on your
12 personal schedule, whether it is vacation, medical
13 procedure, something, somebody very close to you that
14 would potentially impact your service as a Juror. So
15 there are four things I need you to cover and answer when
16 you come back in. Is that consistent with what we
17 discussed?

18 MR. HUBBARD: Yes, Your Honor.

19 MR. YOUNG: Yes, Your Honor.

20 THE COURT: Very good. Step back in the jury room
21 and we are starting Juror number 405. You had some
22 scheduling issues.

23 JUROR: I have a letter from my employer.

24 THE COURT: We will talk to you when you come back
25 in.

1 (Whereupon, the jurors were excused to the jury room.

2 THE COURT: We will give 405 a chance to read and
3 whatnot so we will stand at ease for a minute.

4 BAILIFF: He is standing outside.

5 THE COURT: He has already read?

6 BAILIFF: Yes.

7 THE COURT: I am going to ask him if he has had
8 enough time to look over it. We will bring him in and put
9 him under oath and give him some time.

10 (Whereupon, Juror 405, Phillip Smith came into the
11 courtroom.)

12 PHILLIP SMITH, being
13 first duly sworn, testified as follows:

14 CLERK OF COURT: Spell your first and last name.

15 JUROR: Phillip, P-H-I-L-L-I-P; Smith, S-M-I-T-H.

16 EXAMINATION

17 By The Court:

18 Q Mr. Smith, good to meet you again.

19 A Yes, sir.

20 Q My name is Eugene Griffith, like I introduce myself.

21 You are under oath again, you were under oath Monday.

22 First couple of questions. I asked the Juror to accept an
23 oath and not communicate about the case in any fashion
24 from Monday to today. Have you talked to anybody about
25 the case?

1 A No, sir.

2 Q Anybody talk to you about the case?

3 A No.

4 Q Now, there have been media reports out before and
5 after Monday. Have you seen, I asked you to minimize your
6 media review. Have you seen any media reports on the
7 case?

8 A I just saw the writeup in the State paper, I think it
9 was Tuesday morning about the jury was in the process of
10 being selected and I saw that.

11 Q And accurately reporting things were moving slowly?

12 A Yes.

13 Q Okay. Now, have you formed an opinion on the case at
14 all yet?

15 A (No response.)

16 Q Well if you have, I told y'all--

17 A I would say, from what little bit I have read I would
18 say, yes, I have.

19 Q Okay. Now I handed to you to review three types of
20 potential jurors?

21 A Yes, sir.

22 Q Do you need to see it again?

23 A I saw it.

24 Q And anyway it kind of presupposes certain things. If
25 a conviction of guilty was found unanimously, I will read

1 this to you if--

2 A I saw it.

3 Q Can you describe yourself, find yourself in one of
4 those three--

5 A Well, I did have a question. So, if a Juror sits
6 through the case and is going to decide guilt or
7 innocence, right.

8 Q Yes?

9 A So then they decide--

10 Q Two step process.

11 A Then I would be type one.

12 Q Are you pretty solid on that?

13 A Yes.

14 Q Okay. Fair enough. Thank you for coming in. You
15 are free to go.

16 THE COURT: Bring the Juror in.

17 CONRAD GORE, being
18 first duly sworn, testified as follows:

19 CLERK OF COURT: State your name and spell your first
20 and last name.

21 JUROR: Conrad, C-O-N-R-A-D; Gore, G-O-R-E.

22 EXAMINATION

23 By The Court:

24 Q Mr. Gore, my name is Eugene Griffith, I have
25 introduced myself a time or two to you and to the other

1 jurors. And you are under oath now. Some of the
2 questions you will be asked will be, kind of form of an
3 opinion, really no wrong answer. Got to be truthful and
4 candid. Some questions are very direct and need to answer
5 truthful and so I want to know. I put you under oath
6 Monday and said, please, don't talk about the case with
7 anybody. And that was part of your oath. Have you talked
8 to anybody about the case?

9 A No.

10 Q Has anybody tried to talk to you about the case?

11 A Yes.

12 Q What happened in that conversation?

13 A I just pretty much told them I couldn't talk about
14 it.

15 Q Okay, so that went no further than that?

16 A No.

17 Q Okay. Now, there has been news reports both before
18 Monday, way before Monday and some since Monday. Have you
19 noticed or seen any of those news reports, media reports?

20 A I have noticed but--

21 Q Have you seen any of them?

22 A I haven't seen it, basically on the radio.

23 Q Now, have any of those media reports, whatever they
24 are, have any of those affected or caused you to form an
25 opinion on this case?

1 A No.

2 Q What everybody is looking for is a fair and impartial
3 Juror, not being influenced, not biased, willing to
4 listen, kind of like a blank sheet of paper, open to
5 everything. Now, have you reviewed the list of potential
6 witnesses?

7 A Yes, I did.

8 Q Are you connected in any way to any of those?

9 A No.

10 Q Are you connected to any of these lawyers in any way?

11 A No.

12 Q Connected to Mr. Jones family?

13 A No.

14 Q Now, are you a member of any victims advocacy groups?

15 A No.

16 Q MADD Mothers, SADD Students?

17 A No.

18 Q I read you a summary, basic summary of the criminal
19 procedure and definition of murder and whatnot. Did you
20 understand those instructions?

21 A I did.

22 Q You also were given, before you came in, a
23 description of three potential types of jurors. Type one,
24 kind of a broad definition, after the case has been
25 proven, pretty much if the case has been proven that type,

1 they would give the death penalty always. Type two,
2 always is going to give life in prison. Type three, you
3 read the entire sheet?

4 A Yes, I did.

5 Q Did you understand it?

6 A Yes.

7 Q Can you find yourself in there, not knowing any of
8 the facts?

9 A Right.

10 Q Broad brush?

11 A I would consider myself type three.

12 Q Type three?

13 A Yes.

14 Q Okay. Now, we didn't, I went into some things and I
15 am going to give you some additional definitions. In this
16 case Mr. Jones has entered a plea of not guilty by reason
17 of insanity. That is one of the defenses allowed by our
18 statute, so there may be testimony in that regard. There
19 may be testimony in some other defenses. And so I am
20 going to read them out to you and say there you are, can
21 you consider if there is testimony and evidence, can you
22 consider instructions on the law and how they evaluate
23 those defenses. Okay?

24 A Okay.

25 Q He has plead not guilty and he is presumed innocent.

1 The State has got to prove his guilt, none of that has
2 happened yet other than presumptions are attached to him,
3 he is not guilty. Potential defenses might be accident,
4 involuntary intoxication, self-defense, insanity, guilty
5 but mentally ill, defense of habitation, entrapment,
6 duress and alibi. You may hear testimony concerning those
7 types of defenses. If those types of defenses, testimony
8 is present can you give meaningful consideration to that
9 type of testimony, assuming you have got correct
10 instruction on the law from me?

11 A If I have correct instructions, yes.

12 Q Okay. Very well. Now, one thing that the
13 description described, we are working without facts, five
14 indictments, accusations. The State has got to prove
15 those accusations during the trial of the murder. Okay.
16 They haven't proved anything yet, they haven't had to yet.
17 Mr. Jones is presumed innocent.

18 A Right.

19 Q There will be testimony, because of Mr. Jones' plea,
20 I am trying to describe this in the right order. Because
21 of his plea of not guilty by reason of insanity creates
22 additional verdicts other than the traditional guilty, not
23 guilty.

24 A Right.

25 Q Because of that plea there will be four potential

1 verdicts in the guilt or innocence phase one. Guilty,
2 guilty but mentally ill, not guilty by reason of insanity
3 and not guilty at all. Those are the four potential
4 verdict forms that the jury will get to consider. Can you
5 give meaningful consideration of the Court's instruction
6 on all four of those verdict forms?

7 A I can give them consideration, yes.

8 Q And apply the law as I instruct it, consider all the
9 testimony, no matter where it comes and give all of those
10 verdict forms meaningful consideration?

11 A Yes.

12 Q Now, if a verdict of not guilty is found in stage one
13 the case is over. If a verdict for the State meets the
14 burden of proof beyond a reasonable doubt and a guilty
15 verdict is found then we go to phase two which would be
16 the sentencing phase. And you understand that the
17 sentencing phase, the jury imposes the punishment. Two
18 choices.

19 A Right.

20 Q Life without the possibility of parole, death, only
21 two choices, nothing in between.

22 A Right.

23 Q So guilt is found, the jury makes a decision, the
24 State has got to prove an aggravating factor at that time.
25 Also throughout the trial, maybe in the first phase,

1 potentially in the second phase there will be testimony
2 and evidence and mitigating factors. And those are shown
3 to the jury, there is no really burden of proving any of
4 them, it is just things you can consider. Some may be
5 more important, some less. Mitigating factors are these.
6 Things that would cause you to not impose the death
7 penalty but impose life without parole. Some examples of
8 them are under our statute, no significant history of
9 prior criminal conviction using violence against another
10 person, murder was committed by the Defendant who was
11 under the influence alcohol, I am sorry, mental or
12 emotional disturbance. The victim was a participant in
13 the Defendant's conduct, consented. And some of these
14 might not be applicable but they may be and I will read
15 them off to you. Okay?

16 A Okay.

17 Q The Defendant was an accomplice in the murder
18 committed by another and his participation was relatively
19 minor. The Defendant acted under duress, under the
20 domination of another, the capacity of the Defendant to
21 appreciate the criminality of his conduct or to conform
22 his conduct to the requirements of law was substantially
23 impaired. The age or mentality of the Defendant can be
24 considered. The Defendant was provoked by the victim in
25 committing the murder. The Defendant was below the age of

1 18, the Defendant had mental retardation at the time of
2 the crime. Those are the statutory mitigating factors and
3 there are others. Perhaps the Defendant had a rough life
4 growing up, any of those things, the jury is allowed and
5 required to consider those things. Do you understand
6 that?

7 A Yes.

8 Q All right. So in the sentencing phase the jury can
9 consider everything. So I ask you several additional
10 questions. Can you give meaningful consideration to all
11 of those factors, no matter what the evidence. Whether it
12 is aggravating factor proven by the State, mitigating
13 evidence, affirmative defenses, defenses, can you give
14 meaningful consideration to the evidence, facts presented
15 during the trial, applying the law as I instruct it and
16 act as a fair and impartial Juror?

17 A Yes.

18 Q Now, do you have any religious or moral beliefs which
19 would prevent you from considering the death penalty?

20 A No.

21 Q Do you have any religious or moral beliefs which
22 would prevent you from imposing the life without
23 possibility of parole?

24 A No.

25 Q And you understand now, I presume, the death penalty

1 is not automatic. Phase two the sentence is determined by
2 the jury after consideration of all of that evidence. Do
3 you understand?

4 A Yes, I do.

5 Q Now, I didn't ask you about your personal schedule.

6 A The only thing I have on the schedule is next Friday
7 I was to fly out to Missouri for a graduation. That was
8 it.

9 Q Okay. Other than that?

10 A Other than that, is fine. And if need be that I were
11 on the jury I could cancel that, I have the travel
12 insurance.

13 Q Okay. Now, you have got travel insurance.

14 A Right, my wife does.

15 Q Now, the subject matter of this involves the death of
16 children.

17 A Correct.

18 Q The subject matter is going to be unpleasant, it will
19 be graphic and perhaps very hard to see. Would that type
20 of subject matter create an issue for you being fair and
21 impartial in this case?

22 A No.

23 Q I think that is sufficient.

24 THE COURT: Mr. McGuire, are you up, I am sorry, Mr.
25 Secor, come on. The lawyers get a chance to ask you some

1 questions and so same rules apply. They are looking for
2 your candor and honesty.

3 EXAMINATION

4 By Mr. Secor:

5 Q Good afternoon, Mr. Gore.

6 A Hi.

7 Q How are you?

8 A I am well, thank you.

9 Q As the Judge told you, when he was talking to you, it
10 is important for him to make a determination as to whether
11 a Juror is going to be able to follow his instructions and
12 just restrict assessment of the case to what they hear in
13 here in the courtroom and my questions are going to be a
14 little bit different, only in that I am just trying to
15 find out how you feel about things, just your sincere
16 personal feelings about some issues. Is that all right
17 with you?

18 A Sure.

19 Q And the first thing I would like to ask you about is
20 regarding whether or not, do you remember hearing about
21 this case when it first happened, do you have any memory
22 of that?

23 A Yes, it was just like on the news that I heard it and
24 it was basically, that is about it. Actually I had
25 forgotten about it until we were in the jury court Monday.

1 Q Do you remember, hearing about it again, did it bring
2 back any of your thoughts or feelings from when it
3 originally happened back in 2014?

4 A I did not, I guess, pay close enough attention of the
5 details at the beginning. It is kind of like the deaths
6 in Charlotte. I know that some people were killed and
7 that basically it. I don't know the details of it, it is
8 basically just in passing that I heard.

9 Q Okay. I appreciate that. Going back to one of the
10 other things that the Judge talked to you about was the
11 possibility of three different verdicts in the first phase
12 of this case. And those are guilty, not guilty, guilty
13 but mentally ill and not guilty by reason of insanity.
14 And I just want to make sure, for purposes of our
15 conversation, that, three of those, the verdicts of
16 guilty, guilty but mentally ill and not guilty by reason
17 of insanity, that would mean that you as a Juror believed
18 that the person had done the act. In the case of a
19 murder, you would believe that they had done the killing
20 that constituted the charge of murder. Does that make
21 sense to you?

22 A Yes.

23 Q Okay. And I just want to try to, I just want to know
24 your feelings about, in a situation where you believe that
25 somebody had committed a killing of another person and

1 they were, their defense was that they were not guilty by
2 reason of insanity. Does that strike you as problematic
3 at all because there are people would say that sort of
4 sounds like a excuse. Do you feel as though you would
5 have a hard time considering that verdict of not guilty by
6 reason of insanity in the case where you knew that
7 somebody had killed another person?

8 A If I had the correct information I am sure, through a
9 professional, would explain those things to me then I
10 would go by what they said. I am not a physician but I
11 would go by what, I guess what a physician would say or
12 whoever would be the professional and I would, my thoughts
13 would be based on what they say.

14 Q I understand that and I appreciate that. But you,
15 personally, don't have any opposition to considering that.
16 It doesn't sound to you like an excuse or anything like
17 that?

18 A No.

19 Q Thank you. And as the Judge said to you, this case
20 involves the allegation of five counts of murder. And
21 five counts of murder of children. And this is sort of
22 just about, the question I want to ask you is ultimately
23 about how you feel about punishment, your views about
24 punishment. And in thinking about a case where somebody
25 is found guilty of five counts of murder and this is the

1 murder of children, and as the Judge said murder is the
2 malicious intentional killing of innocent people and in
3 this case children. I just want to know how you feel
4 about the death penalty as being the only appropriate
5 punishment for somebody who is guilty of the murder of
6 five children?

7 A I guess by the Judge's guideline that was set before
8 me and the Defendant met all the criteria for the death
9 penalty, if that is what it needs to be or if it met the
10 criteria to be life without parole, once I was satisfied
11 in my mind that, the criteria was met then I would have no
12 problems saying it is death penalty or life without
13 parole.

14 Q Okay. And I take your word for that and I believe
15 that. I guess, what I am really interested in and it may
16 be just me not asking the question correctly. Do you
17 personally, I know you understand the law and you would
18 follow the law, but do you personally have a feeling, a
19 person who maliciously kills five innocent children, do
20 you have a personal reaction that, yes, that is either one
21 punishment or the other, just in your mind?

22 A I guess in a way, yes. If you hear something and say
23 that person did it and you didn't get all the information
24 you can jump to that conclusion. But once you get the
25 facts, then get educated on the situation then you would

1 form, I guess, another opinion.

2 Q And I greatly appreciate your honesty in that. And I
3 think a lot of people feel that way, the immediate
4 reaction would be death and that is totally fine. Based
5 on just your own feelings, even though that that would be
6 your initial instinct, the death penalty would be
7 appropriate, can you think of the possibility of life
8 without parole for that same person or is it always death
9 for you or do you think, no, it is not always.

10 A I have to look at life being a precious thing. And
11 trying to take somebody's life or me making a decision of
12 somebody's life would be hard for me to do. But once
13 again I would do it if it is in the guidelines of what the
14 Judge says. But I would, the only time that I would want
15 to take somebody's life is in defense for me or my family.
16 But other than that I am not, I don't want to be able to
17 be, kind of getting mixed up on my words.

18 Q That is fine, you are doing perfectly.

19 A Okay.

20 Q Whatever you say is the right answer.

21 A Right, yes. But, you know, once again if it is
22 within the guidelines of the Court that person is guilty
23 and he meets that criteria then I would have no problems
24 if it is the death penalty.

25 Q And I appreciate that. As sort of a general

1 question, are there cases that you think, categories of
2 cases that you think that death should be an automatic
3 penalty or do you think that an automatic death penalty is
4 never appropriate?

5 A Well I guess it just depends on the situation. If
6 someone is found guilty of murdering someone then I would,
7 then that category would be one for the death penalty.

8 Q Okay. Automatic or just possible?

9 A Possible.

10 Q I understand. I want to run through a few things
11 with you regarding how jurors are required to come to
12 their decision in a penalty phase in a Capital case. If I
13 say anything that doesn't make sense to you just stop me
14 because sometimes I don't say it all that well. One thing
15 that is really important for people to understand is that
16 in South Carolina the death penalty is never required in
17 any case. Does that make sense to you?

18 A Yes.

19 Q The law is satisfied with the penalty of life without
20 parole in any case, even the worse case you can
21 possibility imagine. Death is never required. Does that
22 ring true that it should be that way?

23 A Does it sound like it to be true to be that way.

24 Q Does it sound appropriate that that is the law?

25 A Well, is that the law?

1 Q It is, yes sir.

2 A Okay, then I would go, yes.

3 Q And these, the things that I am telling you are the
4 law but really what I am interested in is whether or not
5 you think that that makes sense, that it makes sense to
6 you that death is never required in any case. Does that
7 make sense to you, that we wouldn't make it an automatic
8 punishment, that we would first wait to examine things
9 beyond just the crime?

10 A Yes.

11 Q Okay. And the way that, what happens in a penalty
12 phase, as the Judge told you, is the prosecution would
13 present to you what is called aggravating evidence and
14 that would be evidence that they would be offering to you,
15 it would have to be proved unanimously to all the jury's
16 and there would be reasons that they would be suggesting
17 or grounds for you to vote for death. Does that make
18 sense?

19 A Yes.

20 Q And then the Defense would present to you what is
21 called mitigating evidence. And that mitigating evidence
22 is just a term that means any reason to vote for a
23 sentence of life without paroled. Does that make sense to
24 you?

25 A Yes.

1 Q And there is no burden of proof for mitigating
2 evidence, meaning that the Defense doesn't have to present
3 it to you to a certain level and also there is no
4 requirement of unanimity in a finding of mitigation
5 meaning each Juror has the right to find mitigation in
6 whatever they see in the case. And they don't have to
7 agree on it. And you might find that one Juror says, I
8 felt it was mitigating that the Defendant had a good
9 relationship with his father. And that is a reason that I
10 am going to use to vote for life. Does that make sense to
11 you?

12 A Yes.

13 Q And another Juror might say that they felt that,
14 based on the evidence, that the Defendant has a mental
15 health problem and I am going to vote for life for that
16 reason. And those two jurors may disagree but each of
17 them has the right to use that one piece of mitigating
18 evidence as a reason for them to vote for life.

19 A Right.

20 Q Because each individual Juror finds mitigation and
21 places the value that they want on each piece of
22 mitigation. Does that make sense?

23 A Yes.

24 Q And it is also important that I say that mitigation
25 is not, it is never offered as an excuse or a

1 justification for the crime that you would have found the
2 Defendant guilty of. It doesn't have to have anything to
3 do with the crime. It could be his character, his
4 background, the unique attributes of him as a person,
5 anything. Does that make sense?

6 A Yes.

7 Q All right. The law also allows jurors to vote for
8 life without parole for any reason, no reason and based on
9 mercy alone. So any reason would be like one of those
10 mitigating factors that we talked about, the Judge talked
11 about or something like he had a good relation with his
12 father. No reason means you can just say, I have heard
13 all the evidence, I have considered and in this case I am
14 not voting for the death penalty, I am voting for life
15 without parole. You don't have to explain that or justify
16 that to anybody. Does that sound good to you?

17 A Yes.

18 Q And then mercy alone is that, you could hear all the
19 evidence, consider all the evidence and say, I am just
20 deciding to vote for life without parole because I believe
21 that mercy is appropriate in this case. Does that sound
22 fair to you and appropriate that a Juror would have that
23 power and authority in a case like this?

24 A Yes.

25 Q Okay. When it comes to, and I said, jurors find

1 mitigation for themselves and they don't have to agree.

2 But when it comes to the ultimate decision of whether you,
3 as a Juror, vote for the death penalty or you vote for
4 life without parole, the law says that is an individual
5 moral judgment. And it would be something as profound, as
6 important in your life like your decision about which
7 faith to follow in your life. And I would assume that
8 individual moral judgments that you have made in your
9 life, you expect other people to respect those because
10 that is the decision that you have made for yourself
11 regarding some important issue in your life.

12 A Yes.

13 Q And you would respect other people's individual moral
14 judgments even if you disagreed with them or thought that
15 they weren't, didn't make sense?

16 A Yes.

17 Q And there is that mutual respect between people that
18 is very important, do you agree with that?

19 A Right.

20 Q And the Supreme Court of the United States has said
21 that deliberations in Capital cases--

22 MS. MAYES: Objection, Your Honor. At this point, I
23 believe it is just narration, not to the form of the
24 question.

25 THE COURT: Rephrase that question for me, please,

1 because it did get kind of lengthy.

2 MR. SECOR: I am sorry.

3 THE COURT: That's okay.

4 Q I don't mean to be keeping you longer. I am just
5 going to go onto one other issue. And that is that, in
6 cases of such importance where a person lives or dies as a
7 result of a trial, the law anticipates that twelve people
8 may not all arrive at the same individual moral judgment
9 on penalty. Does that make sense to you?

10 A Yes.

11 Q And because of that it is okay to agree to disagree
12 in the final decision.

13 A Yes.

14 MS. MAYES: Objection, Your Honor, we covered this
15 yesterday.

16 THE COURT: We covered it this morning. Sustained.
17 Keep going.

18 MR. SECOR: May I take that up when we are done with
19 this Juror?

20 THE COURT: Yes, absolutely.

21 Q One other thing I would tell you, Mr. Gore, that once
22 a person arrives at their individual moral judgment of
23 what the appropriate punishment that they think is right
24 for the case, they may not abandon their own individual
25 moral judgment, they may not be bullied out of it. They

1 are required by law to ensure that their individual moral
2 judgment about punishment is what is reflected in the
3 courtroom when the sentence is announced. Does that make
4 sense to you?

5 A Yes.

6 Q I appreciate your time and honesty very much.

7 THE COURT: All right, Ms. Mayes.

8 EXAMINATION

9 By Ms. Mayes:

10 Q Good afternoon, Mr. Gore. My name is Suzanne Mayes,
11 as a Deputy Solicitor or Prosecuting Attorney in this
12 case, we represent the State. So I just have a few
13 questions for you to follow up with. When you first came
14 in the Judge informed you of the options. And in this
15 case, if it were to get to this second phase of the trial,
16 at that phase you would, as a Juror, would have the option
17 of life without parole, meaning the Defendant would never
18 get out of prison or the option of the death penalty. Are
19 both of those decisions that you could consider in this
20 case?

21 A Yes.

22 Q And after all of the evidence is heard, if you felt
23 that the death penalty was appropriate, after
24 consideration of all the aggravating factors and
25 mitigating factors, is the death penalty a sentence that

1 you could impose?

2 A Yes.

3 Q And there would be a sheet of paper, ultimately, that
4 you and the eleven other jurors would have to sign if it
5 was determined that the death penalty was appropriate.

6 And you would need to sign your name to that paper,
7 ultimately being a death verdict. Is that something that
8 you could do?

9 A Yes.

10 Q And just as well, the Judge explained that there
11 would be aggravating factors as well as mitigating factors
12 that could lead to a decision of life without parole. Is
13 that also a decision that you could make after weighing
14 all mitigating and aggravating factors?

15 A Yes.

16 MS. MAYES: Nothing further for Mr. Gore, Your Honor.

17 THE COURT: Very well. Anybody need to be heard?

18 MR. YOUNG: No, Your Honor.

19 THE COURT: Very well. Mr. Gore, you are going to be
20 deemed by the Court as a qualified Juror. There is
21 qualified and there is not. Now, from this point you are
22 still going to remain under oath. So there are several
23 things I need you to promise you will live up to. Don't
24 talk about the case, somebody inquires say Judge Griffith
25 says do not talk about the case. Stick with that. Don't

1 watch media reports, don't do any independent research. I
2 want you to be influenced and make your decision by solely
3 what you hear in this courtroom, not something on the
4 street corner, outside, where ever, in the courtroom.
5 Because everybody hears it at the same time. You saw the
6 website when you looked when to come back?

7 A Yes.

8 THE COURT: That is where you are going to look and
9 you are now under the category qualified Juror. I am not
10 sure when I will have you back. It may be mid next week,
11 it may be late next week, it may be the following week and
12 you get to go to Missouri. Keep those plans open unless
13 you get to a deadline, just keep watching that website, it
14 will tell you when to come back. You got any questions?

15 A No.

16 THE COURT: Very well.

17 (Whereupon, the Juror was excused from the courtroom.)

18 THE COURT: Regarding the agree or disagree issue,
19 Mr. Secor, you want to to be heard on that?

20 MR. SECOR: Yes sir, briefly. Your Honor, I believe
21 yesterday the Court specifically permitted the Defense to
22 ask jurors if they could agree to disagree in the penalty
23 phase. I believe Your Honor also said that you
24 specifically liked Mr. Jones description of disagreement
25 or punishment is not a failure which is, was the next

1 thing I was going to say to Mr. Gore.

2 THE COURT: Did you miss our discussion this morning?

3 MR. SECOR: My understanding was that Your Honor said
4 that you didn't like those questions but you were not
5 going to prohibit us from asking them.

6 THE COURT: I thought y'all were going to follow my
7 suggestion and stay away from it. Mr. McGuire, to his
8 credit, didn't go anywhere close to it. Those questions
9 are problematic because I think it is going to put us back
10 in the position of the jurors are going to ask some
11 questions. I am really vigorously telling you to stay
12 away from it and ask them, can you stick by your moral
13 judgment, you are going to respect somebody else's. I
14 think that is a fair question both ways. I would really
15 want to stay away from agree to disagree because then that
16 is just, to me, creating problems for the Court. So you
17 cited exactly what I said yesterday, I am learning as I am
18 going and I am just thinking that is a problem for me.

19 MR. SECOR: I didn't mean to be contradictory. And I
20 just would state, of course, do what Your Honor says. But
21 in terms of protecting Mr. Jones, I just need to know
22 whether or not we are being prohibited from asking those
23 questions.

24 THE COURT: Well, I mean, I think part of the
25 semantics, the questions submitted by the State, in my

1 opinion, reached some similar responses. The questions
2 proposed by the State would seem to go to those same
3 issues. Do you understand as a Juror you have the duty to
4 reach your own decision on that issue. And then the
5 follow-up, do you understand that the jury can consider
6 and respect the views of the other jurors on those
7 decisions. And can you do that. Will you live up to
8 that. That is kind of how the State suggested and any
9 question along those lines I am good with. So this is a
10 fluid situation because, if I say absolutely don't ask it
11 and y'all reword it and then, well, that is not exactly
12 what was said, don't use these words. So my ruling is, I
13 don't want y'all to ask a question that is going to be
14 potentially elicited, what happens if we don't agree. I
15 don't want to be, whatever form that comes back in. I
16 think that is the best ruling I can do. I am not going to
17 tell you not to do it. If the jury ask a question again
18 then I am going, I don't know exactly how to rule on you
19 can't use these words. I am kind of, I don't want to tie
20 your hands too much. But you have got to make your
21 decision, another Juror has got to make their decision.
22 Y'all have got to respect one another, you can do that.
23 If someone is being bullied you report that to the Court,
24 pass out a note. Sure. I am good with all of that. Is
25 that fair enough?

1 MR. SECOR: Yes, sir. I would just say that the
2 testimony and evidence data from the Capital jury projects
3 shows that there is a significant likelihood that jurors
4 in Capital cases are intermediated or bullied into giving
5 up their individual moral judgment. And that is the--

6 THE COURT: I don't mind a question to that, you are
7 not going to allow someone to cause you to band your
8 position. I am perfectly fine with that.

9 MR. SECOR: I just think that, I think the biggest
10 issue is that jurors are concerned that they have to be
11 unanimous. And the Juror that may not be in agreement
12 with the majority can be talked to abandon their
13 individual moral judgment if they believe that the
14 requirement is unanimity and in South Carolina the
15 requirement is not unanimity.

16 THE COURT: What about this. You have got a
17 question, you understand you cannot be forced to abandon
18 your decision, your opinion.

19 MR. SECOR: Yes, sir.

20 THE COURT: Does that question help you. I think
21 that is an accurate description of what you are
22 describing.

23 MR. SECOR: It is, yes sir, yes sir. I just, I
24 just--

25 THE COURT: Something to those words.

1 MR. SECOR: Yes, sir. And obviously if I misstate
2 going forward it is not intentional.

3 THE COURT: That is why I say, if I say exact words
4 and we reword it, I understand.

5 MR. SECOR: Yes sir, thank you.

6 THE COURT: Okay.

7 MR. YOUNG: Judge, can we approach.

8 THE COURT: Yes.

9 MR. YOUNG: We don't need to approach. Your Honor,
10 the attorneys from the Appellate Defense and what we are
11 being told to protect the record is keep asking the
12 question until the Court says we can't. The Court is
13 going to rule that we can that's fine. I just need it on
14 the record.

15 THE COURT: I don't know exactly what you are asking
16 me to say.

17 MR. YOUNG: Agree to disagree, say you can't ask
18 that.

19 THE COURT: I am going away from the words, agree to
20 disagree. Go away from that.

21 MR. YOUNG: The Court's ruling is that we can't ask
22 that.

23 THE COURT: The Court's ruling is do not say those
24 words in any fashion whatsoever.

25 MR. YOUNG: Thank you.

1 THE COURT: Is that good enough?

2 MR. YOUNG: Yes, sir.

3 THE COURT: All right.

4 MR. HUBBARD: Thank you, Your Honor.

5 THE COURT: Y'all are making me beat this dead horse.

6 I am trying to let y'all try the case and get out of here.

7 MR. YOUNG: I appreciate that, Your Honor, and I am
8 not trying to be despondent.

9 THE COURT: Are y'all ready. 172.

10 (Whereupon, Juror 172, Daniel Hall came into the
11 courtroom.)

12 DANIEL HALL, being
13 first duly sworn, testified as follows:

14 CLERK OF COURT: State your name and spell your first
15 and last name.

16 JUROR: Daniel, D-A-N-I-E-L; Hall, H-A-L-L.

17 EXAMINATION

18 By the Court:

19 Q Mr. Hall, you just took an oath to tell the truth.
20 You mentioned in the jury box you had an issue with
21 employment. Let's hear about that?

22 A Yes, sir. I have a couple of letters here. I
23 apologize, when you first asked about self-employment, I
24 knew nothing about the case, I didn't know how long it
25 would take. I set aside a week on my schedule. I

1 actually am the sole owner and operator of a business. It
2 depends solely on me. In addition to that, I am the sole
3 veterinary cardiologist, specialty clinic in Columbia and
4 the only veterinary cardiologist in the Midland's. We
5 have canceled appointments for this week. But it would be
6 a serious impediment to not be able to continue the cases.
7 We typically book up at least a couple of weeks in
8 advance. Fully booked starting on Monday. So I don't
9 think a trial potentially lasting as long as this one
10 would be financially possible.

11 Q Where is your clinic?

12 A It is in Columbia, it is right behind the Sport's
13 Warehouse. The emergency clinic, Piney Grove.
14 Technically 3924 Fernadino Road. Again, I am the only
15 cardiologist there, there is not someone else that can
16 take over my duties.

17 THE COURT: I want to see the letter that he handed
18 up?

19 MR. HUBBARD: I don't need to see it, Your Honor, if
20 he is the only cardiologist in the Midland's, I think that
21 says a lot.

22 THE COURT: I have been to his clinic, not knowing it
23 was yours. I have been to that business and I have my
24 pets treated there and received great treatment, I had a
25 Bull Dog issue there. Thank you for coming. You are

1 excused, self-employed.

2 JUROR: Thank you.

3 THE COURT: The next one is number 312.

4 (Whereupon, Juror 312, Laura Nielson came into the
5 courtroom.)

6 LAURA NIELSON, being
7 first duly sworn, testified as follows:

8 CLERK OF COURT: State your name and spell your first
9 and last name for the record.

10 JUROR: Laura, L-A-U-R-A; Nielson, N-I-E-L-S-O-N.

11 EXAMINATION

12 By The Court:

13 Q I am Eugene Griffith, I introduced myself at one time
14 or two to you. You now have been placed under oath. You
15 work at Pinner Clinic?

16 A No, based out of Wilson, North Carolina.

17 Q There is a clinic over in Peak, South Carolina
18 operated by the Pinner Family. I want to make certain you
19 are not connected to that because my Court Reporter's
20 daughter-n-law works there.

21 A I don't work there.

22 Q You are under oath and need truthful answers from you
23 and candid answers. Okay?

24 A Yes, sir.

25 Q Some questions that are going to be asked and the

1 lawyers get a chance to ask you, they are looking, they
2 are asking for some of your opinions like what do you
3 think about this. So really no wrong answer. Candid and
4 honest, is what they are looking for. Now, have you had
5 any communication about the case?

6 A No, sir.

7 Q Anybody try to communicate with you about the case?

8 A No, sir.

9 Q Have you seen any media reports that have been going
10 on, whether before, three or four years ago, recently,
11 this week?

12 A When it first happened, I was reading the newspaper
13 daily so I read a lot then. Recently nothing.

14 Q Okay. You read a news report about four years ago?

15 A Correct.

16 Q Now, has that caused you to form an opinion about
17 what happened in this case?

18 A Oh, yes sir.

19 Q Do you have an idea of what happened from the news
20 accounts?

21 A I have an opinion formed.

22 Q Okay. Now, you read, I gave you a witness list, if
23 you know those folks. I also gave you the three types of
24 jurors and I gave you that explanation, very brief and
25 broad instruction on the law describing how a Capital case

1 goes to trial, guilt or innocence, that determination has
2 got to be made. If it is made, if it is guilty then it
3 goes to the penalty phase. Broad brush, have you studied
4 the three types of jurors we typically find?

5 A Yes, sir.

6 Q And did you understand that and my explanation that I
7 read to you?

8 A Yes, sir.

9 Q Have you, did you describe yourself as one of those
10 three types of jurors?

11 A Type one.

12 Q You are type one?

13 A Yes, sir.

14 Q Very well.

15 THE COURT: Any problem?

16 MR. YOUNG: No, Your Honor.

17 THE COURT: Thank you for coming. You are done.

18 JUROR: Thank you, sir.

19 THE COURT: Okay.

20 (Whereupon, the Juror was excused from the
21 courtroom.)

22 THE COURT: They made have to read a little bit.
23 Sometimes they don't have enough time to read.

24 MR. YOUNG: Judge, can we not put multiple copies
25 back there. I know each Juror is coming out one at a

1 time. Can we put eight copies back there.

2 MR. HUBBARD: I think is what is happening, the
3 concern that I have is that if you have it back there they
4 might, that might prompt conversation or at least--

5 THE COURT: I think leave one in the jury room and
6 stagger one here and stagger one there where they can't
7 really talk to each other, they are too far apart. I
8 don't mind doing that.

9 MR. HUBBARD: That is fine with me.

10 THE COURT: I may get them to do that, just put them
11 as far apart where they can't talk.

12 MR. YOUNG: If you tell them not to talk they are
13 going to follow that and we can make copies.

14 MR. HUBBARD: Well, apparently, team two wasn't too
15 good on that, at least one guy wasn't.

16 MR. YOUNG: That was Monday you were talking about.

17 MR. MCGUIRE: Judge, if I could offer a suggestion,
18 maybe it would be helpful. Kind of like, circle, I mean
19 you got one fellow right here--

20 THE COURT: In the hole.

21 MR. MCGUIRE: Be on the, on deck.

22 THE COURT: Is she ready.

23 BAILIFF: No, she needs a couple of minutes.

24 THE COURT: Do you have another place to stage the on
25 deck batter here, do you have another place that they can

1 kind of warm up in the gate.

2 BAILIFF: We have got them reading at the table in
3 front of the grand jury room.

4 THE COURT: That is.

5 BAILIFF: Yes, sir.

6 THE COURT: All right, why don't you bring another in
7 here, sit there reading and put number two out there, put
8 them in two places.

9 BAILIFF: Okay.

10 THE COURT: We will take a break while the next one
11 is reading.

12 (Whereupon, a short break was taken.)

13 THE COURT: Bring the next one.

14 KELLY STONE, being
15 first duly sworn, testified as follows:

16 CLERK OF COURT: Please state your name and spell
17 your first and last name.

18 JUROR: Kelly Stone, K-E-L-L-Y, S-T-O-N-E.

19 EXAMINATION

20 By The Court:

21 Q Good afternoon, Ms. Stone. I introduced myself to
22 you for the third time, my name is Eugene Griffith and I
23 am presiding Judge of the case. I talked to you Monday, I
24 talked to you a moment ago and I asked y'all to take an
25 oath to promise not to discuss the case with anybody. Has

1 anybody discussed the case with you?

2 A Anyone who has figured what I might be a part of,
3 when they would say, oh, I am sorry, I heard on the news.
4 I would say, I don't know anything about it, I can't talk
5 about it.

6 Q And that is a very appropriate response. Now, there
7 has been media reports back when this thing first
8 happened, media reports, some last fall, earlier this
9 winter, this week. Have you, it is almost impossible not
10 to have seen some of it. But have you seen any of those
11 media reports?

12 A If I have I did not recall. I pay more attention to
13 National and International news and I probably need to pay
14 more attention to things that are happening locally.

15 Q Did you hear about the teachers going to Columbia?

16 A I did hear about that.

17 Q Oh, okay. Congratulations on that, I hope that works
18 out for the teachers. My daughter is studying school
19 psychologist, education. Teachers are very much
20 overworked. My heart goes out to you, I am very aware of
21 this. Now, I gave you a list, I read the instructions to
22 you. Did you, let me ask this, let me go back and ask
23 about the media attention. Have you formed an opinion on
24 this case in any way, based on whatever you have heard
25 from whatever source, if anything?

1 A Well, all that I know is--

2 Q Part of it I told you Monday.

3 A Yes.

4 Q So I can't say you don't know anything about the
5 case. I told you some of it?

6 A I will be honest, mainly what I know is what you
7 shared.

8 Q So you realize those are allegations made by the
9 State. That is what an indictment is, we are accusing Mr.
10 Jones, he is presumed innocent under our law?

11 A Yes.

12 Q All the way through. Do you understand that?

13 A Yes.

14 Q And you also heard my instructions moments ago about
15 a little bit about the procedure and the process that
16 trials go through and it is my job to kind of manage the
17 trial through that position and the jury gets to consider
18 at the very end. Do you understand that?

19 A Yes.

20 Q Did you understand those instructions?

21 A Yes, sir.

22 Q Now, understanding those, did you review the list of
23 potential witnesses?

24 A I did.

25 Q Let me go back and ask you this, I should have asked

1 you this first. Your school duties, if you are selected
2 as a Juror, could you serve on jury duty, would it impact
3 any of your personal plans, any medial issues you may
4 have, like some people may have a procedure done that has
5 been scheduled or whatever. Do you have anything going on
6 personally with yourself that if you were selected as a
7 Juror that you wouldn't be able to serve adequately?

8 A Just inconvenient. Just have some things already on
9 the schedule for the summer.

10 Q Okay.

11 A For my children, I have elementary age children. And
12 so scrambling for care for them which would be costly for
13 me.

14 Q Do they go to Lexington One where you teach?

15 A They do.

16 Q And when do y'all get out?

17 A I think my last day is the 6th or the 7th.

18 Q Of June?

19 A Yes, sir.

20 Q Okay. And my guess is the trial may go, starts, it
21 may go about then so it may be that we are done by the
22 time school lets out. Would that be a help to you or a
23 hinderance to me?

24 A That would be a help. My girls are going to be doing
25 competitive swimming and morning practices will begin June

1 11th and if I can't take them they just will not get to
2 participate and hopefully I will get my almost \$300.00
3 dollars back.

4 Q Okay.

5 A So that is another concern.

6 Q My kids were involved on swim teams. Something like
7 that?

8 A Golden Hills Country Club.

9 Q Fair enough. It is good to get them out. Now, did
10 you read over the list of potential witnesses?

11 A Yes, sir.

12 Q Have any connection with any of those folks?

13 A Well, I recognize some of the names from Saxe Gotha.
14 I have been with Lexington One off and on since 1999. And
15 I am a literacy coach at Gilbert Primary School and have
16 taught at Redbank Elementary, just down the road from Saxe
17 Gotha and was a literacy coach there and had some
18 connections, dealings with like Beth Hook at Saxe Gotha
19 only in 2009, 2010. For the district I was a literacy
20 specialist so I had to travel around to all the elementary
21 schools.

22 Q Did you ever have any literacy with any of these
23 kids?

24 A No, I did not. Literacy coaches work with the
25 teachers and with the students. We provide support for

1 the curriculum and instruction.

2 Q I am happy to know a little bit about that. My
3 family, not me, they are in education. My ex-wife was a
4 principal and so she educated me on what a literacy coach
5 did. Having a good literacy coach helps the scores.

6 A Right.

7 Q Very much so.

8 A So I recognize her name and I had been--

9 Q That is Ms. Hook, is that right?

10 A Yes, Ms. Hook. So 2009 and '10 we would meet, we
11 would go to the school once a month and observe teachers
12 on the grade level we were working with and so we did meet
13 with her every once in a while just to kind of talk about
14 things going on at the school and what we noticed. So
15 just professionally back then. I mean, she may not
16 remember who I am. We do run into each other, things that
17 we both are at professionally within the district. And
18 then Jonathan Stone, I just recognize his name from taking
19 some classes recently. So in 2017, '18.

20 Q Have a little professional connection with him?

21 A Yes, sir. And i don't know him personally and he may
22 not remember my name but he would recognize me, we took
23 those classes. I think he is a kindergarten teacher at
24 Saxe Gotha.

25 Q Okay. What grade did you teach before you became a

1 literacy coach?

2 A I taught kindergarten through third grade.

3 Q Any other connections with any of the list?

4 A I just recognized a few other names from Saxe Gotha,
5 just Janet Ricard, Ann Wise and, I just recognize names.

6 I think Janet Ricard is the lead interventionist over
7 there, I think, which would mean that I would have been in
8 the same circles. I was an interventionist the past two
9 years.

10 Q You would have an IEP meeting with them or something?

11 A I don't think an IEP meeting but similar meetings and
12 trainings.

13 Q Now, would your relation with any of those cause you
14 an issue, sitting as a Juror, knowing that the could
15 potentially testify and say, this is what I saw, this is
16 what I did. Would that create an issue for you being fair
17 and impartial to either side knowing this. I am going to
18 call them, because there are different facets of
19 colleagues, would that create an issue for you being fair
20 and impartial?

21 A No, sir.

22 Q Now, I gave you the instruction I read thirty minutes
23 ago or better on the broad instruction of the law, the
24 procedure and some of the definition of murder and the two
25 phases of a Capital case potentially, described for you,

1 aggravating, mitigation, all of that sort of thing. And
2 also gave you, before you came in, types of potential
3 jurors. Did you read that?

4 A I did.

5 Q And obviously, a literacy coach, you are a good
6 reader. Do I need to explain anything in there for you,
7 do you understand?

8 A Yes, sir.

9 Q Type one, its fashion, type two, type three?

10 A Yes.

11 Q Can you identify yourself as any one of those three
12 types? This is an opinion.

13 A Right, I realize. I have conflicting opinions, I
14 must say, just within myself. I would say in the past, I
15 definitely was for the death penalty. And now I could
16 see, you know, where life in prison could be a good choice
17 but I cannot say one way or the other at this time, which
18 one I would go towards.

19 Q Would that mean you are a type three?

20 A I guess.

21 Q Okay. And you say you guess, explain that to me in a
22 little bit more?

23 A I guess I would say, as I have grown in my faith as a
24 Christian, that I feel a little more strongly towards life
25 in prison and not so much for an eye for an eye, a tooth

1 for a tooth. So just know that there can be grace and
2 redemption but, yes, there should still be consequences an
3 punishment for what he has done. But just not, that is
4 why I said, I am not hundred percent sure which way I go.

5 Q I am going to give you some more legal definitions or
6 examples of things. So in the guilt or innocence phase,
7 because of the plea entered by Mr. Jones, he has entered a
8 plea of not guilty by reason of insanity so that brings
9 the definition and proof of insanity and mental things,
10 issues, descriptions or whatnot, kind of in the play in
11 the trial. And so because of that plea he is faced with
12 four potential types of verdicts, potentially. And there
13 are many defenses to crimes and I am going to read those
14 to you and come back and ask you, can you follow the
15 instructions if they were applicable because in the big
16 picture right now we don't have any facts. We are a broad
17 picture with the law knowing that they are going to
18 present witnesses and testimony of different things, a
19 wide variety of things will be coming in the trial, to the
20 Court which is me, and to the jury. But potentially, some
21 of these aren't applicable. Potential defenses can be,
22 there was an accident, involuntary intoxication,
23 self-defense, necessity, insanity, guilty but mentally
24 ill, defense of habitation, entrapment, duress and alibi.
25 Those are potential defenses that the testimony could be

1 presented on. And so one of those defenses has been
2 entered by Mr. Jones. So I ask you, understanding that
3 testimony, the State has got to prove its case beyond a
4 reasonable doubt. You will hear other testimony regarding
5 one or more of those defenses. That creates for the first
6 phase to the jury four potential verdicts. It would be
7 guilty, guilty but mentally ill, not guilty by reason of
8 insanity, not guilty at all. Those will be options on the
9 verdict form for the jury to consider and have to reach a
10 unanimous verdict on. Can you, if given the appropriate
11 instruction on the law, consider all the facts and
12 circumstances of the variety of testimony and give
13 meaningful consideration to any and each of those
14 potential verdicts. Can you do that?

15 A I think I can. The only one that I am probably a
16 little more skeptical of is the plea of insanity.

17 Q And why are you skeptical on that one?

18 A Well, I know very little about this case but I can
19 infer--

20 Q You are giving me the answers I am looking for. I
21 need to know what you are thinking?

22 A Right. With the crime that was committed, I don't
23 know, based on being jealous or just being in a rage and
24 that emotion just overtaking somebody and just wanting to
25 get revenge or, you know.

1 Q Whatever the circumstances are.

2 A And so I think it would be easy to say a plea of
3 insanity. And I don't know that, my brother-n-law, my
4 sister is divorced and my brother-n-law physically and
5 emotionally abused my sister. And there have been times
6 since they have been divorced that I have been worried
7 that he may do something to hurt them because in his mind,
8 it is all her fault, everything that has happened and he
9 is not taking any responsibility for his part and what has
10 happened to their family. And because of that and he has
11 that mentality, he continually tried to punish my sister
12 and their children. And there have been times that I have
13 been concerned that he would do something to her or those
14 children to get back at her because he wants to show her,
15 you know, you did this, it is not my fault, you made it
16 happen. And so that is why.

17 Q And all jurors come to the court as they come and you
18 are describing something to me very accurate. I have seen
19 examples of that in my past. Would your personal
20 experience of your sister and your family, would that
21 impact your ability to be fair and impartial in this
22 trial, considering there may be some family dynamics
23 testimony. Because that is why you are describing, family
24 dynamics?

25 A It could be difficult just because of what has

1 happened to my family, has taken place for five years when
2 my sister finally took the courage to leave her now
3 ex-husband and still continues to affect her family. I
4 know she is not innocent, she also has issues. But it has
5 been difficult for my family and so I am not saying that
6 it might not would bring up some things, some feelings.

7 Q Let me ask you this. You work for children and you
8 talked about your sister and her children, you have got
9 children. This case involves children. That subject
10 matter will be discussed and it is quite obvious that
11 subject matter will be very difficult, it is going to be
12 unpleasant and perhaps even graphic. Would that subject
13 matter make it difficult for you to be fair and impartial
14 to both the State and Mr. Jones?

15 A It might would be difficult.

16 Q But could you still be fair and impartial to both
17 sides?

18 A I would do the best that I can.

19 Q All right. I am going to give you some factors and
20 some things. And I am going to ask, my last few questions
21 and then the lawyers get a chance to talk to you. If
22 guilt is found, the first phase, guilty or not guilty.
23 And one of those four verdict forms. If it is not guilty
24 or not guilty by reason of insanity unanimously the case
25 is over. If it is guilty but mentally ill or guilty the

1 case goes on to stage two or phase two and then the
2 punishment is decided by the jury. And jury has got two
3 choices, life or death. Mitigating factors are reasons
4 that jurors can assign or vote for life. All right.
5 Potential mitigating factors, the Defendant has no history
6 of any type of use of violence against other people. The
7 murder is committed by the Defendant while he was under
8 the influence of mental or emotional problems. The murder
9 was committed while, I am sorry, the victim was a
10 participant in the Defendant's conduct or consented to the
11 act. All of these are applicable, I will read all the
12 mitigating statutory factors to you. The Defendant was an
13 accomplice in the murder by another person and his conduct
14 participation was lower. The Defendant acted under duress
15 under the domination of another. The capacity of the
16 Defendant to appreciate the criminality of his conduct or
17 to conform his conduct to the requirements of law was
18 substantially impaired. The age or mentality of the
19 Defendant at the time of the crime. The Defendant was
20 provoked by the victim in committing the murder. The
21 Defendant was below the age of 18, that would be one that
22 wouldn't be applicable. The Defendant had mental
23 retardation at the time of the crime. And then there are
24 other non-statutory mitigating factors such as early
25 childhood, how they were raised, anything such as that.

1 Those are mitigating factors. Those are considered no
2 matter when they are presented in trial, they can be
3 considered by the jury as reasons to impose the life
4 without parole sentence. Now, if we get to the sentencing
5 phase, will you be able to consider my instructions on the
6 law and give meaningful consideration to both verdicts,
7 apply the law as I instruct it, consider mitigating
8 factors, aggravating factors, defenses potentially, any
9 testimony whatsoever, apply the law as I instruct it and
10 act fair and impartial in this trial?

11 A Yes, sir.

12 Q Now, do you have any religious or moral beliefs which
13 would prevent you from considering the death penalty?

14 A Yes, sir.

15 Q Now, you realize the death penalty is not an
16 automatic once you get into the sentencing phase, not
17 automatic. Two choices, one is not automatic and the
18 other one is not automatic. The jury decides between the
19 two. Do you understand?

20 A Yes.

21 Q Do you have any religious or moral beliefs which
22 would prevent you from imposing life without parole
23 sentence?

24 A No, sir.

25 Q Knowing that life without parole, they spend the

1 balance of their life in jail, that is it, no chance of
2 release?

3 A Right, that is how it should be.

4 Q Okay. Mr. Young, is it you?

5 MR. YOUNG: Can we approach real quick?

6 THE COURT: Yes, come on.

7 (Whereupon, a bench conference was held in the
8 presence of the Juror but out of the hearing of the
9 Juror.)

10 Q Just a couple of more questions for me. I want to go
11 back over a couple of things just to make certain, what I
12 am trying to, I want to make certain you are comfortable
13 because you are connected with a few of the witnesses and
14 they are not large witnesses but they will be presented,
15 they may or may not. But the fact that you work with kids
16 every day and elementary kids, the victims of this are the
17 age of the kids you are involved with and the testimony,
18 the pleasantness is pretty high. I want to make certain
19 that you feel comfortable dealing with this subject matter
20 because if you are not I don't want to put you in that
21 position and I can see you kind of hesitate right now and
22 you are a little bit nervous in talking to you. I want
23 your honest opinion because it is going to be very
24 graphic. Is it going to put you in a difficult position?

25 A It would be hard.

1 Q All right.

2 THE COURT: I am going to excuse her. I am
3 comfortable that this is not going to be a fair place to
4 put her.

5 MR. YOUNG: Yes, sir.

6 THE COURT: I think you have done wonderful, okay.

7 JUROR: Okay.

8 THE COURT: My sister teaches too. She is a
9 substitute. Good luck.

10 JUROR: Thank you, sir.

11 (Whereupon, the Juror was excused from the
12 courtroom.)

13 THE COURT: Okay. She was about to cry right there,
14 I was looking at her, that impacted my decision there.

15 MR. HUBBARD: Absolutely.

16 MR. YOUNG: I could hear it.

17 THE COURT: She was trembling.

18 MR. YOUNG: Right.

19 THE COURT: Who have we got next.

20 (Whereupon, Juror 283, Sarah McNeal entered the
21 courtroom.)

22 SARAH MCNEAL, being
23 first duly sworn, testified as follows:

24 CLERK OF COURT: State your name and spell your first
25 and last name for the record.

1 JUROR: Sarah, S-A-R-A-H; McNeal, M-C-N-E-A-L.

2 EXAMINATION

3 By The Court:

4 Q Good afternoon, Ms. McNeal.

5 A Good afternoon.

6 Q My name is Eugene Griffith for the third time. Good
7 afternoon.

8 A Good afternoon.

9 Q I ask you to take an oath Monday and part of that
10 oath was please do not discuss the case among yourself or
11 anybody, has anyone tried to discuss the case with you?

12 A No.

13 Q Have you discussed with anyone?

14 A No.

15 Q There has been multiple reports, media, social media,
16 all sorts of information out there, both when this
17 incident happened, last several months, last several days
18 also. Understand you didn't take an oath until Monday but
19 have you seen anything in the media at any time?

20 A No, because of my job, I don't have access to it.

21 Q What do you do?

22 A I am office assistant, finance assistant and book
23 store manager for Right Direction Church International.

24 Q Okay. Now, did you understand the instructions that
25 I gave that I read earlier?

1 A Yes, sir.

2 Q And that is kind of a broad spectrum picture of some
3 of the criminal procedures in South Carolina and
4 definition of murder and whatnot and explanation of a
5 regular job. But particularly kind of an explanation of
6 how a Capital case proceeds to trial and it is broken into
7 two phases potentially. Did you understand before I gave
8 those instructions?

9 A No, sir.

10 Q Did you understand my instructions when I gave them?

11 A Yes.

12 Q Okay. Now, understand, the only facts that the Court
13 has provided to you is that the State has made accusations
14 by indictments against Mr. Jones. And Mr. Jones is
15 presumed innocent sitting right there, absolutely presume
16 innocent until the State meets its burden of proof beyond
17 a reasonable doubt of proving the elements of the murders,
18 presume innocent. Now, that hadn't taken place, don't
19 have any facts, the State has not presented any testimony.
20 You know that?

21 A Yes, sir.

22 Q The description of something happened four years ago
23 and he is being accused of that. And you understand those
24 indictments are mere notice of telling him, this is what
25 you need to prepare to come into court and to defend

1 yourself against. Do you understand that?

2 A Yes, sir.

3 Q And he has entered a plea of not guilty by reason of
4 insanity. And so there will be testimony in that regard
5 and other things. Did you have an opportunity before you
6 came in to review the witness list as well as the two
7 types, I mean the three types of potential jurors which
8 describe kind in definite terms, but in general, not
9 knowing anything about the facts, but there is a factual
10 finding of guilt. And you have read this three type of
11 Juror sheet?

12 A Yes.

13 Q Did you understand that?

14 A Yes, sir.

15 Q Now, the State proves its case beyond a reasonable
16 doubt. Finding of guilt and goes to the sentencing phase
17 and an aggravating factor is found. Do you have an
18 ability to tell me which type of Juror you might be. And
19 this is where I need candor and opinion. I don't need the
20 answer you think I am looking for because I am looking for
21 candor from you more than anything.

22 A I think one.

23 Q You are one?

24 A Yes.

25 Q You are pretty firm on one?

1 A Yes.

2 Q Anybody shake you off of that?

3 A No, sir.

4 Q Okay. Fair enough. Thank you for coming and most
5 importantly thank you for your patience with the Court.

6 A Thank you. You are free to go.

7 (Whereupon, the Juror was excused from the
8 courtroom.)

9 THE COURT: We will take a break, about five minutes.

10 (Whereupon, a short break was taken.)

11 THE COURT: Bring 213 in.

12 (Whereupon, Juror 231, Tiffany Kent came into the
13 courtroom.)

14 TIFFANY KENT, being
15 first duly sworn, testified as follows:

16 CLERK OF COURT: Please state your name and spelling
17 your last.

18 JUROR: Tiffany Kent, K-E-N-T.

19 EXAMINATION

20 By The Court:

21 Q Good afternoon, Ms. Kent.

22 A Good afternoon.

23 Q I will talk to you starting out and then the lawyers
24 may talk to you. I met you and I introduced myself Monday
25 and a few moments ago and then again right now. Thank you

1 for your patience. A few questions and you are under oath
2 to tell the truth. Some of my questions are very direct
3 and easy to answer, some of them are, I am looking for
4 your opinions so there is really no right or wrong answer
5 to an opinion question and so I want candor and honesty
6 from you. Okay?

7 A Yes, sir.

8 Q That is what the lawyers are doing, they are
9 listening and trying to get to know you. Did you have any
10 communication with anyone about this case since they took
11 the oath Monday?

12 A I just talked to my husband and my mom because she
13 would have to take care of my son if I was picked.

14 Q You didn't talk about the facts of the case?

15 A No.

16 Q Has anyone tried to talk to you about the case?

17 A No.

18 Q You were told to say, Judge Griffith said don't talk
19 about the case. You can blame it on me because I am the
20 one that said it.

21 A I just told them I couldn't talk about it.

22 Q Fair enough. There has been media reports, social
23 media, public media, several years will be four years ago,
24 a few months ago, last week, this week, any time. Have
25 you seen any of the media reports?

1 A I saw something on Facebook either Monday or Tuesday
2 night. But somebody just posted a link about the jury
3 selection starting.

4 Q Now, what I am looking for, is to know if any of
5 those media reports, whatever you read, whatever you heard
6 or whatever you perused, whatever that verb is, have those
7 reviews, perusal, because you know something about the
8 case because I told you something about the case. There
9 is accusations made by the State against Mr. Jones to
10 which he has plead not guilty and presumed innocent. Now,
11 so have you formed any opinion about what happened in this
12 case based on what you have seen?

13 A No, sir.

14 Q Okay. You have an open mind?

15 A Yes.

16 Q I gave you a list of potential witnesses, did you
17 know any of those witnesses?

18 A No.

19 Q You didn't grow up in South Carolina, did you?

20 A I grew up in Greenville.

21 Q Greenville, okay, not in the Midland's?

22 A No.

23 Q Did you know any of these potential witnesses?

24 A No.

25 Q Not connected to them in any way?

1 A No, sir.

2 Q All right. I have gave you instructions on kind of a
3 broad picture of what would be coming, criminal process,
4 criminal procedure a little bit, definition of murder,
5 some definitions of certain aspects of the trial. This
6 being a Capital trial is divided into two phase. Phase
7 one is guilt or innocence, finding of innocence the case
8 is over with right there. The finding of guilt the case
9 goes to phase two when the sentencing option is then
10 available and the one thing that I described to you
11 different is that the jury gets to impose the sentence in
12 a Capital case, not the Judge. Traditionally, a jury
13 trial, finding of guilt, the Judge will impose the
14 sentence. In a Capital case it is kind of different sort
15 of because it is a Capital case. Finding of guilt and the
16 phase two the jury considers mitigating factors,
17 aggravating factor the State has got to prove and then
18 they determine sentence. Now, did you study the three
19 types of potential jurors that I handed out?

20 A Yes, I did.

21 Q Did you understand it?

22 A Yes, sir.

23 Q Can you define yourself, describe yourself to any of
24 those three types, like type one, two or three?

25 A Type three.

1 Q Type three?

2 A Yes, sir.

3 Q Type three, as I understand it, is a person who that
4 doesn't have their mind made up but understands the State
5 has got the burden of proving the guilt beyond a
6 reasonable doubt first. Then that portion of the trial is
7 over with. Stage two then proceeds and there is a
8 presentation of aggravating factors and the State has got
9 to try to attempt one or more of the aggravating factors
10 and then there is mitigation evidence presented
11 throughout. And mitigation factors are factors that
12 jurors can assign a reason to impose a life sentence as
13 opposed to the death sentence. Do you understand that?

14 A Yes, sir.

15 Q Now, because of the plea of Mr. Jones, he has entered
16 a plea of not guilty by reason of insanity, that adds yet
17 another facet to the verdict in the first phase. Okay?

18 A Yes, sir.

19 Q Making that plea that he has asserted one of the
20 affirmative defenses allowed by our law. Now there are
21 other defenses that potentially can be considered. I am
22 going to read out most of them. I am telling you this,
23 the reason I am giving you this kind of broad picture, I
24 have not tailored my instructions to the jury because I
25 give it at the end. Because I haven't heard the testimony

1 either. So until you hear the testimony at the trial and
2 know what is testified to it is virtually impossible to
3 get your instructions on all aspects of the law definite.
4 Because something might be testified to that I haven't
5 anticipated. So I have got to add an instruction on that.
6 So I understand you have studied some paralegal work?

7 A Yes, sir.

8 Q I am guessing you understand some of what I am
9 telling you?

10 A Yes, sir.

11 Q Do y'all do trial work in your office or do you
12 mostly do transactional work?

13 A I am worker's comp. I am the defense side.

14 Q So that is an adversarial process in front of the
15 Commissioner?

16 A Yes, sir.

17 Q It doesn't involve a jury though?

18 A No, our attorneys go there.

19 Q And are you solely focused on worker's comp?

20 A Yes, sir.

21 Q Potential defenses that I may instruct you at the
22 time and my question to you at the end, will you follow
23 that. Okay.

24 A Okay.

25 Q Potential defenses may be accident, involuntary

1 intoxication, self-defense, necessity, insanity, guilty
2 but mentally ill, defense of habitation, entrapment,
3 duress and perhaps alibi. And some of those might not
4 apply at all, not testimony in those, I wouldn't instruct
5 on those things. If there is I may instruct on those.
6 Now, understanding Mr. Jones has entered that plea of not
7 guilty by reason of insanity, that adds an aspect that you
8 would have to consider defenses presented. So potential
9 verdicts in this case could be guilty, guilty but mentally
10 ill, not guilty by reason of insanity and not guilty at
11 all. Can you, after hearing all the testimony in the
12 guilt or innocence phase, considering the State has got
13 the burden of proving the case of murder, I defined to
14 you, they have got to prove that case beyond a reasonable
15 doubt. Can you consider my instructions, all the
16 testimony, whether it be aggravating factors, mitigating
17 factors, whatever it is, apply the law as I am giving it
18 to you, consider these defenses. Can you give meaningful
19 consideration to all four of those potential verdict
20 forms.

21 A Yes, sir.

22 Q Now, if a finding of innocence occurs the case ends
23 right there. A finding of guilty or guilty but mentally
24 ill, the case proceeds to stage two which is sentencing
25 phase. And as I have told you, there are two potential

1 verdicts, I am sorry, results in the sentencing phase, two
2 sentences. Two potential sentences, death, life without
3 parole. No other choices. There is no other sentence in
4 between. It is either life or death. The jury is going
5 to consider that. The jury can consider, there is really
6 no burden of proving something, mitigating factors, jury's
7 can consider mitigating factors that they observe during
8 the trial. Things that they hear about, there will be
9 mitigating evidence presented that you get to consider and
10 you must consider if you follow my instructions properly.
11 So mitigating factors can be that the Defendant has no
12 significant history of prior criminal convictions
13 involving the use of violence against another person. The
14 murder was committed while the Defendant was under the
15 influence of mental or an emotional disturbance. The
16 victim was a participant in the Defendant's conduct and
17 consented to the act. The Defendant was an accomplice in
18 a murder committed by another and his participation
19 relatively minor. The Defendant acted under duress or
20 under the domination of another person. The capacity of a
21 Defendant to appreciate the criminality of his conduct and
22 to conform his conduct to the requirements of law was
23 substantially impaired. The age or mentality of the
24 Defendant at the time of the crime. The Defendant was
25 provoked by the victims committing the crime. The

1 Defendant was below the age of 18. The Defendant had a
2 mental retardation at the time of the crime. And then
3 there are other factors that aren't listed in the statute,
4 you can consider also that can be mitigating factors such
5 as how he was raised, did he have a hard childhood, came
6 from a broken home, anything whatsoever that would cause
7 you to assign a sentence of life as opposed to death is a
8 mitigating factor. Now, the fact that one of the
9 statutory ones that he is under 18 wouldn't apply because
10 he is not under 18 so that is just, that wouldn't count.
11 But anything can be a mitigating factor. This may be
12 potential mitigating factors that you could consider. Can
13 you give meaningful consideration, the State has got to
14 prove an aggravating factor to seek the death penalty,
15 there will be a presentation of mitigating evidence to the
16 jury by the lawyers. Can you give meaningful
17 consideration to all the evidence, whether it be
18 aggravating, a defense, mitigating factor, give meaningful
19 consideration to all of that testimony and evidence and
20 reach a fair and impartial verdict in this case?

21 A Yes, sir.

22 Q Now, do you, you understand that, in the sentencing
23 phase, there are only two choices. Nothing is automatic.
24 Do you have any personal, religious or moral belief which
25 would prevent you from imposing a sentence of death?

1 A No, sir.

2 Q Do you have any religious, moral or personal belief
3 that would prevent you from finding a sentence of life
4 without parole?

5 A No, sir.

6 Q And understanding that life without parole means the
7 balance of your life, no chance of release whatsoever. Do
8 you understand?

9 A Yes, sir.

10 Q Now, a couple of more questions, I should have asked
11 this earlier and I didn't. You got anything on your
12 schedule personally coming up through the month of May
13 because this trial, picking the jury is going slower than
14 I anticipated and may have the jury panel qualified by
15 mid-next week. The trial may start shortly after that and
16 may last a couple of weeks. The month of May may be
17 occupied. Do you have anything in your schedule, personal
18 vacation, somebody in your, spouse, somebody is having
19 medical procedure and you need to be attending to them.
20 Something going on in your schedule to prevent you or
21 impose greatly on your personal time to be a Juror. Is
22 there anything on the horizon for the next few weeks that
23 would create a hardship for you?

24 A None, we just got back from vacation last week.

25 Q So nothing on your schedule?

1 A No, sir.

2 Q Okay. Now, this case, I told you something about it,
3 involves the death of five children. And the testimony is
4 going to be rather graphic and it will be perhaps harsh,
5 it will be very unpleasant at times. And nobody here
6 would disagree with that. It will be difficult to
7 consider some of these things. Is that subject matter and
8 that type of subject matter, discussion of that create an
9 issue for you in being a fair and impartial Juror. Can
10 you consider a subject matter of that type?

11 A It would be hard to listen to it but at the end of
12 the day I would follow your instructions.

13 Q But you could consider testimony, nobody would want
14 to hear the testimony but some of us have to. You, as a
15 Juror, can you do that fair and impartial even though it
16 is going to be unpleasant?

17 A Yes, sir.

18 Q All right.

19 THE COURT: Mr. Young.

20 EXAMINATION

21 By Mr. Young:

22 Q Good afternoon, Ms. Kent.

23 A Hello.

24 Q Thank you for bearing with us during this process.

25 Okay?

1 A Okay.

2 Q Bring the microphone closer, Joy has to take your
3 responses down. No nods, okay.

4 A Okay.

5 Q This is just an opportunity for you and I to have a
6 conversation about your opinions, okay?

7 A Okay.

8 Q There is no right or wrong answer. All right?

9 A Okay.

10 Q You share with me how you feel about these different
11 things I am going to ask you about. Okay?

12 A Okay.

13 Q First thing I want to ask you is sort of general
14 views about the death penalty.

15 A It is hard to say what my views are because any other
16 case, they are all different. So, I mean, I am not for or
17 against it. I mean, because you will just have to take it
18 based on each case individually. Does that answer your
19 question.

20 Q It does and is a very fair answer. I am going to put
21 you in a little bit tougher spot. Okay?

22 A Okay.

23 Q If you were Governor of South Carolina and you got to
24 decide, we are going to have the death penalty, we are not
25 going to have the death penalty. Which way do you think

1 you would go?

2 A I would go with having it.

3 Q Would have it?

4 A Yes, sir.

5 Q And to me that implies that you think it has a
6 function?

7 A Yes.

8 Q Can you tell me what that is.

9 A I just believe that some people's action do deserve
10 the death penalty.

11 Q Okay. And for you is that sort of the worst of the
12 worst people deserve the death penalty or people who
13 commits certain types of murder that punishment should
14 always be the death penalty?

15 A I mean, it has got to be the worst of the worst.
16 Because you can't put everybody to death that has done
17 something wrong. So it would have to be something bad.

18 Q I think, I understand where you are coming from and
19 we are going to come back to that in just a second. Okay?

20 A Okay.

21 Q The Judge talked to you a little bit about that Mr.
22 Jones has plead not guilty by reason of insanity?

23 A Yes, sir.

24 Q And you understand that not guilty by reason of
25 insanity in South Carolina means that somebody says, I did

1 the actions. right.

2 A Yes, sir.

3 Q Are you with me on that. But because of a mental
4 disease or defect I was not able to understand the legal
5 or moral wrongness of the actions?

6 A Yes, sir.

7 Q Does that make sense to you?

8 A Yes, sir.

9 Q Any questions about that?

10 A No.

11 Q Some people think that that defense, the defense of
12 insanity is just sort of a copout and it is just letting
13 somebody off. And my question to you is, is that you?

14 A No because this is real, people are going to suffer
15 from it.

16 Q It is a verdict that you could give meaningful
17 consideration to and find if you thought it was
18 appropriate?

19 A Yes, sir.

20 Q I am going to come back to you talking about the
21 death penalty. Okay?

22 A Okay.

23 Q Because during the first trial he has plead not
24 guilty by reason of insanity. The Judge has explained to
25 you if he is found not guilty or not guilty by reason of

1 insanity the trial stops. Are you with me on that?

2 A Yes, sir.

3 Q If he is found guilty but mentally ill or guilty we
4 have a second phase in the trial.

5 A Yes, sir.

6 Q And that is where the jury gets to determine
7 punishment, right?

8 A Correct.

9 Q And the first thing that would happen would be that
10 the State would have to prove unanimously, beyond a
11 reasonable doubt to all twelve jurors the existence of
12 something called an aggravating factor. Are you with me
13 on that?

14 A Yes, sir.

15 Q And in this case the State has alleged two
16 aggravating factors, that being the deaths of multiple
17 children.

18 A Correct.

19 Q Some jurors say, for me, I am going to rephrase my
20 question, I apologize. For you, I just want to know how
21 you feel about whether or not death is the only
22 appropriate punishment for that guilty of murder of
23 multiple children?

24 A It is not the only appropriate thing. I mean it just
25 depends on what the evidence is and my mind. I don't

1 really know how to answer that. Like, I don't know.

2 Q Okay.

3 A I am sorry. I am nervous.

4 Q Don't be nervous, you can't say anything wrong. If
5 you say I don't know, that is fine, you don't know. Okay?

6 A Okay.

7 Q That is a perfectly acceptable answer. Okay?

8 A Okay.

9 Q Or do you think that there are things that you could
10 learn about this guilty murder of children that would make
11 you think that maybe life is the appropriate penalty?

12 A Yes, sir.

13 Q What would some of those things be?

14 A I mean, if he truly does have a mental illness, that
15 is a big thing to consider. And, I mean, I guess that is
16 a big thing for me, is mentally ill.

17 Q Do you think that life in prison without the
18 possibility of parole could be a substantial enough
19 penalty for somebody who is guilty of the murder of
20 children?

21 A I think, at some point would be more harsh than the
22 death penalty because they have got to live with it in
23 jail for the rest of their lives thinking about what they
24 did.

25 Q And you understand that South Carolina law is that

1 life without parole, the death penalty is the harsher
2 penalty?

3 A Right but they are going to be dead and they have to
4 live in jail for the rest of their life they have to
5 relive what they did every day when they wake up. So that
6 could be more harsh in some people's mind.

7 Q Is it in your mind?

8 A I don't know. I mean, I just, it just depends on
9 that particular thing. Because there are so many people
10 that have killed people that are children that some of
11 them have been put to death and some of them haven't. So,
12 I mean, I guess it would depend on what I found out, to
13 make that decision then.

14 Q Fair enough. Thank you for sharing that with me.
15 Okay?

16 A Okay.

17 Q The way that this decision about life or death sort
18 of works and we have talked about aggravating factors,
19 right?

20 A Yes, sir.

21 Q And mitigating factors are different. Okay?

22 A Yes, sir.

23 Q Mitigating factors don't have to be unanimous. Okay?

24 A Okay.

25 Q They don't have a burden of proof on them. Okay?

1 A Okay.

2 Q It can be something presented by the defense. It
3 could be something from the crime itself. Okay?

4 A Okay.

5 Q Or a Juror can find it for herself. You can say
6 nobody presented it but I think this is mitigating and I
7 want to give it the value as mitigation. Are you with me
8 on that?

9 A Yes, sir.

10 Q And each Juror gets to decide for herself what value
11 to place on any piece of mitigation. Okay?

12 A Correct.

13 Q Each Juror can say for herself, can say, I saw him
14 having a relationship with his father and I think that
15 that was mitigating enough for me to put the value of life
16 on that and I am going to give the life penalty for that
17 reason?

18 A Correct.

19 Q Okay.

20 A Okay.

21 Q And Juror number two can say, I didn't see that.
22 That is not mitigating to me but to me I thought that he
23 had mental illness and I am going to put the value of life
24 on that and I am going to find for a life penalty for that
25 reason. Okay?

1 A Okay.

2 Q Are you with me that they don't have to agree?

3 A Right.

4 Q Does that make sense to you?

5 A Yes, sir.

6 Q And some jurors can say, I don't have a reason, just
7 based on who I am I want to vote for a life penalty.

8 Okay?

9 A Okay.

10 Q And that is perfectly acceptable, you don't have to
11 explain it, you don't have to justify it to anybody?

12 A Yes, sir.

13 Q Does that make sense to you?

14 A Yes, sir.

15 Q Does that sound like that is how it should work to
16 you?

17 A Yes.

18 Q Okay. And some jurors can say, you know what, I
19 don't have a reason but I just feel like being merciful
20 and just don't feel like signing the death penalty today,
21 I want to extend mercy. Okay?

22 A Correct.

23 Q And for you in your concept of who you are, can you
24 tell me a little bit about your views about mercy. Do you
25 think that mercy is something that somebody earns or is it

1 something that sort of is really bestowed on another?

2 A I think it is bestowed on another, that something
3 that you earned.

4 Q Okay. Just how could you earn?

5 A Yes.

6 Q This final decision about whether another person
7 lives or dies is called an individual moral judgment. Are
8 you with me on that?

9 A Yes, sir.

10 Q And we all make moral judgments in our daily lives.
11 For you you have made individual moral judgments. The
12 best way that I can describe it, is like you have made
13 your decision about what faith is appropriate for you?

14 A Right.

15 Q And other people have made different decisions about
16 what faith is appropriate for them?

17 A Correct.

18 Q And you expect them to respect your decision?

19 A Absolutely.

20 Q And you respect their decision even though it is
21 different from yours?

22 A Yes.

23 Q And if you saw somebody getting bullied or harassed,
24 we are talking about beyond civil discourse, would you
25 stop it?

1 A If I had a chance, yes, I would.

2 Q And you could write a note out to the Judge, saying,
3 you know what, things aren't being done respectfully back
4 here?

5 A Correct.

6 Q It needs to stop?

7 A Yes.

8 Q Once you have arrived at your individual moral
9 judgment, whatever it is, are you with me on that?

10 A Yes, sir.

11 Q It is your duty and obligation to have your
12 individual moral judgment returned in the courtroom.
13 Okay?

14 A Okay.

15 Q Can you assure me that you would do that?

16 A Yes, sir.

17 MR. YOUNG: I beg the Court's indulgence. With the
18 exception of the Court's prior ruling I will stop there.

19 THE COURT: Thank you, you are protected on the
20 record on that issue. Mr. Graham.

21 EXAMINATION

22 By Mr. Graham:

23 Q Ms. Kent, my name is Shawn Graham, good afternoon.

24 A Good afternoon.

25 Q Follow up on what Mr. Young was just talking to you

1 about, you understand that if you make it to the penalty
2 phase that you have the duty to reach your own decision?

3 A Yes, sir.

4 Q You also understand though that you have the duty to
5 consider what other people say as well that would be on
6 the jury with you?

7 A Yes, sir.

8 Q You would have to respect their views and their
9 opinions as well and listen to them as well?

10 A Right.

11 Q Just as you would expect them to listen to you?

12 A Absolutely.

13 Q And you would be willing and able to do that if you
14 served on a jury?

15 A Yes, sir.

16 Q You identified yourself as a type three Juror?

17 A Yes, sir.

18 Q So you would want it, if we make it to the penalty
19 phase you would want to hear all the good, all the bad,
20 hear everything you could and after you have heard
21 everything then you would make your decision?

22 A Yes, sir.

23 Q After hearing everything, if you thought it was
24 appropriate, and the other jurors thought it was
25 appropriate you could give life?

1 A Yes.

2 Q If after hearing everything, talking about it with
3 the other jurors and you thought it was appropriate you
4 could give death?

5 A Yes.

6 Q You do understand and let me explain to you, that in
7 South Carolina that if you were on the jury and you and
8 the rest of the jurors decided that death was the
9 appropriate punishment that you would actually have to
10 sign your name on a document saying that.

11 A I did not know that but, yes, I would be able to do
12 that.

13 Q And I ask that because some people will say something
14 but when it comes to writing their name on something it
15 causes a problem. But for you, if you thought death was
16 the appropriate sentence you would be able to write your
17 name down?

18 A Yes, sir.

19 Q Thank you, Ms. Kent, I appreciate it.

20 THE COURT: Are you good?

21 MR. YOUNG: Yes, sir.

22 THE COURT: Ms. Kent, you lived in Newberry.

23 JUROR: I lived with my parents in Newberry for five
24 years.

25 THE COURT: Now, the Court declared that you are a

1 qualified Juror. That doesn't mean you are on the jury
2 panel, it means you are a qualified Juror. And that means
3 is you are going to remain under oath until I need you
4 back. I can't tell you when I need you back until I get
5 done with the, going through questioning the other jurors.
6 You are going to keep up with when I need you back through
7 the website. You are now a qualified Juror and so you
8 will look at that box or whatever it is on the website as
9 to when I need you back. Once I get enough, a group to
10 select from we will call you in. We will come back in the
11 courtroom and a jury will be selected. Potentially you
12 could be on the jury, potentially you could be excused.
13 Look it up on the website.

14 JUROR: Is it on the same website.

15 THE COURT: Yes, same thing, same place. Until then
16 don't talk about the case, don't let anybody talk to you
17 about, ask you about the case. Do not do any independent
18 research and avoid gathering information from the media.
19 Don't do it, my instruction to you and to every Juror, I
20 want the jury in every case that what they see to decide
21 the case they get in the courtroom. And they get together
22 as a group and get it while the record is being made with
23 everybody present. So all the jurors are here at the same
24 time and will hear what is going to be heard in the trial
25 rather than, well, I heard this about that and saw this

1 about that. It is all at one time and it is all under the
2 same timing and you get to see all the witnesses. I don't
3 want you to be influenced in your decision or what might
4 have happened, what didn't happen about something outside
5 the courtroom. I want you to hear in here, do you
6 understand?

7 JUROR: Yes. So should I go ahead and tell my boss?

8 THE COURT: I would, tell him sometime late next week
9 or the following week that we may call you back. You keep
10 up with the website and when I need you back come on back.
11 Thank you so much.

12 (Whereupon, the Juror was excused from the
13 courtroom.)

14 THE COURT: Juror number 293, bring them in.

15 (Whereupon, Juror 283, Jessica Miller, came into the
16 courtroom.)

17 JESSICA MILLER, being
18 first duly sworn, testified as follows:

19 CLERK OF COURT: State your name and spell your last
20 name.

21 JUROR: Jessica Miller, M-I-L-L-E-R.

22 EXAMINATION

23 By The Court:

24 Q Ms. Miller, good afternoon.

25 A Good afternoon.

1 Q This is my third time to get to introduce myself. My
2 name is Eugene Griffith and I am the trial Judge for this
3 case, been assigned. And you have been patient with me so
4 thank you for that. You took an oath Monday to not let
5 anyone talk to you about the case, have you talked to
6 anybody about the case?

7 A No.

8 Q Anybody talk to you about the case?

9 A No.

10 Q Now, there has been media coverage of the case, this
11 week, last week, several years ago when things first
12 happened. Have you seen any of the media reports?

13 A No.

14 Q You heard anything about the case otherwise other
15 than what I told you Monday?

16 A No, I vaguely remember it but I am not sure it was
17 that case.

18 Q Did you form an opinion about what you vaguely
19 remember?

20 A No.

21 Q Fair enough. Now, I gave you two things to read
22 after I read my preliminary instructions to you. Did you
23 understand my preliminary instructions?

24 A Yes.

25 Q And this is a criminal procedure and the definition

1 of murder. This is a Capital case meaning it has got two
2 phases, phase one, guilt or innocence and phase two is the
3 punishment phase and that is when mitigating facts and
4 aggravating facts are presented also. Now, did you study
5 the witness list?

6 A Yes.

7 Q Did you study the three types of potential jurors?

8 A Yes.

9 Q Now, not knowing anything other than the accusations,
10 Mr. Jones is presumed innocent right now, the State has
11 got to prove the charges of murder against him beyond a
12 reasonable doubt. They have not presented anything yet,
13 they have made allegations, he has plead not guilty by
14 reason of insanity.

15 A Right.

16 Q There is going to be a lot of evidence presented for
17 the jury to consider. Now, if the case gets to the
18 sentencing phase, so finding him guilty occurs, you get to
19 the sentencing phase. That is what the types of jurors
20 are described. Did you understand that three types of
21 jurors?

22 A Yes.

23 Q Can you find yourself in any one of those three
24 types?

25 A I would say the third type.

1 Q The third type?

2 A Yes.

3 Q Now, just so I am clear and understand, the case
4 proceeds to trial, the State goes first, they have got to
5 present the testimony and evidence regarding murder.

6 A Right.

7 Q Murder, malice, killing of another. Now, the State
8 has got to prove that case beyond a reasonable doubt
9 before the case could go to stage two. Now, there are
10 defenses to murder and other crimes. And there are some
11 that are statutory. I am going to read a few to you.
12 Now, all of them won't be relevant, there are more than
13 one defense. Okay.

14 A Okay.

15 Q Potential defenses could be, and see, I haven't heard
16 the testimony either. I can't tell you, this is going to
17 be a defense and that will be a defense. But I can tell
18 you Mr. Jones has presented one defense because he had to.
19 The testimony not being presented, sometimes we have got
20 to wait and hear it. Okay?

21 A Right.

22 Q Potential defenses may be accident, involuntary
23 intoxication, self-defense, necessity, insanity, guilty
24 but mentally ill, defense of habitation, entrapment,
25 duress and alibi and maybe an identification. Now, if the

1 testimony is presented which some of those defenses may
2 have relevance to I would instruct you on those aspects of
3 the law. Now, understanding that the first phase, those
4 defenses may be presented, while the State is presenting
5 its case trying to prove the guilt beyond a reasonable
6 doubt. Jury's weigh the evidence that is presented to
7 them while considering the instructions of the Court, the
8 aspects of the law say that. You are to consider it, I
9 don't exactly know how my instructions will go, it will be
10 tailored to the testimony. Can you give meaningful
11 consideration to testimony presented by both sides or
12 either side regarding the elements of the crime and the
13 aspects of any defenses which may be presented, can you
14 give those meaningful consideration and be fair and
15 impartial to both sides?

16 A Yes.

17 Q Now, if the finding of innocence occurs through the,
18 innocent by reason of insanity or innocent, the case ends.
19 Stops right there. Now, if you find him guilty or guilty
20 but mentally ill occurs we go to phase two. At that time
21 the State would have the responsibility of proving an
22 aggravating factor. And I described some of those
23 aggravating factors in my instructions as police are
24 victims, children are victims or multiple victims or
25 different things can make the crime more aggravating. The

1 State has got to prove that factor to the jury's
2 satisfaction beyond a reasonable doubt. During that phase
3 jurors also consider mitigating factors that are allowed
4 to be testified to. And those factors would be presented
5 and the jury has got to consider all of them which may be
6 presented. Mitigating factors allowed by statute and
7 there are others that are allowed also. Particularly
8 mitigating factors could be a Defendant has no significant
9 history of a prior criminal conviction involving the use
10 of violence against another person. The Defendant
11 committed the murder while the Defendant was under the
12 influence of mental or emotional disturbance. The victim
13 was a participant in the Defendant's conduct and consented
14 to the act. The Defendant was an accomplice to the murder
15 committed by someone else and his participation was
16 relatively minor. The Defendant acted under duress or in
17 the domination of another. Some of these, depending on
18 how the testimony goes I want you to hear them all. Okay?

19 A Okay.

20 Q The capacity of the Defendant to appreciate the
21 criminality of his conduct, to conform his conduct to the
22 requirements of law, substantially impaired. The age of
23 mentality of the Defendant at the time of the crime. The
24 Defendant was provoked by the victim committing the
25 murder. The Defendant was below the age of 18 at the time

1 of the commission. The Defendant had mental retardation
2 at the time of the crime. There are other mitigating
3 factors can be anything. You may hear aspects of this,
4 being raised up in childhood, maybe came up in a broken
5 home, whatever is presented jury's can consider. Now,
6 understanding in the sentencing phase there will be
7 aggravating factors presented, evidence of those, there
8 will be mitigating evidence presented. And those are
9 reasons to assign life without parole as opposed to the
10 death penalty. And can you give meaningful consideration
11 to those types of testimony, whether they be aggravating
12 factors or mitigating factors and follow the instructions
13 the Court gives regarding evaluating that type of evidence
14 and testimony and be a fair and impartial Juror in this
15 case?

16 A Yes, I can.

17 Q Now, did you, I am not sure, did you look over the
18 witness list?

19 A I did.

20 Q Did you recognize anybody you might know?

21 A No.

22 Q Not connected to any of them?

23 A No.

24 Q I did notice you grew up somewhere else?

25 A Yes, I lived in three different states.

1 Q So you are not a native of South Carolina?

2 A No.

3 Q But none of those witnesses are connected to you?

4 A No.

5 Q Now, I should have asked you too, this case, we are
6 trying to get jurors to be qualified or eligible. So you
7 are in the third panel but one of the earlier panels, it
8 may be that I am into next week before I get to all the
9 panels and talk to all of the jurors like I am talking to
10 you. But things proceeded a little faster today. I am
11 kind of getting a better rhythm of trying to streamline my
12 questions to jurors. Understanding the trial may take a
13 week, two weeks to try, maybe occupying the better part of
14 May, maybe close to June. Do you have anything personally
15 scheduled, vacation, cruise, have a medical procedure,
16 whatever it is that would prevent you or if you were
17 assigned as a Juror that would create a hardship for you?

18 A I only have a doctor's appointment next week. That
19 is it.

20 Q Now, also the subject matter of this case is going to
21 involve testimony, very graphic testimony of children.
22 And you may see pictures, the testimony may be harsh,
23 unpleasant, very graphic regarding the death of children.
24 Is that type of subject matter and testimony regarding it
25 going to create an issue for you, because of that subject

1 matter, to hear and consider but mostly importantly, hear
2 and consider it and be fair, fair and impartial to both
3 sides, the State and the Defense?

4 A I can do that.

5 Q You can do that?

6 A Yes.

7 Q Okay. Now, do you have any personal, moral religious
8 beliefs that would prevent you from finding a sentence of
9 the death penalty?

10 A No.

11 Q Do you have any personal, religious, moral belief
12 which would prevent you from making a finding of life
13 without the possibility of parole?

14 A No.

15 Q And knowing that that means living out of your days
16 in jail, no release?

17 A Right.

18 Q Do you understand now that the death penalty is not
19 automatic, the jury determines one of the two, life or
20 death?

21 A Yes.

22 Q Mr. Jones has entered a plea of not guilty by reason
23 of insanity. I don't think I asked you this question.
24 That means during the first phase, guilt or innocence,
25 there will be four potential verdicts. And the Judge, me,

1 will give instructions on the aspects of those particular
2 verdicts and the responsibility for the State to prove its
3 case beyond a reasonable doubt. Potential verdicts would
4 be guilty, guilty but mentally ill, not guilty by reason
5 of insanity and outright not guilty.

6 A Okay.

7 Q Can you give meaningful consideration to all four,
8 each and every one of those particular potential verdicts
9 in considering this case, hear the testimony and evidence,
10 no matter what it is, consider the instructions of the
11 Court and give meaningful consideration on each of those
12 four potential verdicts?

13 A Yes, I can.

14 Q You can. Can you be a fair and impartial Juror?

15 A Yes.

16 Q Okay. Mr. McGuire.

17 EXAMINATION

18 By Mr. McGuire:

19 Q Good afternoon, Ms. Miller.

20 A Good afternoon.

21 Q I really appreciate you bearing with us, it has been
22 a bit of a slow process. We are very often in here
23 working very hard. I am sorry it is taking a bit.

24 A That's okay.

25 Q And my name is Bill, Bill McGuire. I am one of the

1 lawyers in the case and this is where the Judge gives us
2 the opportunity to talk to you about your beliefs about
3 the death penalty for murder.

4 A Okay.

5 Q I want to ask you, if you found yourself Governor of
6 South Carolina for a day and you had a Bill on your desk,
7 you could have the death penalty or not have it, which way
8 would you go?

9 A You could have it.

10 Q And I am assuming that you believe that it serves a
11 purpose?

12 A Yes.

13 Q Tell me about that, what kind of purpose do you think
14 it serves?

15 A It is the ultimate consequence for your actions, I
16 guess.

17 Q Okay. Part of the criminal justice system is a
18 concept called retribution. And you may have heard that
19 phrase, punishment must fit the crime.

20 A Right.

21 Q You have heard that phrase before?

22 A Yes.

23 Q That sound's fair?

24 A Yes.

25 Q Okay. And some folks might say, you know, there are

1 some crimes, some types, some categories of offenses
2 involving murder, the intentional killing of an innocent
3 person and then add something to it, like a police officer
4 shot in the line of duty or a rape and a murder or killing
5 innocent young children. And I am going to ask you about
6 the last one. Would you say that type of crime, that
7 category, the intentional killing of innocent children
8 demands the death penalty?

9 A Depends on the evidence, I guess, and what I hear. I
10 can't answer that question without knowing the facts
11 behind it.

12 Q And when you say, the facts, are you thinking about
13 the facts of the offense, the incident, the killing?

14 A The intention, the thoughts behind it, how it
15 happened. Like, I don't know anything about it.

16 Q It is an unfair place to put you in to try to make
17 some judgments without having heard everything?

18 A Right.

19 Q Do you think that the life penalty, letting somebody
20 live out their years in prison, for killing innocent
21 children, does the life penalty really serve enough to
22 punish that kind of act, that kind of murder?

23 A It could be. Again, it depends on the outcome, what
24 I hear from the evidence.

25 Q And we talked, you said you wanted to hear the

1 evidence. We talked about you would want to know about
2 the facts of the case, the thought process, why it
3 happened, that sort of thing.

4 A Right.

5 Q Would the person who committed the killing, that
6 person's background and character, would that be relevant
7 to fixing punishment for that kind of killing?

8 A Yes, I would think so.

9 Q Okay. Why is that important to you or why is it
10 relevant to you?

11 A History repeats itself.

12 Q What do you mean by that?

13 A If someone has been in trouble before or done certain
14 things before and nothing was--

15 Q If they didn't learn from their mistakes.

16 A Yes, if they didn't learn from their mistakes and it
17 is repeating themselves.

18 Q Okay. And could the killer's background, how they
19 grew up, their walk in life, could that ever be a reason
20 to vote for the life penalty. Would it be relevant in
21 looking at the life penalty?

22 A Yes.

23 Q And how so?

24 A Because they can't control how they grew up and how
25 it affected that person's mentality.

1 Q Okay. So maybe their walk in life has put them in a
2 position where a jury could be merciful and spare their,
3 spare their life and not execute them?

4 A I would say yes.

5 Q Okay. Now, again, this is, the Judge talked to you
6 about, I think the Judge talked to you sort of the
7 emotional, graphic nature of potential evidence. I mean
8 it could cause people to recoil and cry. It could be
9 difficult. And in a case like that some jurors might show
10 up to court and say, you know what, in that kind of case,
11 the killing of innocent children, this horrific case, that
12 verdict not guilty by reason of insanity, that sounds like
13 a copout excuse, kind of letting the guy off. What is
14 your position on that statement.

15 A I wouldn't say that because I don't know him and I
16 don't know if he has issues in that aspect of his life.

17 Q Okay. And if you heard testimony from professionals,
18 psychiatrists about that, you could hear it and if it
19 supported not guilty by reason of insanity, that is a
20 verdict that you could consider and vote for?

21 A Yes.

22 Q If it was supported?

23 A Yes.

24 Q Okay. You wouldn't reject it out of hand?

25 A No.

1 Q Bear with me one second, if you would.

2 A Not a problem.

3 Q I am going to ask you some questions about this
4 process and I am going to tell you about some legal
5 principle's and ask you if they make sense to you and if
6 you can follow them. Okay?

7 A Okay.

8 Q Now, the Judge told you about the first phase of the
9 case and that is like any other trial that we see on TV,
10 is the person guilty, did he do it, do they have the right
11 guy, that sort of thing. And there is a potential, a
12 potential, if it is not guilty by reason of insanity you
13 would not go to the second phase?

14 A Okay.

15 Q But if we were and this is my only opportunity to
16 talk to you about it, that is why we have to talk about it
17 now. If the jury was to go to that second phase, the
18 punishment phase, the sentencing phase, it is very
19 different from a traditional regular trial. And that is
20 because a lot of it involves individuality of each
21 individual Juror. Where our laws are, it is sort of
22 stacked to allow people to vote for the life penalty. And
23 what I mean by that is, this mitigation evidence, like a
24 person's mental condition. I think you said how they grew
25 up maybe, their background, their walk in life. One Juror

1 can say, well, I saw something in that evidence that was a
2 spark of humanity, some hope of redemption, I am voting
3 for the life penalty for my little bundle of reasons here.
4 And somebody else could say, this is my little reason, one
5 or two or three and they can be completely different.

6 A Okay.

7 Q No one has to agree that they are the same reason,
8 all twelve jurors don't have to say, well, we think this
9 is mitigating, each individual Juror can just say, this is
10 what I saw, has the value of life with me. I want to vote
11 life, that is my individual moral judgment. Does that
12 sound fair?

13 A Yes.

14 Q And that is a principle of what you could follow?

15 A Yes.

16 Q And then, I just mentioned that the decision in this
17 type of case, a situation whether a human being lives or
18 dies. The law describes it as an individual moral
19 judgment. And once a Juror reaches their individual moral
20 judgment, they have the duty and obligation to stick with
21 it and retain it. Did you know that?

22 A Yes.

23 Q Does it make sense?

24 A Yes.

25 Q And that is because the Juror oath, if you were

1 selected on the jury the Judge would give an oath and that
2 oath requires the Juror, once they reach their individual
3 moral judgment, and by example, the life penalty. They
4 have an obligation to stick with it, retain it and not
5 change it and go over to the other side just because there
6 is a majority on the other side?

7 A Right.

8 Q Does that sound fair?

9 A Yes.

10 Q And you could do that?

11 A Yes.

12 Q And if it would harm a juror's conscience to change
13 their individual position, they simply may not do that.
14 Do you understand?

15 A Right.

16 Q That would be wrong?

17 A Yes.

18 Q And each individual Juror with regard to their
19 individual decision, their position, they are entitled to
20 respect. Does that sound fair?

21 A Yes.

22 Q You would want people to respect your position?

23 A Yes.

24 Q You could respect somebody else's position?

25 A Yes.

1 Q Okay. And I think we have, would you agree that it
2 would be wrong for people to coerce a Juror to kill
3 another human being, be an execution, if they did not want
4 to do that?

5 A Yes.

6 Q Okay. That would be wrong?

7 A Absolutely, yes.

8 Q If you saw that situation could you step in and stop
9 it?

10 A Yes.

11 Q And maybe even pass a note out to the Judge saying,
12 civil discourse and respecting dignity has left these
13 proceedings, the law is not being followed, people are
14 trying to coerce another person to abandon their
15 individual moral judgment. We know that is wrong, that is
16 going on here, Judge, could you stop that?

17 A Yes, I would be able to do that.

18 Q Thank you very much.

19 THE COURT: Ms. Mayes.

20 EXAMINATION

21 By Ms. Mayes:

22 Q Good afternoon, Ms. Miller.

23 A Good afternoon.

24 Q My name is Suzanne Mayes and as a Deputy Solicitor I
25 represent the State in this prosecution.

1 A Okay.

2 Q Just have a couple of questions for you to follow-up.
3 One of the things that Defense Counsel was just asking you
4 about is, whether you could consider a mental health
5 defense such as not guilty by reason of insanity. And you
6 stated that you could?

7 A Yes.

8 Q Now, if you heard testimony or evidence that
9 countered that, that countered that mental health defense
10 could you also consider that too in reaching a verdict?

11 A Yes.

12 Q And the Defense Counsel was just asking you about in
13 the course of jury deliberations, whether you would be
14 willing to listen to the views of others. Is that
15 something that you would do?

16 A Yes.

17 Q And follow the Court's instructions in that regard?

18 A Yes.

19 Q And by the same token, if that required long
20 discussions and long deliberations is that something that
21 you would be up for?

22 A Yes.

23 Q As well as saying true to your own independent moral
24 judgments?

25 A Yes.

1 Q The Judge explained the options in the second phase
2 of the trial, if we get to a second phase in the course of
3 this case. And that involves two potential decisions.
4 Decision of life without parole, meaning he never gets out
5 of prison or the death penalty. If after you heard all
6 the evidence, including the mitigating factors and the
7 aggravating circumstances and you determine that the death
8 penalty was appropriate could you give the death penalty?

9 A Yes.

10 Q With the death penalty there is a verdict form and
11 with that there is a sheet of paper that all twelve jurors
12 would have to unanimously sign, writing their name in
13 agreement with that death verdict. Is that something that
14 you could do?

15 A Yes.

16 Q Sign your name to that form?

17 A Yes.

18 Q Thank you.

19 MR. MCGUIRE: Nothing more from us, Judge. We are
20 good.

21 THE COURT: Are you good?

22 MR. HUBBARD: We agree.

23 THE COURT: Good. All right, Ms. Miller. The Court
24 determined and the lawyers agrees that you are a qualified
25 Juror. So you took an oath a moment ago. You are going

1 to remain under oath.

2 JUROR: Okay.

3 THE COURT: Until I have you back. You know the
4 website.

5 JUROR: Yes.

6 THE COURT: Check that website and you are now not on
7 a panel, you are on a qualified Juror. That will tell you
8 when I need you to come back to the Court House.

9 JUROR: Okay.

10 THE COURT: After that we will have smaller panels,
11 there will be a subset of that, a qualified Juror such as
12 yourself. They will appear in the courtroom and then a
13 jury will be selected. You are not on the jury, you are a
14 qualified Juror potentially being put on the jury. More
15 has got to happen then. Now, until that time I do not
16 want anybody to try to influence you about the case. I
17 want your influence and your fact gathering, gathered here
18 in the courtroom, these lawyers, their witnesses, me and
19 the Court Reporter. I don't want someone outside of the
20 courtroom influencing your decision whether it be somebody
21 on social media, regular media, friend down the street,
22 fishing buddy, whatever you do, whatever your hobbies are,
23 you to be influenced, whichever way it is here. Don't
24 talk about this case, don't let anybody question you about
25 the case, discuss the case. Minimize seeing news report,

1 turn the channel, go do something else, try to minimize
2 that. Now, when you come back I will say, anything
3 influences you, something happens, I will ask everybody
4 that because my hope is that there will be jurors that
5 aren't biased in any way, ready to listen, fair and
6 impartial to both sides and will receive the case and
7 information all at the same time. That is what I am
8 looking for. So if you live up to that oath I will be
9 able to do that. Don't talk about the case and good luck
10 to you. Thank you so much.

11 JUROR: Thank you.

12 THE COURT: That is panel three.

13 MR. YOUNG: Yes, sir.

14 THE COURT: Thank y'all for being very efficient
15 today. Okay. Can we set our goal a little higher
16 tomorrow and do two panels, one in the morning and one in
17 the evening and see how that goes. Do y'all want to try
18 for three? It took about three hours and ten minutes or
19 so this afternoon for a full panel of eight.

20 MR. HUBBARD: If it is possible, assume we do two
21 panels. Would it be possible that we can't do a whole
22 third panel, that maybe as we are going we can identify
23 individual members on it and come in, and go ahead and
24 make use of a full day. It is up to you.

25 MR. YOUNG: I don't know how you would put the notice

1 up on the website.

2 THE COURT: I am going to lend my ear to you and Ms.
3 Frick how you are going to the website as when we need
4 panel number four, five and six maybe.

5 MR. HUBBARD: Here is what I was thinking, say you
6 have one panel coming in in the morning, you have one
7 coming in the afternoon, whatever time. But it looks as
8 we are getting in to that second panel that we are going
9 to get them all done. We are going to have an hour and a
10 half or so left. Would it be possible to individually
11 call somebody. If it is not that is fine.

12 THE COURT: We have got the people that did not show
13 up for the original, are coming in tomorrow morning at
14 9:00 to get some admonitions from the Court. That is,
15 they are coming in at 9:00 so we will try to start this by
16 9:15. Let's go for panels four and five tomorrow. And
17 let's say have them here at 9:00, 9:15 and then 1:00 for
18 the afternoon. So we go three hours and three hours, it
19 should be about right for lunch.

20 MR. HUBBARD: Your Honor, we were apprized, I think
21 Bill and I were apprized of Juror 428--

22 MR. MCGUIRE: Yes, sir. The Clerk received a note,
23 Mr. Hubbard and I have both read it.

24 THE COURT: Is that the one that I talked about?

25 MR. MCGUIRE: Yes.

1 THE COURT: If y'all agree, I am going to cut her
2 loose.

3 MR. MCGUIRE: We agree to let her go.

4 THE COURT: Her medical condition, she did not bring
5 that to my attention so I agree with y'all. Medically she
6 is excused.

7 MR. MCGUIRE: Yes, sir.

8 THE COURT: Okay. Thank you for considering that.

9 MR. YOUNG: One further issue and I know that the
10 Court doesn't like to beat a dead horse and I am not
11 trying to, I promise. But the State is, of course, asked
12 the Court to instruct us to stop saying, do you agree to
13 disagree and using that language. And the Court did and
14 then the State turned that around and started telling
15 jurors, well, you are going to have to deliberate for a
16 long time which is not what the statute says. It doesn't
17 say deliberate for a long time, you have to deliberate
18 until you are done. And the State is going to start
19 saying you have got to deliberate for a long time, you are
20 going to have these long deliberations, you have got to
21 fight about it forever. We object to that language and we
22 should be allowed to go back to you can agree to disagree
23 and it ends there.

24 MR. HUBBARD: That wasn't the question. But when we
25 talk about deliberations and, you know, the goings on in

1 the jury room and basically hold your opinion once you
2 reach it, you have a duty to do that. But they also have
3 a duty to discuss and interact and in a case like this
4 they need to also be prepared that there is going to be
5 some divergent views going on but they have got to see if
6 they can reach a consensus or unanimous opinion. So that
7 is perfectly fine. No one said, the question was not, you
8 will be back there a long time discussing this. It is
9 just you have got to be prepared. So it is the same
10 thing. It is a flip side, they want to talk about, once
11 you reach our opinion stick to this but you also have to
12 be able to listen and share and maybe learn from your
13 fellow jurors. It is balance, that's all it is, it is
14 just balance.

15 THE COURT: And maybe it could be recharacterized a
16 little differently because--

17 MR. YOUNG: Deliberate means think about carefully.
18 A Juror can say, I thought about it carefully, I have
19 decided I don't have a reason. I am going to vote for
20 life, and it is over. That is fine and that is what the
21 law allows. But it also says they are to deliberate, they
22 are not to go back there and sit in a corner, each one of
23 them, but twelve people are suppose to interact and talk.
24 That is all we are trying to add into this because it
25 strikes me as we have been going along that it almost

1 sounds like, you go in there and you--

2 THE COURT: Let's go with the words we have been
3 using, meaning consider and deliberate. That has been the
4 language of instructions of the Court all the way down the
5 line. That is appropriate.

6 MR. HUBBARD: We just want to make sure it is
7 deliberating with your fellow jurors. But they have to
8 individually, everybody agrees on that, they have to
9 individually reach their opinion. They can't be told what
10 to do.

11 THE COURT: Okay. I think meaning, consider and
12 deliberate is fair. I don't want to suggest to them in
13 any fashion that there is a time limit of a time maximum.
14 But y'all play within the bounds of reasonableness on
15 that. All right. See y'all in the morning at 9:00.

16 (Whereupon, the trial will resume the next morning at
17 9:00 a.m.)

18 May 3, 2019

19 (Whereupon, the Court will talk to the jurors who did
20 not come to court on April 29th, 2019.)

21 (Whereupon, waiting on jurors to enter the
22 courtroom.)

23 THE COURT: Solicitor.

24 MR. HUBBARD: A couple of non-jury matters.

25 THE COURT: These are non-jurors. Go ahead while we

1 are waiting on them.

2 MR. HUBBARD: There are some reports that we want to
3 see if we can get one is by Dr. Maddox, Dr. Donna
4 Schartz-Watts Maddox.

5 MR. YOUNG: I got it for them this morning, Judge, I
6 will, I don't have a hard copy yet. I will email it to
7 them so they will get it.

8 MR. HUBBARD: As far as other reports, we had some
9 preliminary for, I don't know, reports but not final
10 reports by some of their other folks, if they have got
11 final reports we would like to have those as well.

12 MR. YOUNG: We will give it to them. Of course, we
13 didn't file Rule 5 but we are giving it to them anyway.

14 THE COURT: I mean, that's, we can't play that. You
15 have got to give them to them if they ask for them, don't
16 you.

17 MR. YOUNG: No sir, we don't have to give them
18 anything. But we have given them everything.

19 THE COURT: I know, but that is just kind of cheesy
20 to say, we didn't file Rule 5, that is a little, I
21 understand how that Rule is written and how Defense
22 lawyers will argue it and I just find that a little
23 disingenuous.

24 MR. YOUNG: It is not disingenuous in the sense that
25 they gave me stuff and I didn't send it back and say, we

1 have filed a Rule 5 but I did that with the understanding
2 I was giving them everything anyway.

3 THE COURT: Right and then, you know, anyway, y'all
4 share everything and I appreciate y'all doing that.

5 MR. HUBBARD: It would help Dr. Frierson because I
6 think, before he testifies he would want to review it,
7 Your Honor. Thank you. And one final thing, very small
8 thing and it sounds so petty on our part but it is really
9 not. We have been using this door, we have got all of our
10 stuff here. We just ask and I know the way this courtroom
11 is built is unfortunate. But we would just ask that the
12 Defense use the back door because our stuff is here and
13 they have been walking by. I don't want, I don't think
14 there has been any bad activity or anything like that, I
15 am not saying that, I am not alleging on their part. It
16 is crowded and this is our stuff. If they can just please
17 do that, I know it is an inconvenience and I apologize but
18 it is just how the Court House was built.

19 THE COURT: I agree. Y'all be mindful of that, I
20 don't think there is anything going on but y'all have got
21 a crowd, they have got a crowd and y'all got third row,
22 both sides have got third row.

23 MR. HUBBARD: Thank you, Judge.

24 THE COURT: Yes, sir.

25 MR. YOUNG: I have an issue with that.

1 THE COURT: I know but they do, y'all can't because
2 they can't go that way.

3 MR. YOUNG: I don't have an issue with you telling us
4 we can't walk past the table. It is fine. Two things
5 before we start with jurors.

6 THE COURT: I want to deal with these jurors first.
7 These are the jurors who didn't show up. Do you want to
8 state something before they come up here.

9 MR. YOUNG: I can do it after they come up here.

10 THE COURT: Let me deal with them and then we will
11 start with our panel. Whichever my clerk's can call,
12 whoever these are. I want to know who they are. Let's
13 call them up here one at a time.

14 CLERK OF COURT: I don't have the list, I can look
15 them up.

16 THE COURT: Let's just start on the end, you in the
17 black shirt, come on up. What is your name.

18 JUROR: My name is Jamie Sheffield. I missed court
19 Monday.

20 THE COURT: How did you miss it.

21 JUROR: I was at my lawyer's office on Monday morning
22 fighting for visitation for my children. There is all of
23 my evidence right here and I know it is not a very good
24 excuse of forgetting but I just had a lot of things going
25 on.

1 THE COURT: Did you have a summons to be here Monday?

2 JUROR: Yes, sir. This is what y'all sent me.

3 THE COURT: Did you send questionnaire back in for
4 me.

5 JUROR: I believe so, I took it in the post office.

6 THE COURT: Did you get his questionnaire responded
7 back. You got it?

8 CLERK OF COURT: 390. Yes, sir.

9 THE COURT: He sent it back. Okay. You were at you
10 lawyers office all day?

11 JUROR: I want to say like 10:00 and 11:00.

12 THE COURT: You were thinking about court over there.

13 JUROR: I had court.

14 THE COURT: I am going to reassign you into a
15 different term of court but I am not sure what else I am
16 going to do. This is created an inconvenience because we
17 have a bunch of people here. A lot went on getting this
18 organized and it is really frustrating to the lawyers to
19 put the time in. Have a seat, okay.

20 JUROR: Okay.

21 THE COURT: Nexts in line, come on. Tell me who they
22 are. What is your name.

23 JUROR: William Brown.

24 THE COURT: William Brown.

25 JUROR: Number 60.

1 THE COURT: Why didn't you show up Monday?

2 JUROR: Forgot, plain and simple, ain't going to lie
3 to you.

4 THE COURT: Created a big inconvenience on us.

5 JUROR: I understand that.

6 THE COURT: So I am going to reassign you to a
7 different term of court and maybe make y'all sit here
8 today and watch a little bit of this.

9 JUROR: Not a problem.

10 THE COURT: Thank you, Mr. Brown, for your candor.

11 JUROR: I mean, there is no sense in lying about it.

12 THE COURT: Next. What is your name.

13 JUROR: Taylor Oswell.

14 THE COURT: Why didn't you come to court Monday.

15 JUROR: I had a job interview that same day and I had
16 forgot about it. And then I had it in my phone and
17 forgot.

18 THE COURT: Did you get that letter and all the
19 questionnaire, did you send it back?

20 JUROR: Yes, sir.

21 THE COURT: Did you read that letter? Tell you not
22 to wear shorts?

23 JUROR: I was on my way over--

24 THE COURT: It created a huge inconvenience on the
25 system and we have got a lot of people in here, a lot

1 going on.

2 JUROR: Yes sir, I do understand.

3 THE COURT: I am going to reassign you to a different
4 term of court but I am probably going to do something in
5 addition for creating an inconvenience. Have a seat.

6 Next, in the green. What is your name.

7 JUROR: Martinez.

8 THE COURT: Did you get my letter and the
9 questionnaire I sent out?

10 JUROR: I am not sure.

11 THE COURT: What do you do for a living?

12 JUROR: Right now I am just coming out of college,
13 sir.

14 THE COURT: What are you studying.

15 JUROR: Welding, sir.

16 THE COURT: Okay. You got a Juror number for me.

17 CLERK OF COURT: 270.

18 THE COURT: Why did you miss Monday?

19 JUROR: I had, I had no idea, I forgot.

20 THE COURT: I am going to reassign you to a different
21 week and I am also going to do something else, I haven't
22 decided. Have a seat. Thank you for your candor.

23 Next in line, come on. What is your name.

24 JUROR: Gary Pilkington.

25 THE COURT: You remember your Juror number?

1 JUROR: No, sir.

2 THE COURT: What happened Monday?

3 JUROR: I had a doctor's appointment, I didn't think
4 about this until I got out of the doctor's office.

5 THE COURT: I sent that letter out back in February.

6 JUROR: I filled out the paperwork and all and sent
7 it back in.

8 THE COURT: You were at the doctor.

9 JUROR: Yes.

10 THE COURT: Were you sick?

11 JUROR: No, I had knee replacement.

12 THE COURT: Did you. It was like a follow-up.

13 JUROR: Yes.

14 THE COURT: I am going to reassign you to a different
15 week of court and I am not certain what I am going to do
16 for y'all. We got 165 jurors that came in and so y'all 15
17 put an inconvenience on the whole system so I am trying to
18 figure out what to do with you.

19 Next. What is your name.

20 JUROR: Keisha Patti.

21 THE COURT: Ms. Patti, do you remember your Juror
22 number?

23 JUROR: No, sir.

24 THE COURT: What happened Monday?

25 JUROR: My son got sunburned over the weekend with

1 some friends and then, he didn't go to school that day,
2 Monday so I had to stay home with him on Monday.

3 THE COURT: Did you remember you were suppose to be
4 here?

5 JUROR: Yes, sir.

6 THE COURT: Did you call anybody?

7 JUROR: No, sir.

8 THE COURT: Okay. It created a big inconvenience on
9 the system. We put a lot of effort in this. I am going
10 to reassign you to another term of court but also going to
11 keep you here today for a little bit. Have a seat.

12 JUROR: Okay.

13 THE COURT: Next. What is your name.

14 JUROR: Ashley Thompson.

15 THE COURT: Ms. Thompson, what happened Monday?

16 JUROR: It slipped my mind.

17 THE COURT: You got my letter and whatnot?

18 JUROR: Yes. I told my boss about it and it just
19 slipped my mind, I am sorry.

20 THE COURT: Okay. It created a big inconvenience. I
21 am going to transfer you to another week of court. Have a
22 seat.

23 What is your name.

24 JUROR: Cindy Macedonia.

25 THE COURT: I go to Macedonia Church over in

1 Prosperity side of the lake. What happened Monday.

2 JUROR: I was babysitting my Grandson.

3 THE COURT: This trial has been a huge organization
4 struggle and it was a big inconvenience on us. A number
5 of people didn't show up and it created problems. I am
6 going to reassign you to a different court week but thank
7 you for your candor. Have a seat.

8 What is your name.

9 JUROR: Janet Jackson.

10 THE COURT: Where were you on Monday?

11 JUROR: I had a medical issue, I was at the hospital.
12 I called.

13 THE COURT: Did Ms. Jackson call, she was, had a
14 medical issue. You went to the hospital?

15 JUROR: I had bleeding. I forgot after that.

16 THE COURT: I can understand that. Have a seat and I
17 will reassign you to a different court.

18 What is your name.

19 JUROR: Christy Sulier.

20 THE COURT: What happened Monday?

21 JUROR: I forgot.

22 THE COURT: You know that created a big inconvenience
23 on the whole system. I will reassign you to a different
24 court week. Have a seat. Number 36.

25 What is your name.

1 JUROR: Tina Brittin.

2 THE COURT: Ms. Brittin, did you get the summons to
3 be here Monday?

4 JUROR: Yes, sir.

5 THE COURT: What happened?

6 JUROR: My step-dad's uncle died and I was the only
7 one that was able to go to the funeral. So I had to go to
8 that.

9 THE COURT: Did you call the Clerk's office?

10 JUROR: I didn't even have a chance to think about
11 it.

12 THE COURT: I am going to reassign you to a different
13 court week. Have a seat.

14 What is your name.

15 JUROR: Jason Pendleton.

16 THE COURT: What happened Monday?

17 JUROR: I forgot.

18 THE COURT: Fair enough. Big undertaking get this
19 big of a trial organized. Questionnaire and all of that
20 sent out is expensive. I am going to reassign you to a
21 different court week. Have a seat.

22 I have spoken on the record with all jurors who
23 failed to show Monday, your original summons day.
24 Everyone has given me an explanation as to why they failed
25 to appear. As I told each of them, this is a big

1 undertaking to get this much organized by the Clerk's
2 office, by the Court's staff. Anyway, a summons to appear
3 at jury duty is very important to conducting business of
4 the Court and it must be done orderly, it must be done
5 properly. But I don't want jurors who did show up to feel
6 as if the jurors who didn't show up just got away with
7 something scott free. So all jurors who did not appear
8 Monday will be reassigned to another court week. Ms.
9 Jackson did not appear because she was in the hospital.
10 Except for you, she had a plausible reason and she
11 reported it to the Court, to the Clerk staff as to where
12 she was so I would find that to be a very plausible reason
13 for her not to be here. The balance, the other eleven, I
14 am going to make them stay today or come back Monday.
15 Their choice and sit through the voir dire process for the
16 entire court day so they can see what is going on and what
17 the other jurors are doing. But they will observe court
18 in the jury selection process for the entire day. To
19 understand the importance and the systematic process we
20 are going to go through, not because they are being
21 punished, but I want the other jurors who did show up to
22 understand that just by not showing up they got away with
23 just being transferred because that is not fair and this
24 Court is not going to allow that to be considered as a
25 reason for not showing up, so you can not have jury duty.

1 Everyone will have jury duty but they also will have a day
2 in court. Ms. Jackson is free to go, the others need to
3 tell if you will stay today or stay Monday. I want to
4 know shortly. One of the clerk's staff will be out there,
5 today or Monday. If you choose Monday and don't come back
6 Monday it is going to cost you two days. It is important
7 to understand when the Court and the Clerk sends out
8 summons that they be responded to appropriately. So that
9 is my imposition of a sanction. All right. Ms. Counts,
10 you deal with that and get their list and make sure we
11 know who is who and we are ready to go forward. Mr.
12 Young, you said you wanted to put something else on the
13 record, I think before we started with the jurors.

14 MR. YOUNG: Yes, sir. Two things. One, I know the
15 Court has been, in your preliminary instructions to the
16 jury, you have been saying Mr. Jones has requested a jury
17 trial which of course is inaccurate because Mr. Jones has
18 requested a bench trial and the State has objected to that
19 which is their right. But I do think it is important that
20 we give the jurors accurate information. So I request
21 that the Court amend that in their initial jury charge.
22 And I would also request that the Court tell the jurors
23 that the cameras in the courtroom are not rolling on them
24 and that their names and stuff are not being released.

25 THE COURT: In the summary preliminary instructions,

1 I glanced over it very quickly. I don't see it said,
2 maybe it does and I just glanced over it twice. I am
3 certain I have said that, this comment that I have read
4 does not say that and so I will read it again consistently
5 with the way it is written and I will also tell the jurors
6 that the cameras are off. Okay. Are we ready to bring
7 the panel in?

8 MR. HUBBARD: Yes, sir. You are going to read it as
9 you were?

10 THE COURT: Yes, read it as it is. I think that
11 worked relatively smooth yesterday afternoon for
12 everybody. What do y'all think about making the jurors
13 sit here. Do y'all like that?

14 MR. YOUNG: I understand where the Court is coming
15 from. I just worry that they don't, they haven't been
16 told that they can't tell anybody, the media.

17 THE COURT: I want those eleven jurors back in here.

18 MR. YOUNG: Or make them sit through the first day of
19 trial.

20 THE COURT: The one lady in the hospital made sense.

21 MR. YOUNG: I do think it is a risk that is not worth
22 taking.

23 THE COURT: One more time, what was your issue.

24 MR. YOUNG: They are talking, telling people what is
25 being said, recording what has been said, on Facebook

1 telling the people who the other jurors are. Telling what
2 the questions are.

3 THE COURT: That is a valid comment.

4 CLERK OF COURT: I have another one that shown up.

5 THE COURT: If I admonish them that they can't repeat
6 what they hear in here. I can do that.

7 MR. YOUNG: If you trust them.

8 THE COURT: No, I don't trust them. They are worried
9 about them publishing what they hear in here. I thought
10 about it. What do you think, Lisa.

11 CLERK OF COURT: They are doing what?

12 THE COURT: They are worried about them sitting in
13 here and talking about the case and going on Facebook
14 saying the Judge is, whatever.

15 MR. YOUNG: Let them come back.

16 THE COURT: Come back when?

17 MR. YOUNG: When you are here next time.

18 CLERK OF COURT: You can make them sit through civil.

19 THE COURT: They can sit with Judge McLeod.

20 CLERK OF COURT: I can see the concern with that
21 about Monday.

22 MR. YOUNG: Just transfer them and let's move on. I
23 am not trying to, y'all do what you want.

24 THE COURT: Let's take them downstairs and transfer
25 them to a civil week. I like that, we are in court and

1 there is some stuff going on I don't want them to hear. I
2 want to get their attention.

3 MR. HUBBARD: The easiest thing to do is have them
4 show up when you hold court again, that way you still got
5 your grip on them, you have a list of names.

6 THE COURT: I want them to come sit in in a day of
7 court with me. It will be better. Go tell them that is
8 what I am going to do. I am going to transfer them to a
9 week I am holding back in Lexington and that way I can
10 impose the sanction at my discretion then. On this trial
11 I don't want this to be a distraction to me.

12 CLERK OF COURT: So they are going to get another
13 summons.

14 THE COURT: Right. Just walk them out of here. If
15 the media asked, I am transferring them to another week
16 when I am holding court. That is what we are doing.

17 MR. HUBBARD: Do you want a caution or anything.
18 They really haven't heard anything.

19 THE COURT: Let's get them out of here and do that.

20 (Whereupon, the eleven jurors that did not show up on
21 Monday were escorted out of the courtroom to come
22 back at another date to sit in court with Judge
23 Griffith.)

24 (Whereupon, eight jurors entered the courtroom. 162,
25 Amy Girardeau; 302, David Murphy; 59, Nathaneal

1 Brown; 101, David Connelly; 125, Hope Derrick; 226,
2 Desiree Jordan; 373, Taylor Sawyer; 169, Jeffery
3 Griffith.)

4 THE COURT: Good morning, folks. Thank y'all for
5 being patient. What is going to happen now, brought y'all
6 all in. Madam Clerk, will you place this entire panel
7 under oath, please.

8 (WHEREUPON, the jury panel of eight was sworn at
9 approximately 9:42 a.m.)

10 THE COURT: I will remind you you are under oath when
11 you come back in here. I am going to give you a
12 preliminary brief instruction on how to, what to expect,
13 criminal procedure, definition of some of the elements of
14 going on, some aspects you may hear. And after that I
15 will put you back in the room and then call you in one at
16 a time and ask you a few particular questions on your own
17 and then the lawyers get an opportunity to ask you
18 questions individually. When you go back to the room you
19 are going to be given a list of witnesses and another
20 sheet to review and you will be asked questions about
21 that, do you know anybody. The questions today, they are
22 going to be truthful because you are under oath but candor
23 and honesty. Some of these questions, many of them is
24 about your opinions and some of your opinions matter but
25 they have got to be truthful opinions, not what you think

1 the lawyers are asking for. Everybody is listening and
2 trying to get you to know you a little bit. So candor and
3 truthful is what we are looking for. I am going to
4 introduce again to you. My name is Eugene Griffith and I
5 am the presiding Judge here in the trial. And I will give
6 you this preliminary instruction and then let you retire
7 back to the big room. You, as a group, have been summoned
8 as potential jurors in the case of the State versus
9 Timothy R. Jones, Jr. I said my name is Judge Eugene C.
10 Griffith, Jr. and I am the presiding Judge. Mr. Jones is
11 charged with five counts of murder. In South Carolina
12 murder is defined as the killing of another person with
13 malice aforethought. Malice is defined as a person with a
14 wicked or depraved heart, intent on wrongdoing, hatred,
15 ill-will or hostility. The definition of murder excludes
16 any just cause or excuse for the killing. The State
17 alleges the defense of murder combined with an aggravating
18 offense, then the State can seek the death penalty. Now
19 before and during a trial a person accused, such as Mr.
20 Jones, they are presumed innocent of each and every
21 element to which the crime he is charged. The State must
22 prove each and every element of the crimes charged by a
23 standard of proof called beyond a reasonable doubt. In
24 most criminal cases the Judge determines the punishment
25 after a conviction at trial. But in a Capital case the

1 jury determines the punishment. In a Capital case a trial
2 is divided into two parts potentially. The first part is
3 called the guilt or innocence phase and then if necessary
4 the punishment phase is the second half. In the first
5 portion of the case the State must prove the Defendant's
6 guilt of murder beyond a reasonable doubt. If the jury
7 unanimously finds the accused guilty of the murder then
8 the trial proceeds to the second phase. In the second
9 phase, the State must prove an aggravating factor beyond a
10 reasonable doubt, if they do that then the jury considers
11 the aggravating and mitigating evidence presented in
12 deciding the punishment. Either life without the
13 possibility of parole or the death penalty. Our law in
14 South Carolina does not allow the State to seek the
15 execution if the person is convicted solely of the murder.
16 The State must prove the additional aggravating factor.
17 The State must prove at least one of the statutory
18 aggravating factors beyond a reasonable doubt. Now even
19 if the State proves murder and an aggravating factor
20 jurors are required to consider all mitigating evidence or
21 circumstances. Jurors must consider any mitigating facts
22 that would support a sentence other than death. Even if
23 no mitigating circumstances exist jurors are not required
24 to impose the death penalty. In order for a sentence of
25 death to be imposed the verdict must be signed by all

1 twelve jurors. Even if jurors unanimously decide to
2 sentence a Defendant to life without parole then a
3 sentence of life without parole will be imposed. In this
4 case the State has indicted five counts of murder and has
5 notified Mr. Jones that it intends to seek the death
6 penalty. Mr. Jones has entered a plea of not guilty by
7 reason of insanity. In this case you may hear testimony
8 and evidence showing many things. A wide variety of
9 testimony may be presented to you during the trial and as
10 those issues I will instruct you as to how to consider and
11 evaluate this testimony, whether it be defined as evidence
12 of an aggravating factor, evidence of mitigation which
13 would be any reason to vote for a sentence of life without
14 parole. Evidence of any defenses, evidence of any
15 affirmative defenses such as accident, guilty but mentally
16 ill and not guilty by reason of insanity. So until the
17 testimony and evidence is presented I am not able to tell
18 you the exact instruction of law that I will give on these
19 aspects but you can, can you accept the oath to
20 meaningfully consider the testimony and evidence and apply
21 the law as I instruct it and consider all the evidence
22 consistent with these instructions. Those are my
23 preliminary instructions. And my sentence was a question.
24 You will be asked that in addition to other questions when
25 you come back in. Now, also, the first question I will be

1 asking you is aspects of any personal scheduling
2 conflicts. I will inquire to those, so that is when we
3 will talk about that. Okay. Y'all step back in the jury
4 room and I will, not sure which one of y'all is first out
5 but will have you back out here in a few moments.

6 (Whereupon, the jury panel was sent to the jury
7 room.)

8 THE COURT: Y'all want me to swear them in again or
9 just a reminder they are under oath.

10 MR. YOUNG: Just a reminder.

11 MR. HUBBARD: A reminder.

12 THE COURT: Okay, that is fair.

13 MR. YOUNG: Your Honor, just a reminder about the
14 cameras.

15 THE COURT: Okay. Bring them in.

16 (Whereupon, Juror 162, Amy Girardeau came into the
17 courtroom.)

18 THE COURT: Tell me your name.

19 JUROR: Amy Gerardeau, 162.

20 THE COURT: Spell your last name.

21 JUROR: G-I-R-A-R-D-E-A-U.

22 EXAMINATION

23 By The Court:

24 Q The first question, I introduced myself. My name is
25 Eugene Griffith, good morning. It is our opportunity to

1 get to know you a little bit and ask you some questions.
2 And I gave you a preliminary instruction, there are no
3 wrong answers, just candor so remind you you are still
4 under oath. Did you understand my preliminary
5 instructions?

6 A I did.

7 Q Now, when we met Monday I placed the entire panel
8 under oath to not talk about the case from that point
9 forward. Have you followed that oath?

10 A I have.

11 Q Has anybody tried to contact you, communicate with
12 you, ask you questions about the case?

13 A I have told family and boss where I am today.

14 Q So other than telling them where you are going that
15 is all the communication you have had.

16 A Yes.

17 Q There has been media coverage before Monday, several
18 years ago, last week, this week. Has any of that media
19 coverage caused you to form an opinion as to the facts of
20 this case?

21 A I read an article the weekend before that jury
22 selection started on Monday. That is all I knew.

23 Q I am looking for, I am just wanting to know, have you
24 formed an opinion of what you think happened?

25 A No, sir.

1 Q All of your answers have to be out loud. She takes
2 everything I say. She has to hear you and the attorneys
3 have to hear you. I gave you a witness list, did you
4 review that witness list?

5 A I did.

6 Q And did you recognize any names?

7 A I recognized a last name.

8 Q Tell me who it is.

9 A McBride, last name.

10 Q McBride.

11 A From Saxe Gotha.

12 Q A teacher?

13 A I think it said the person was a teacher. I just
14 know the last name.

15 Q Rebecca McBride at Saxe Gotha Elementary. How do you
16 know her?

17 A I am not sure if I know her. I did know Mr. Robbie
18 McBride. He was my pastor when I was growing up.

19 Q You grew up in the area?

20 A I did.

21 Q Other than that one, you may know her?

22 A I may, I may not. I just know the last name.

23 Q Now, let me ask you this. This case involves the
24 death of five children and that subject matter is going to
25 be relatively difficult and unpleasant, perhaps graphic at

1 times. The subject matter of that type may be difficult
2 for you to consider and listen to and be fair and
3 impartial to both the State and the Defense?

4 A I think that I could be fair.

5 Q Now, in my preliminary instructions, I kind of gave
6 you a summary of the procedures that go forward and the
7 trial is provided into two parts. Part one, in part one
8 if there is not guilty verdict, not guilty by reason of
9 insanity the trial is over, it stops, it ends there. If
10 it is guilty verdict or guilty but mentally ill or guilty
11 then the trial will go to phase two. I gave a list, a
12 sheet, I have a copy here if you need to see it again, of
13 three types of potential jurors. Type one, type two, type
14 three and it is general categories but it is regarding
15 the, how you consider yourself, evaluate yourself. Could
16 you find yourself, did you read that sheet?

17 A I did.

18 Q Did you understand it?

19 A I did.

20 Q Can you find what type you may fall into?

21 A Three.

22 Q And type three would be someone who wants to wait to
23 the very end and hear everything whether it is aggravating
24 or mitigating, all of it?

25 A Right.

1 Q That is how you find yourself?

2 A Right.

3 Q Okay. Now, let me ask you this. I am going to toss
4 out some additional terms because I ask you about some
5 defenses and there are other defenses that may be
6 presented during the guilt or innocence portion and
7 describe the verdict form. Potential defenses in the
8 guilt or innocence could be accident, involuntary
9 intoxication, self-defense, necessity, insanity, guilty
10 but mentally ill, defense of habitation, entrapment, most
11 of these, all of these are mostly in the statute that are
12 defenses, a person can claim. And sometimes testimony
13 comes out that shows those. I haven't heard the
14 testimony, nor have you so we are kind of guessing or
15 anticipating on what is going to be presented. Sometimes
16 that is difficult for me to do. My instructions would
17 include instructions on the law if testimony to support
18 those defenses were presented. Now, knowing that Mr.
19 Jones has tendered a plea of not guilty by reason of
20 insanity, the potential verdicts and guilt or innocence in
21 that first stage could potentially be four. It could be
22 guilty, guilty but mentally ill, not guilty by reason of
23 insanity and not guilty at all. And those, I read
24 additional defenses there but can you give meaningful
25 consideration to each and every one of those potential

1 verdicts understanding that I will instruct you on the law
2 at that time to explain those potential verdicts. But
3 also can you consider the facts and circumstances
4 presented during the trial subject to my instruction on
5 the law and act fairly and impartial in this case?

6 A I can.

7 Q Now, if there is a finding of guilt we go to stage
8 two. And at that time then jurors also consider
9 aggravating factors. And potentially aggravating factors
10 are such as this. Multiple murders, children victims,
11 murder of a police officer, rape and murder, kidnapping
12 and murder, those are aggravating factors that the State
13 is under a duty to prove beyond a reasonable doubt. And
14 an aggravating factor, at least one of those statutory
15 aggravating factors. Now, mitigating evidence is also
16 presented during a trial. There is no really requirement
17 as to how much mitigating evidence has got to be presented
18 but it is presented. So jurors are required to consider
19 whatever it is. Mitigating factors are reasons that a
20 Juror would want to enter a verdict, I am sorry, a
21 sentence of life without parole. You understand this, if
22 it goes to stage two, the jury has decided the sentence,
23 there is only two choices, life or death. There is
24 nothing else, no years, no in between, life or death,
25 those are the jurors choices and they make one of those

1 two choices. Now, potential mitigating factors could be
2 the Defendant has no significant history of criminal,
3 prior conviction involving the use of violence against
4 another. The murder was committed while the Defendant was
5 under the influence of mental or emotional disturbances.
6 The victim was a participant in the Defendant's conduct
7 and consented to the act. The Defendant was an accomplice
8 in the murder committed by another and his conduct was
9 minor. The Defendant acted under duress or under the
10 domination of another. The capacity of the Defendant to
11 appreciate the criminality of his conduct or to conform
12 his conduct was impaired. The age or mentality of the
13 Defendant at the time of the crime. The Defendant was
14 provoked by the victim in committing the murder. The
15 Defendant was below the age of 18. The Defendant had
16 mental retardation at the time of the crime. And any
17 other reasons, such as tough childhood, broken home, came
18 from a broken home. Those are mitigating factors, some of
19 those are listed in the statute and some of those are just
20 factors that people can consider. You can consider
21 anything you like as a mitigating factor. That type of
22 testimony will be presented also. Now, can you meaningful
23 consideration to my instructions on the law regarding,
24 evaluating and considering the State's burden of proof
25 with the aggravating factor, the mitigating factors, give

1 meaningful consideration to my instructions and testimony,
2 evidence presented in this trial and act as a fair and
3 impartial Juror?

4 A I can.

5 Q Now, your personal schedule coming up. Do you have
6 vacation, medical procedure, getting married. Things like
7 that?

8 A Just the 9 to 5:00.

9 Q You don't have anything personal scheduling problem
10 if you were called, to sit as a Juror because it may take
11 about a month.

12 A Not during the week days.

13 Q Okay. Weekends would be an issue?

14 A Possibly.

15 Q Okay, fair enough. Now, do you understand that the
16 death penalty is not automatic?

17 A Yes.

18 Q Do you have any religious or moral beliefs which
19 would cause you or prevent you from considering the death
20 penalty as a potential verdict?

21 A No.

22 Q Do you have religious, moral or personal beliefs that
23 would prevent you from considering life without parole as
24 a potential sentence?

25 A No, sir.

1 Q You can consider both?

2 A Yes.

3 THE COURT: Mr. Young.

4 EXAMINATION

5 By Mr. Young:

6 Q Good morning, Ms. Girardeau.

7 A Good morning.

8 Q Is that close?

9 A Yes.

10 Q Can you say it for me one more time.

11 A I use Girardeau.

12 Q I apologize, thank you for being patient with us. We
13 are going to talk a little bit about your opinions like
14 the Judge told you. There are no right or wrong answers,
15 okay. And I want to let you know that if there is
16 anything that you want to ask the Judge and come up here
17 and talk about with just us as opposed right here we can
18 do that. Okay?

19 A Okay.

20 Q And I know you had said you had been a victim and if
21 you want to talk about that here, I just have to ask you a
22 couple of questions, I am not going to bring up too much
23 about it. Okay?

24 A Okay.

25 Q And you put it in your, and I appreciate you putting

1 it in your questionnaire.

2 A Right.

3 Q Would that experience in any way impact your ability
4 to be fair and impartial?

5 A Does it, no.

6 Q I have to ask?

7 A That's okay.

8 Q And I noticed you were defended against a couple of
9 times too, is that right?

10 A Right.

11 Q Does that in any way impact you to be fair and
12 impartial?

13 A No.

14 Q Okay. You stood up when we over in court on Monday
15 saying that you had heard something about the case. Did
16 you hear about it back in 2014?

17 A I did not. An article came across my Facebook saying
18 selection started on Monday, jury selection on Monday. I
19 just assumed that that was it.

20 Q Okay. That was the only article you saw, you didn't
21 hear about it when it first happened?

22 A I did not.

23 Q Okay. Can you tell me, I am going to ask you about
24 your views about the death penalty. Can you tell me a
25 little bit about where you stand on the death penalty?

1 A I wouldn't say I am against it, I think it can be
2 considered in extreme cases. Obviously, I agreed with the
3 third jury selection, that I would rather hear both sides
4 and make a decision, not one or the other.

5 Q Very fair. Do you think it is sort of an option of
6 last resort?

7 A If it is warranted I would say I would agree with it,
8 if it is not I wouldn't, I don't know if that answers your
9 question?

10 Q You would know it when you heard it?

11 A Right.

12 Q Does that sound right?

13 A Yes.

14 Q And it sounds like, if I use the phrase with you, an
15 eye for an eye and ask you whether or not that was
16 something that resonated with you?

17 A I think if I heard everything and thought that that
18 was appropriate that I would go that route. If I didn't I
19 wouldn't. I haven't had any pleasure of that before.

20 Q Okay. Fair enough. Let me give you a little bit
21 more information. First, I want to talk, about you
22 guilty, not guilty, not guilty by reason of insanity,
23 guilty but mentally ill of murder. Okay?

24 A Okay.

25 Q And the Judge told you a little bit about the not

1 guilty by reason of insanity, Mr. Jones has plead not
2 guilty by reason of insanity. Okay. And not guilty by
3 reason of insanity means, says I did it, I did the actions
4 but because of a mental disease or defect I was not able
5 to appreciate the legal or moral wrongfulness of my
6 actions. Do you understand that?

7 A I do.

8 Q Any questions about that?

9 A No.

10 Q To some people that verdict is sort of a copout in
11 letting somebody just sort of not be responsible for their
12 actions and I just need to ask you, is that you?

13 A I was pre-law in college, I know what it means.

14 Q Thank you very much. Moving on, after you found
15 somebody guilty or guilty but mentally ill of murder, that
16 means that they knew what they were doing, knew the
17 difference between right and wrong, not an accident, not
18 self-defense, intentionally with malice chose to kill an
19 innocent person. Are you with me on that?

20 A Right.

21 Q And then the next part would be an aggravating
22 circumstance. Are you with me on that right. In this
23 case, multiple children murdered, right?

24 A Right.

25 Q And then the jurors would have a punishment option,

1 are you with me on that?

2 A Yes.

3 Q At that point and time where you just heard guilty,
4 murder, multiple children. Some people think the death
5 penalty is the only appropriate punishment in that type of
6 case. Is that you?

7 A I don't think it is the only appropriate punishment.

8 Q Okay. Why not?

9 A I would have to consider everything and I think in
10 extreme cases, like I said, that is warranted but I
11 couldn't just say that without hearing anything.

12 Q In your mind, when you are talking about these
13 extreme cases where it may be warranted. Is there
14 anything about a Defendant in those extreme cases that you
15 could learn that you say, you know what, that makes me
16 think the life penalty might be more appropriate?

17 A I feel like my answer is the same, kind of, if I
18 heard the case and based it on what I heard then I would
19 make a decision.

20 Q Okay. And I guess, could a Defendant's character and
21 background, how they grew up, how they were raised, who
22 their family was, events that had happened to them
23 throughout their life. Would that stuff be important to
24 you in deciding which punishment was appropriate?

25 A I don't know if that decides the punishment. I think

1 it adds to the facts and everything but I don't think that
2 decides the punishment.

3 Q Okay. Do I hear you are saying, you would decide
4 punishment based on the crime?

5 A Right, based on the facts and what has happened, not
6 personal background, I guess.

7 Q Okay. I understand where you are coming from. That
8 is totally fine, okay. I will talk to you a little bit
9 about how jurors are going to be instructed to make this
10 decision. Okay. First we have, what we talked about,
11 sort of the statutory aggravating circumstance. Are you
12 with me on that?

13 A Yes.

14 Q And those have to be proven to each and every Juror
15 unanimously beyond a reasonable doubt. Okay?

16 A Correct.

17 Q Do you understand that. And then you have mitigating
18 circumstance. The Judge told you a couple of them that
19 are listed in the statute. Right?

20 A He did.

21 Q And then you could, mitigating factors can also be
22 anything else that a Juror believes is a reason to vote
23 for a life penalty. Okay.

24 A Okay.

25 Q Are you with me on that?

1 A I am.

2 Q Each Juror gets to decide for herself what value to
3 put on any specific piece of mitigation. Okay. Are you
4 with me on that?

5 A Yes.

6 Q And it doesn't have to be unanimous, it doesn't have
7 a burden of proof, once one Juror decides for herself, for
8 me this is a mitigating factor that I want to give the
9 value of life, they are entitled to do that. Okay?

10 A Right.

11 Q And it can be anything that the defense presented, it
12 can be presented by the State. The jurors can find it on
13 their own. Are you with me on that?

14 A Yes.

15 Q So one Juror can say, I saw him have a loving
16 relationship with his father and based on that
17 relationship I think I want to vote for a life penalty
18 based on that. Do you understand that?

19 A Yes.

20 Q And that is fine. The law is totally fine with that.
21 Okay.

22 A Yes.

23 Q Another Juror can have a different reason and that
24 reason is valid too. Okay. And each Juror doesn't even
25 have to have a reason. The jurors can say, I don't have a

1 reason, I just feel like voting for a life penalty. And
2 that is fine too. Are you with me on that?

3 A Yes.

4 Q At the end of the day, is a decision about whether or
5 not another person lives or dies is called an individual
6 moral judgment. Are you with me on that?

7 A Yes.

8 Q This sort of like choosing what faith is right for
9 you.

10 A Yes.

11 Q You have made your own personal decisions about what
12 faith is right for you.

13 A Yes.

14 Q And you recognize that other people have made
15 different decisions about what faith is right for them?

16 A Yes.

17 Q And you respect their right to make that decision for
18 themselves?

19 A Yes.

20 Q You expect them to respect your right to make your
21 own decision about what is right for you?

22 A Yes.

23 Q And if you saw somebody being bullied, harassed or
24 belittled, that their individual moral judgment was wrong,
25 would you stop it?

1 A Yes.

2 Q Would you send a note out to the Judge saying, that's
3 not right, they are entitled to their opinion and we are
4 supposed to all be respectful?

5 A Yes.

6 Q If twelve jurors, in their own individual moral
7 judgments, agree that the penalty be death and Mr. Jones
8 would be executed. Do you understand that?

9 A I do, yes.

10 Q And if twelve jurors in their individual moral
11 judgments agreed that life is the appropriate punishment
12 then he will be in prison until he dies.

13 A I do, yes.

14 Q The law is that no Juror should ever be forced to
15 give up what they have arrived at as their individual moral
16 judgment. Okay?

17 A Okay.

18 Q And that they have a duty and obligation to make sure
19 that their individual moral judgment is heard in court.

20 A Yes.

21 Q Does that make sense to you?

22 A It does.

23 Q One second. One more question. If you were Governor
24 of South Carolina and you got to decide are we going to
25 have a death penalty or not have a death penalty. Where

1 would you come out on that?

2 A I think that it should be an option.

3 Q And can you tell me a little bit about what value you
4 think it has?

5 A I just feel that in cases where it is warranted that
6 it should be an option.

7 Q And you understand that, I know the Judge told you
8 but the death penalty is never required, not in any case,
9 not the worse case you could imagine, it is never
10 automatic death.

11 A Yes.

12 Q There is a formula to arrive at this verdict, it is
13 what each individual Juror feels is appropriate.

14 A I understand.

15 MR. YOUNG: Okay. Based on the Court's limitations
16 that is all I have.

17 THE COURT: Ms. Mayes.

18 EXAMINATION

19 By Ms. Mayes:

20 Q Good morning.

21 A Good morning.

22 Q My name is Suzanne Mayes and as a prosecuting
23 attorney we represent the State in this case so I just
24 have a couple of questions for you. The Judge explained
25 at the outset what the ultimate options would be if this

1 case gets to what we call the second phase of the trial.
2 And in that phase the options would be life without
3 parole, meaning he never gets out of prison or the death
4 penalty. Or both of those options that you can consider?

5 A Yes.

6 Q And after you have heard all of the evidence, if you
7 felt that the death penalty was appropriate could you give
8 the death penalty?

9 A Yes.

10 Q If the jurors were to unanimously decide that the
11 death penalty was appropriate there would be a form along
12 with that verdict, the death verdict, which all twelve
13 jurors must sign. Would you be able to sign your name to
14 a death verdict?

15 A Yes.

16 Q Nothing further.

17 THE COURT: Anything from the Defense?

18 MR. YOUNG: Yes, Your Honor. We would like to be
19 heard.

20 THE COURT: Okay. If you will step out and we will
21 be right back to you in a moment.

22 (Whereupon, the Juror was excused from the
23 courtroom.)

24 THE COURT: All right.

25 MR. YOUNG: Your Honor, the Defenses' position that

1 Ms. Girardeau should be disqualified. She is
2 substantially impaired in her ability to follow the law in
3 that she cannot give meaningful consideration to
4 mitigation as instructed by the Court. She said that the
5 background and character of the Defendant was not
6 important to her, it is not something, by not being
7 important to her it is not something that she is going to
8 give meaningful consideration. I would cite to the Court,
9 State v. Bell, Bryan v. Sterling, United States versus
10 Folks, Morgan versus Illinois, Edings versus Oklahoma and
11 Abdul-Kavir versus Quarterman, 550 US 233.

12 THE COURT: If you have a piece of paper give to her
13 and read from it, that would be hugely helpful to her. I
14 have learned it over the years, hand it to her and then
15 you can read it directly. Every lawyer reads too fast.
16 There is not one that is not guilty of it including one
17 who was a former lawyer sitting right here. Ms. Mayes.

18 MS. MAYES: Yes sir, Your Honor. At the outset when
19 you were going through the inquiry with her you explained
20 what the mitigating circumstance may be and gave examples
21 of those. She stated to you that she would consider all
22 of those and that she could consider both, life without
23 parole and death. Ultimately as she was being questioned
24 by the Defense she made it clear that she could give both
25 a life without parole verdict or decision regarding

1 punishment as well as the death penalty. She went on to
2 state that she would consider all factors or she would
3 have to consider the evidence is what my notes show, that
4 the death penalty is warranted in extreme cases. However
5 she would have to hear all the evidence and she gave that
6 response regarding questioning as both potential life
7 verdict and a potential death verdict. The State's
8 position is she is qualified. And, of course, the Court
9 can bring her out at any point and explore that further if
10 need be.

11 THE COURT: Bring her back in.

12 (Whereupon, the Juror came into the courtroom.)

13 EXAMINATION

14 By The Court:

15 Q I have got one other question for you. If you are
16 selected as a Juror in this case, as I described to you,
17 there is going to be a wide variety of testimony
18 presented, evidence presented. There is going to be
19 testimony involving allegations that the State would
20 intend to prove, perhaps taking in aggravating factors.
21 There will be testimony about any of the defenses,
22 testimony about potential affirmative defenses, there
23 would be testimony about mitigating factors, reasons to
24 give life without parole sentence. Can you give
25 meaningful consideration to all that evidence and all of

1 that testimony but also accept the instruction of the
2 Court to how they evaluate and consider and give
3 consideration to those particular facts or testimony. Can
4 you do that?

5 A Yes.

6 Q Can you give consideration to all of those forms of
7 testimony and act as a fair and impartial Juror?

8 A Yes.

9 THE COURT: I find Ms. Girardeau qualified as a Juror
10 in this case. What that means is you move from panel
11 four, this could go into next week with this same
12 procedure with other jurors. So you are going to check
13 back on the website and look under the tab, qualified
14 jurors to find out when I want you back. So until then
15 you are to follow your oath, don't talk about the case,
16 don't let anybody talk to you about the case and minimize
17 your involvement with communication of social media,
18 public media about discussions, facts, reports on this
19 case. I want you to consider the testimony and evidence
20 and whatnot in the courtroom as opposed to outside. Can
21 you do that?

22 JUROR: I can.

23 THE COURT: Will you do that under your oath?

24 JUROR: Yes.

25 THE COURT: Thank you very much.

1 (Whereupon, the Juror was excused from the
2 courtroom.)

3 THE COURT: Yes, sir.

4 MR. YOUNG: Your Honor, we note our objection. I
5 know the Court asked her, can you consider everything, all
6 the facts and circumstance and the charge on the law. But
7 when it comes to a Defendant's character and background, I
8 believe she is still impaired and did not think that she
9 could give meaningful consideration. We continue to
10 maintain that she is substantially impaired.

11 THE COURT: Your objection is noted for the record.
12 Who is next.

13 (Whereupon, Juror 302, David Murphy came into the
14 courtroom.)

15 EXAMINATION

16 By The Court:

17 Q Good morning, Mr. Murphy.

18 A Good morning.

19 Q My name is Eugene Griffith, I am the presiding Judge
20 over this case, welcome to the courtroom. I remind you
21 you are under oath and what is going on right now is that
22 the lawyers are and I are asking more particular
23 questions, most particularly I am going to ask you several
24 questions. Under oath to tell the truth. These are more
25 meaningful questions now, this portion will be, like your

1 opinions, really not a wrong answer, just need candor,
2 candid answer. Okay.

3 A Okay.

4 Q I ask you about your work schedule, personal
5 schedule, you got anything on the horizon. When the jury
6 gets the selection the trial may last two weeks or so. We
7 are looking in going into close to June. You got anything
8 on your personal schedule or agenda that would conflict
9 with that if you were selected as a Juror.

10 A The only thing that I have is a father/son golf
11 tournament in Myrtle Beach the third week of July.

12 Q I think we are good on that. I have a
13 father/daughter thing on July 13th, my daughter is getting
14 married so I hope to be done by then. I think we are
15 good. Now, I also asked you, you took an oath Monday when
16 you left to not communicate about the case in any manner
17 whatsoever. Did anybody try to talk to you about the
18 case?

19 A Well, there has been folks at work talking about the
20 case. They know I am on the jury for this case or
21 possibility be selected for it. Talking about the case.

22 Q Did they inquire and ask you if you were a potential
23 Juror?

24 A Yes.

25 Q And your response was?

1 A I had to tell my supervisor what was going on.

2 Q That you were summoned in?

3 A Yes.

4 Q Okay. Other than telling your supervisor that you
5 were summoned in, has anyone talked to you or discussed
6 the facts about the case?

7 A No, sir.

8 Q Now, there has been media coverage, social media,
9 public media. And I am guessing, unless you are under a
10 rock, couldn't miss it all. Have you seen, heard or
11 anything, whether you have or not, has any of that
12 publicity that you have seen, heard or otherwise, has that
13 affected or caused you to form an opinion as to what
14 happened in this case?

15 A No, sir.

16 Q Do you have an idea or an opinion of what happened in
17 this case?

18 A No, sir. I mean, what happened in the case? I know
19 what happened in the case.

20 Q Monday I read the indictments so you know what, the
21 State is alleging there is five children that have been
22 killed. Certainly you know that?

23 A Yes.

24 Q Aside from that fact, any details?

25 A No, sir.

1 Q Now, have you had an opportunity to look over the
2 witness list?

3 A I have.

4 Q And it was rather lengthy?

5 A Yes.

6 Q Anybody on that witness that you know?

7 A I do not recognize one of them.

8 Q Not a one?

9 A Not a one.

10 Q Okay. I am amazed how many jurors have answered that
11 same way. Oh, I didn't tell you, the cameras are off
12 right now so nobody is going to find out who you are. See
13 you on TV or anything, that won't happen, even in the
14 trial, jurors don't get published, don't get photographed.
15 It is against the rules. They get around it by taking my
16 picture a lot. Don't worry about that. Now, I gave you a
17 summary of the criminal procedure, a little bit of the
18 criminal law, how a Capital case proceeds. There are two
19 phases, phase one goes, guilt or innocence. If it is not
20 guilty, one of the affirmative defenses found, the case
21 ends there. The case goes to phase two, there is guilt
22 finding, the State has proved the murders beyond a
23 reasonable doubt, it goes to phase two in the sentencing
24 portion. And during the sentencing portion there are only
25 two choices for the jurors. It is one of the few cases

1 that we have that the jury imposes the sentence, two
2 choices, life or death. No other choices, no middle
3 ground, two choices. One of the two. I sent you a
4 summary of three types of jurors. Did you review that?

5 A I did.

6 Q And did you understand my instructions earlier?

7 A I did.

8 Q I read to the group.

9 A Yes.

10 Q And it was a general discussion, criminal procedure,
11 you understand the two phase, phase one is guilt or
12 innocence, go phase two, gets a guilty verdict, decide
13 punishment. You understand?

14 A Yes, sir.

15 Q Did you read the types of Juror, can you identify
16 yourself as one of those three types?

17 A Yes sir, I am the third type.

18 Q The third type. Now, I am going to ask you some
19 additional questions about that. And the lawyers will
20 too, they are coming to come up and ask you in a few
21 minutes. As of the three types, you say you are a third
22 type, that you want to hear everything.

23 A Yes.

24 Q Now, the, I keep telling jurors. Part of my job is
25 to make certain the trial is conducted fairly and

1 impartially and the main part of my job doing that is, I
2 give instructions on the law to the jury. This is how to
3 consider the evidence that you have heard. Consider it in
4 this fashion. The definition of this is that. I define
5 things and then the jury takes the definitions and aspects
6 of the law and then evaluates the testimony within those
7 parameters. I don't know all the testimony that is going
8 to be presented. Until the witnesses are called in and
9 they start presenting, telling what they saw, did,
10 whatever, I don't know exactly what my instructions will
11 be. If something is not testified to and the facts don't
12 support it, for instance, there is one aspect in here that
13 someone is under 18 and it is a Defendant, then a
14 mitigating factor can be considered on that. That is not
15 going to be the case here so that one will automatically
16 be eliminated. But there are other aspects of my
17 instructions that I will charge and until I hear the
18 testimony I don't know whether it is in or out in the
19 instruction. Okay?

20 A Yes.

21 Q The testimony presents it and the jury should
22 consider it and then I instruct it. So with that, a
23 little bit of explanation, Mr. Jones has entered a defense
24 called an affirmative defense which means not guilty by
25 reason of insanity. I am going to give you some other

1 defenses that are perhaps testimony to support. Potential
2 defenses would be accident, involuntary intoxication,
3 self-defense, insanity, guilty but mentally ill, defense
4 of habitation, entrapment, duress or alibi. Those are
5 just all the statutory defenses. The jury decides the
6 weight to give testimony. Now, in the guilt or innocence
7 phase, because he has entered a plea or not guilty by
8 reason of insanity there are four potential verdict forms
9 in the guilt or innocence. Guilty, guilty but mentally
10 ill, not guilty by reason of insanity or not guilty at
11 all. Those four. Now, facts have been presented.

12 Depending on the facts and circumstances, whatever they
13 are, considering my instructions on the law can you give
14 meaningful consideration to all four of those verdicts,
15 consider the testimony and evidence that has been
16 presented and evaluate that fairly and impartially?

17 A I believe I can.

18 Q Now, if there is a not guilty verdict in stage one
19 the case stops there, it ends. If it goes to stage two,
20 the State has met its burden of proof in the murder beyond
21 a reasonable doubt. In stage two a couple of things
22 happen. The State presents testimony to prove an
23 aggravating factor. There are numerous, not numerous,
24 several aggravating factors that can enable the State to
25 seek the death penalty. Rape of murder, kidnapping of

1 murder, murder of a police officer, the murder of
2 children, multiple murder victims. Those are some
3 aggravating factors that the State has to prove, they can
4 prove one of those beyond a reasonable doubt. Can you
5 consider testimony of that, meaningful consider my
6 instructions?

7 A I can.

8 Q All right. Also during the entire trial, can be
9 during guilt or innocence and also during the sentencing
10 portion, if we get there, there are mitigating factors and
11 testimony that can support mitigating factors. There are
12 some statutory mitigating factors, I am going to read all
13 of them. A Defendant has no significant history of prior
14 criminal conviction involving the use of violence against
15 another. The murder was committed by the Defendant while
16 he was under the influence of mental or emotional
17 disturbance. The victim was a participant with the
18 Defendant's conduct and consented. The Defendant was an
19 accomplice in the murder committed by another and his
20 participation was minor. The Defendant acted under duress
21 or domination of another. The capacity of the Defendant
22 to appreciate the criminality of his conduct or to conform
23 his conduct was substantially impaired. The age or
24 mentality of the Defendant at the time of the crime. The
25 Defendant was provoked by the victim in committing the

1 murder. The Defendant was below the age of 18 at the time
2 of the crime. That one is not here. The Defendant had
3 mental retardation at the time of the crime. Now, those
4 are statutory. There are others that jurors can consider
5 such as the childhood, broken home, how you were raised
6 up, something happened to you in the past. Mitigating
7 factors are reasons to impose life without parole
8 sentence. Now, can you give credibility, meaningful
9 consideration to testimony, the aspects of mitigating
10 factors, whatever they are and where ever they come from,
11 consider the instructions of the Court and act as a fair
12 and impartial Juror in this case?

13 A Yes, sir.

14 Q Do you understand the State has got the
15 responsibility to prove guilt beyond a reasonable doubt
16 first?

17 A Yes, sir.

18 Q If that happens and the jury finds a unanimous
19 verdict on the guilt then it goes to the sentencing side.
20 Do you understand that the death penalty is not automatic,
21 not an automatic verdict?

22 A Yes.

23 Q Once it gets to sentencing the jury has got two
24 choices, life or death, nothing in between. Do you
25 understand?

1 A Yes, sir.

2 Q Do you have any personal, moral, religious beliefs
3 which would prevent you from finding a verdict, I am
4 sorry, a sentence of death?

5 A No, sir.

6 Q Do you have any religious, moral or personal beliefs
7 which would prevent you from finding a sentence of life
8 without parole?

9 A No, sir.

10 Q Now this trial involves the death of children. The
11 testimony may be graphic, it will be unpleasant, it may be
12 harsh, it may be difficult to hear. Nobody in here has
13 any qualm, it is not going to be easy. Will you have the
14 ability to consider testimony regarding that type of
15 testimony, you don't have anything personal in your past
16 that would affect your ability to be fair and impartial
17 considering that subject matter will be presented to the
18 Court and to the jury.

19 A No, sir. I don't have any problem.

20 Q You can do that fairly and impartially?

21 A Yes, sir.

22 Q Fair enough. Mr. McGuire.

23 EXAMINATION

24 By Mr. McGuire:

25 Q Good morning, Mr. Murphy.

1 A Good morning.

2 Q My name is Bill, Bill McGuire, I am one of the
3 lawyers in the case and as the Judge said, this is our
4 opportunity to talk to you a little bit about your views
5 about the death penalty for the offense of aggravating
6 murder. And I am going to ask the same thing of you that
7 the Judge did, just open, honest, true answers, don't tell
8 me what you think I want to hear, what the Judge wants to
9 hear?

10 A Okay.

11 Q If you were Governor for a day and there was a Bill
12 on your desk or two Bills on your desk and you could sign
13 one, one we would have the death penalty, one we would
14 not. Which one would you sign?

15 A I believe I would sign to have the death penalty.

16 Q You gave that some pretty careful thought. Were you
17 right on the fence or just slightly leaning towards
18 having it?

19 A Thinking of the circumstances that can warrant that
20 to me, not something you would take lightly per se but I
21 think there are circumstances where that is, that should
22 be the punishment under certain circumstances.

23 Q It sounds and don't let me put words in your mouth, I
24 am just trying to get out who Mr. Murphy is. It sounds
25 like you consider the death penalty a last resort?

1 A Yes, I do.

2 Q For only the most extreme cases?

3 A Yes.

4 Q And as the Judge said, the case that brings us here
5 today, it is a malicious, intentional killing of multiple
6 children. Not something like an accident or all children
7 are killed together in a car wreck or anything like that.
8 It is just multiple children killed one after another. Is
9 that such an extreme case where you would say that demands
10 the death penalty?

11 A I believe so, yes.

12 Q So in a case where it is intentional killing,
13 multiple children, that is a death penalty case for you?

14 A Yes, sir.

15 Q Okay. And letting someone live out their years in
16 prison with a life punishment, that is not severe enough
17 to punishment that potential killing of multiple children?

18 A In my mind, no.

19 Q And these answers you are giving me, it looks like
20 you are giving careful thought to them?

21 A Yes.

22 Q And they are answers that are under oath?

23 A Yes, sir.

24 Q And you have thought about your answers to make sure
25 they are true and accurate?

1 A Yes.

2 Q They are a reflection of your value system?

3 A Yes, sir.

4 Q Your moral code?

5 A Yes, sir.

6 Q And what justice requires?

7 A Yes.

8 Q When it comes to fixing punishment for this type of
9 extreme case, the intentional murder of children, some
10 folks would say the background of the killer, how he grew
11 up, that sort of thing, would not be relevant in fixing
12 punishment in that extreme case. Would you agree with
13 that?

14 A No, it has to be relevant.

15 Q And how so, why is that?

16 A I don't think you can get there without it being
17 relevant. I don't think you can get to that point in your
18 life without something along the way helping, aid you to
19 get there, not aiding you, but influencing you to get
20 there.

21 Q Okay.

22 A I don't believe you can, the way you were, influences
23 are raised where it has to have, there has to be some kind
24 of background to get to that point, to take a life of
25 anybody.

1 Q Okay. Somebody engages in the act of intentionally
2 killing innocent children, if I hear what you are saying
3 is, something must be going on to get to that point?

4 A I think so, something, yes.

5 Q Now, you heard the Judge say that Mr. Jones has plead
6 not guilty by reason of insanity. Some folks, in fact
7 some folks already in this case have come and sat there
8 and said, not guilty by reason of inanity, that sounds
9 like an excuse, kind of a copout, letting somebody off.
10 Is that your position or does that seem right, would you
11 agree with that?

12 A I can't really define insanity.

13 Q Okay.

14 A I am, you know, as far as knowing exactly what the
15 law is, so I can't say that is a copout per se so no. I
16 don't think that is necessarily a copout, if that is the
17 question.

18 Q Let me give you a little bit more information and or
19 I can get the Judge to define insanity for you. I will
20 give it a shot.

21 A How the law sees insanity, I am sure there is a
22 definition of insanity, I have had my own definition in my
23 mind of what does the law consider.

24 Q What is your definition?

25 MR. GRAHAM: Objection, Your Honor.

1 THE COURT: That is not a fair question. He said he
2 didn't know.

3 MR. MCGUIRE: No, no, he says he has the definition
4 in his mind, he doesn't know the legal definition.

5 THE COURT: I thought he said it the other way.

6 MR. MCGUIRE: Well, Judge, can I put on the record?

7 THE COURT: Yes, I had a copy of it and I misplaced
8 it. I am not sure I handed it down to somebody.

9 MR. MCGUIRE: Well, I will do it.

10 THE COURT: I don't mind defining again. That is
11 kind of what I was looking for in case you were going to
12 ask that.

13 MR. MCGUIRE: I tell you what, if I can just--

14 THE COURT: Y'all have had those copies around. All
15 right. Here we go. All right. The reason the lawyers
16 did that is the Court instructs, the lawyers present
17 facts. First, it is an affirmative defense to a crime at
18 the time of the commission of, I am stammering. Here we
19 go again. Insanity is defined as, at the time of the
20 commission of the act constituting the offense, a
21 Defendant, as a result of a mental disease or defect, lack
22 the capacity to distinguish moral or legal right from
23 moral or legal wrong or to recognize a particular act
24 charged was morally or legally wrong. Now, I am going to
25 go ahead and give you, I talked about guilty but mentally

1 ill. It is slightly different. A Defendant is guilty but
2 mentally ill is, at the time of the commission of the act
3 constituting the offense he had the capacity to
4 distinguish right from wrong or to recognize his act from
5 being wrong but because of mental disease or defect he
6 lacked the capacity to conform his conduct to the
7 requirements of law. Those are the two definitions. Mr.
8 McGuire, now ask your question.

9 Q Thank you. So you said you had your own impression
10 of what insanity was and now you heard the legal
11 definition. Are they consistent or a little bit
12 different.

13 A Pretty consistent.

14 Q Okay. And you can give meaningful consideration to
15 the verdict of not guilty by reason of insanity if it is
16 supported by evidence?

17 A Yes, sir.

18 Q So, Mr. Murphy, I want to talk to you a little bit
19 about the potential sentencing phase, the Judge talked to
20 you about the punishment phase. And it is very different
21 from what we normally think about a trial. The first
22 phase, the guilty, not guilty part, that is a traditional
23 trial. Do they have the right guy, is he really guilty,
24 that sort of thing, right. And then the sentencing phase,
25 the second phase, it is not a fact decision, it is kind of

1 a moral decision. And all twelve jurors are entitled to
2 have their individual moral judgment, that is how the law
3 describes it. Does that sound fair to you?

4 A Yes.

5 Q And you would expect people in a matter so grave as
6 to whether to take the life of a fellow human being, to
7 kill Mr. Jones, in a matter that grave and important you
8 would expect some disagreement?

9 A Absolutely.

10 Q Okay. And the way the law describes it, once an
11 individual Juror, at the end of the case, after hearing
12 everything and their individual moral judgment and say the
13 life penalty, life in prison. It is wrong and improper
14 for them to give up that position just to join a majority.
15 Does that make sense?

16 A That is absolutely wrong.

17 Q And you would want them to, the law requires them to
18 stick with and retain that individual moral judgment, does
19 that sound right?

20 A Yes.

21 Q Okay. It is actually against the Juror oath, when
22 the Judge gives a Juror oath to try the case on what you
23 hear in the courtroom and somebody after hearing all of
24 that gets to the point where they say their vote is for
25 life, they have to stick with that. Does that sound fair?

1 A Yes, sir.

2 Q We can agree that it would be wrong to coerce or try
3 to force somebody to abandon their position, life penalty
4 and actually kill another human being via execution. That
5 would be wrong to coerce somebody to force them to vote
6 for Mr. Jones death. That would be wrong?

7 A I agree.

8 Q Okay. And the Judge told you and I just will remind
9 you and ask you if you think this is appropriate. The
10 State of South Carolina is always satisfied with a life
11 verdict in any case, in the worst case, in this case.
12 Does that sound right, that the death penalty is never
13 automatic?

14 A Yes, never automatic.

15 Q No Juror could have to or be forced to vote for
16 death?

17 A Right.

18 Q And that sounds fair?

19 A Yes, sir.

20 Q If you saw a situation where a majority of jurors
21 were trying to coerce or force a Juror to vote for death,
22 that the discussions got beyond just civil discourse, that
23 it was true coercion. Could you jump in and stop that?

24 A I think so.

25 Q And one of the things you could do, one of the things

1 that would be available to you would be to pass a note out
2 to the Court, to the Judge saying, coercion in the room,
3 dignity has left the room, respect has left the room, we
4 need to get back to that. Judge, can you help us. You
5 could do that?

6 A Yes, sir.

7 Q That is all I have for you. Thank you very much.

8 THE COURT: Mr. Graham.

9 EXAMINATION

10 By Mr. Graham:

11 Q Good morning, Mr. Murphy.

12 A Good morning.

13 Q My name is Shawn Graham, I am one of the Prosecutors
14 with the State on this case. Understanding that there are
15 classes of aggravating factors that the Judge was talking
16 about that make it a death penalty case plus something
17 else, in this case a child under eleven or multiple
18 deaths. Those are the aggravating circumstances that the
19 State would have to prove above murder. So it is murder
20 and something else. And in this case those are the
21 aggravating circumstances. That is even before you get to
22 the choice to consider whether, that is what makes it a
23 death penalty case. Do you understand that?

24 A Yes.

25 Q So once you get to that point, let' say the State is

1 able to prove beyond a reasonable doubt that Mr. Jones is
2 guilty, move into the second phase and we prove that one
3 of the aggravating circumstances exist beyond a reasonable
4 doubt to you and the other jurors opinions, so in this
5 case either a child under eleven or multiple deaths. We
6 have got that out. At that point is it your position, you
7 came in and said you were a type three Juror?

8 A Yes.

9 Q Is it your position that even in those circumstances
10 that you would be able to consider both life and death as
11 a punishment?

12 A Yes, sir.

13 Q So you ultimate, even if to say, prove beyond a
14 reasonable doubt that he was guilty and proved an
15 aggravating circumstance of a child under eleven or
16 multiple deaths, you could still consider a life sentence?

17 A I could after hearing all the information, yes.

18 Q You would want to, as the Judge instructed, you want
19 to hear the aggravating, the things that make it worse,
20 the mitigating, things that make it better, a reason or
21 give them life before you would decide between either
22 death or life?

23 A Yes, sir.

24 Q And you would be able to consider both?

25 A Yes, sir.

1 Q Mr. McGuire talked to you about individual moral
2 judgment. You remember him using that phrase?

3 A Yes.

4 Q You do understand though that in, for the jury to
5 reach a decision of life it would have to be unanimous.
6 Or for the jury to reach a decision of death it would have
7 to be unanimous. So you understand that after you heard
8 all the evidence that you and the rest of the jurors would
9 go deliberate?

10 A Yes.

11 Q Obviously it would be discussions of people's beliefs
12 and thoughts--

13 MR. MCGUIRE: Your Honor, I would have an objection
14 that we would have to put on the record.

15 THE COURT: Step outside real quick and have you
16 right back in here.

17 (Whereupon, the Juror was excused from the
18 courtroom.)

19 THE COURT: What is your objection.

20 MR. MCGUIRE: Your Honor, Mr. Graham stated to the
21 Juror, do you understand that the sentence to be life
22 would have to be unanimous for life. That is not a
23 correct statement of the law. If the jury ends in
24 disagreement, a non-unanimous jury, the Judge takes the
25 case and sentences to life.

1 THE COURT: You don't have to tell me the law.

2 MR. MCGUIRE: You are right, I am sorry. That is my
3 objection. And do you want to know what I propose to do
4 or how to cure it?

5 THE COURT: Yes.

6 MR. MCGUIRE: I would like to be able to communicate
7 with this Juror about the jury disagreement and the Judge
8 will take the case and sentence to life to correct that
9 misstatement of the law.

10 MR. GRAHAM: Judge, we would object to him being able
11 to instruct the jury on something. If I did something
12 wrong I would ask for Your Honor to correct it. The only
13 verdicts that the jury can reach, unanimous verdicts they
14 can reach are a verdict of life or a verdict of death. I
15 don't believe that that is a misstatement of the law.

16 THE COURT: Okay.

17 MR. GRAHAM: If that needs to be cleared up that can
18 be cleared up. Your Honor gave that in the initial
19 instructions about unanimous verdicts of life and death.

20 MR. MCGUIRE: I agree, it might be best coming from
21 the Court. Judge, can you just give us a couple of
22 minutes to huddle and actually draft the proposal. It
23 won't take long.

24 THE COURT: Here is what I was, I was huddling right
25 there in my head as y'all were discussing this. If a

1 unanimous verdict is not reached and the Court will give
2 you additional instructions on how to resolve that.

3 MR. MCGUIRE: That isn't incorrect, the statement,
4 for it to be life there has to be a unanimous verdict.
5 That has to be corrected.

6 THE COURT: Why didn't y'all come up with this last
7 night.

8 MR. HUBBARD: Your Honor, this goes way back to our
9 original thing which is why we are objecting to this at
10 all. It is improper.

11 THE COURT: This is what I am trying to stay away
12 from.

13 MR. MCGUIRE: This is not our fault, misstatement of
14 the law.

15 THE COURT: I agree, I agree, quit arguing, sit down
16 and draft your proposal. I don't need additional words to
17 agree with you. You talk me out of it, less is more.

18 MR. HUBBARD: We will draft one too.

19 THE COURT: Sure.

20 (Whereupon, a short break was taken.)

21 THE COURT: Mr. Hubbard.

22 MR. HUBBARD: I certainly object to their language
23 because, again, I think you have already ruled on it. I
24 think at the end of the day less is more. And what you
25 have been charging is what the law is, that sentences must

1 be unanimous, whether it is life or death. That is their
2 job. I think the only obligation the Court ever has is to
3 tell the jury what their job is. Once they can't do their
4 job, they don't need to know what your job is. There is
5 no case that says that. In fact, State versus Copeland,
6 just for the record, Your Honor, I know you don't need me
7 to read at length about it. State versus Copeland which
8 is 300 SC 2nd 63, 1982 case. It is proper to charge a
9 sentencing jury that its verdict must be unanimous no
10 matter what the options are. I think you have to charge
11 that. So what Mr. Graham ask was proper law, that is what
12 you are reading to them at the beginning as you are
13 qualifying them. That is proper law. What they are
14 proposing is not supported by law in any case saying that
15 that is what you must do.

16 THE COURT: Mr. McGuire.

17 MR. MCGUIRE: For the record, I handed up a
18 handwritten proposal which states, if after appropriate
19 deliberations the jury is not unanimous as to either
20 sentencing option, life without parole or the death
21 penalty, the Judge is required to sentence the Defendant
22 to life without parole. And, of course, that is the
23 one-hundred percent true, accurate statement, basically
24 right out of the statute. And what we have to address,
25 you know, this is very limited to Mr. Graham's statement

1 to the Juror, for there to be a life sentence it has to be
2 unanimous for life. And that is a misstatement of the
3 law. It is not true and if this Juror is not corrected
4 and he is seated, in his deliberations, since he is making
5 up his mind in the case he could be, it is a reasonable
6 probability that he will remember Mr. Graham's statement
7 and his belief and view that it has to be a unanimous
8 verdict to have a life sentence would be introducing an
9 arbitrary factor in the deliberations. And if any
10 arbitrary factor comes into the case it is a violation of
11 Mr. Jones Eighth Amendment rights with regard to cruel and
12 unusual punishment. All decisions have to be made
13 properly, not under some false belief. And they have
14 injected that arbitrary factor in this case. It has got
15 to be cured and you can cure it with one sentence.

16 MR. HUBBARD: And, Your Honor, I guess, just short
17 recap is that and for the record so they know what I have
18 put up in front of Your Honor. It is actually what you
19 have read to the jury, which is a correct statement of the
20 law. In order for the sentence of death to be imposed the
21 verdict must be signed by all twelve jurors. If jurors
22 unanimously decide to sentence a Defendant to a life
23 without parole sentence then the sentence of life without
24 the possibility of parole will be imposed. That is not a
25 misstatement of the law, can never be an arbitrary factor.

1 Here is the real danger of their proposal.

2 THE COURT: I understand, I know the danger.

3 MR. HUBBARD: About watering it down.

4 THE COURT: Yes. All right.

5 MR. MCGUIRE: And, Judge, I would just say in
6 Poindexter for our position, that, you know, that the
7 jurors have to be informed with regard to their
8 sentencing, the consequences of their decisions and the
9 results of their deliberations.

10 THE COURT: Here is what I am going to do. I am
11 going to tell him that if either sentence, some, I am
12 stammering today. If either sentence -- y'all come up
13 here.

14 (Whereupon, a bench conference was held.)

15 THE COURT: Bring Mr. Murphy back in.

16 (Whereupon, Juror David Murphy came back into the
17 courtroom.

18 THE COURT: Mr. Graham, were you finished, you were
19 right at the end.

20 MR. GRAHAM: I was close to the end. I only had one
21 more question after that, Your Honor.

22 THE COURT: Mr. Murphy, I want to, as I did on the
23 definition of insanity and mentally ill, I want to make
24 certain, I am certain in my preliminary comments to you
25 that I read earlier, I want to go back over those. It is

1 my job to make sure the instructions of the law are
2 correct and I make every effort to do so. But once the
3 case goes past guilty or innocence, there is a guilty
4 verdict found on the guilt or innocence phase, it goes to
5 sentencing from the jury's task with evaluating all the
6 evidence, mitigating factors, aggravating factors the
7 State has got to prove, all the testimony. And they have
8 got two choices, life without parole and death. If the
9 jury unanimously reaches either of those verdicts those
10 sentences are carried out. So if the jury is unanimously
11 life without parole that sentence is carried out. The
12 balance of life, that person is convicted and sentence is
13 imposed. If it is a death verdict, all jurors sign the
14 verdict form, that sentence is carried out. Now, the
15 lawyers have asked you about your individual moral
16 judgment and whatnot. A person has that and people
17 discuss that and banter back and forth. No jury is going
18 to be coerced or made to abandon their moral judgment. So
19 that is just how it is. A person, once they make that
20 decision they are not going to be required to or suggested
21 to abandon that decision. All right.

22 JUROR: All right.

23 THE COURT: That is my corrected instruction. Mr.
24 Graham, continue on.

25 MR. GRAHAM: You covered it actually. Thank you,

1 Your Honor.

2 THE COURT: Anything else, Mr. McGuire?

3 MR. MCGUIRE: On the record.

4 THE COURT: All right, step out real quick and we
5 will have you right back in here.

6 (Whereupon, the Juror was excused from the
7 courtroom.)

8 THE COURT: I know that is not incorrect.

9 MR. MCGUIRE: That is not incorrect?

10 THE COURT: That is not incorrect. I am going to
11 continue to look into other things. But let me hear you
12 on this issue.

13 MR. MCGUIRE: Sure. Judge, on this issue there is a
14 difference between having an uninformed Juror and a
15 misinformed Juror. In this situation, the statement, the
16 only way there would be a life sentence is if all twelve
17 unanimous for life. That is not true because there could
18 be a life sentence when the jury is not unanimous, the
19 Judge would take the case and sentence. So if it is just
20 an uninformed Juror, we don't tell them anything which is
21 kind of what we have been doing, that is one thing. But
22 affirmatively misinforming a Juror puts an error in the
23 case, there is a reasonable probabilty that he could
24 remember that when he is in deliberations.

25 THE COURT: He is tasked with accepting instructions

1 from the Court which I just gave him the correct
2 instruction.

3 MR. MCGUIRE: Sure. But if he does remember the
4 statement by Mr. Graham, the only way it would be a life
5 sentence is if all twelve agree on life. And he brings
6 that up in deliberations he is injecting a false arbitrary
7 factor in deliberations.

8 THE COURT: All right, you have noted for the record
9 but I believe my correct statement of the law would, at
10 worst, let him hear that also. So he would have to
11 arbitrarily assign a wrong reason and not listen to and
12 not accept the Court's instructions which would be against
13 his oath, correct?

14 MR. MCGUIRE: Sure. But just for the record, Judge,
15 I would cite Simichik, (phonetic), versus Kelly for the
16 proposition of the jurors should be misinformed and their
17 sentence decision, as well as Poindexter in that allowing
18 the Juror to remain misinformed and--

19 THE COURT: He has not been allowed misinformed.

20 MR. MCGUIRE: He was misinformed by Mr. Graham. He
21 was correctly informed by the Court.

22 THE COURT: Right.

23 MR. MCGUIRE: But I don't think it went far enough to
24 completely correct it and I appreciate the Court's
25 comments and they are true and accurate. But it didn't

1 go, the next step to say, Mr. Graham indicated that the
2 only way to be life had to be unanimous. That is not
3 true, the jury can disagree and the Judge takes the case
4 and sentences to life. I am not going to kick the dead
5 horse. I cited my cases. Do you want to be heard on
6 whether he is qualified?

7 THE COURT: Yes.

8 MR. MCGUIRE: And, Judge, we would move that this
9 Juror be disqualified based on the fact that in the case
10 of intentional killing of innocent children, he indicated
11 the death penalty was the only appropriate punishment. I
12 ask him if the life penalty could be severe enough, hard
13 enough to punish that kind of killing and he said no. He
14 said that is a reflection of his moral code, his personal
15 beliefs, he thought justice required. There wasn't any
16 confusion about that. Based on those answers and how
17 strong he felt them, I would say that he is substantially
18 impaired. And, Judge, what I think we have had is a
19 pretty good line of people that are identifying themselves
20 in the middle of the road. And we have had so many good
21 qualified jurors in the middle of the road, they seem
22 openminded. Why are we going to take a chance and put
23 this guy out and say, innocent children, kill multiple
24 case, I am death penalty, life penalty is not severe
25 enough punishment. That is a reflection of my values, my

1 code, what justice requires. Why take the risk.

2 THE COURT: Just like we had seven men and one woman
3 on the first one, by chance. We may have a run of other
4 types coming through here and one type or the other. Who
5 knows. All right, Mr. Graham, let me hear you on the
6 qualification.

7 MR. GRAHAM: Thank you, Your Honor. He is qualified
8 under the totality of the circumstances. He came in and
9 said he was a type three. Mr. McGuire got up and asked
10 questions that you said are inappropriate. You are
11 suppose to go with class, instead he went specifics and he
12 led him with, could you consider both but you could only
13 consider this suggesting the answer to him and he replied.
14 When he was faced again later, when I asked him questions,
15 he did. He said he could, in the same situation, in the
16 class of children with a class of multiple murders that he
17 could consider both life and death. He could consider
18 aggravating and mitigating circumstances. I didn't imply
19 what the answer should be, he said it was the only
20 appropriate, said it was an improper question. I mean I
21 didn't think we were going to use the phrase, innocent
22 children. So I think the question was improper the way it
23 was asked. I think that ultimately when he came in to you
24 and to Your Honor and to me when I asked questions, he
25 said he was a type three Juror and he could consider

1 everything and both sentences even in this case.

2 THE COURT: The Court finds based upon the totality
3 of all the questions and the answers provided by Mr.
4 Murphy that he identified himself as a type three, he
5 multiple times identified him as to wants to hear all the
6 facts and circumstances. And he could consider all of
7 those in reaching a verdict or a sentence. So the Court
8 finds him qualified. All right, bring him back in.

9 MR. MCGUIRE: Just very briefly to put on the record.
10 We rely on, to seek the evidence but also Morgan v.
11 Illinois and Witherspoon v. Illinois.

12 THE COURT: Y'all keep reading off that same sheet,
13 give Joy a copy of it. Bring him back in.

14 (Whereupon, Mr. Murphy came back into the courtroom.)

15 THE COURT: Mr. Murphy, the lawyers and the Court
16 discussed and found you qualified to be a Juror in this
17 case. That does not mean you will be a Juror, you are
18 qualified as a potential Juror. You move from panel four
19 to a qualified Juror list. The internet, the website will
20 identify and tell instructions to qualified jurors to when
21 I need you back in here. Probably be next week or just
22 watch that website under the qualified jurors, you are to
23 report back at, so and so time on so and so date. And it
24 may not be for a while. It may be, please check back,
25 please check back until you see something. Just monitor

1 that website. Until that time don't talk about the case,
2 don't allow anybody to question you or ask you about the
3 case or suggest anything to you about the case. Do not do
4 any independent research, do not monitor the social media,
5 media sites to try to gather information. Minimize your
6 media contact. I understand there is publicity about the
7 case. I want you to be influenced and make decisions in
8 this case in what you hear in the courtroom and not what
9 is publicized elsewhere. I don't have any control over
10 that, I have control in here. I want you to respect these
11 parties and be a fair and impartial Juror in a fair and
12 impartial trial. So that is your oath to the Court. Can
13 you accept it?

14 JUROR: Yes, sir.

15 THE COURT: All right.

16 (Whereupon, the Juror was excused from the
17 courtroom.)

18 THE COURT: Let's take a few minutes.

19 (Whereupon, a short break was taken.)

20 MR. MCGUIRE: Judge, I have handed to Joy the
21 instructions and we would like to have that marked as a
22 Court's exhibit.

23 THE COURT: All right, Court's exhibit 72.

24 (Whereupon, Court's Exhibit 72 was marked for
25 identification only.)

1 THE COURT: Juror 59, bring them in.

2 (Whereupon, Juror 59, Nathanael Brown came into the
3 courtroom.)

4 EXAMINATION

5 By The Court:

6 Q Good morning.

7 A Good morning.

8 Q Mr. Brown, I am going to remind you, you are under
9 oath.

10 A Yes, sir.

11 Q You took an oath Monday when I first introduced
12 myself and I told you, don't discuss the case with
13 anybody, don't let anybody discuss the case with you.
14 Have you done that?

15 A Yes, sir.

16 Q Anybody tried to discuss the case with you?

17 A No, sir.

18 Q There have been lots of publicity in this case. Has
19 any of that publicity caused you to form opinions as to
20 what happened in this case?

21 A No, sir.

22 Q I asked you also to review a lengthy witness list,
23 not all of those witnesses will be called. Those are
24 potential witnesses just in case they need to be called.
25 Are you connected in any way to any of those witnesses?

1 A After reading through it twice, no one I know seems
2 remotely from, seems familiar to me.

3 Q Now, I asked you to consider your personal schedule,
4 vacation, family obligations that are important or paid
5 for, medical procedures. You got anything on your
6 upcoming schedule for the next several weeks which would
7 cause you a personal issue if you had to reschedule it.

8 A The only issue would be that I just started a new job
9 and I would like to keep a good record with them.

10 Q What do you do?

11 A I work sort of as a document reviewer for a
12 litigation firm.

13 Q Okay. Are you in law school?

14 A No, sir.

15 Q So you look for things in particular?

16 A I basically put things where they need to be just to
17 make sure things are organized. It is not the field that
18 I intend to go. I graduated at USC with a Business
19 Degree.

20 Q And you have worked with this firm for how long?

21 A It will be about two weeks now today.

22 Q All right. And if need be and you get selected as a
23 Juror certainly the Clerk of Court can notify them why
24 that your jury service is important in Lexington County.

25 A Yes, sir.

1 Q I think the lawyers would understand as much as
2 anybody.

3 A I believe so.

4 Q Okay. Now, you heard my instructions earlier this
5 morning regarding the criminal procedure and process that
6 a Capital case goes through. Do you understand that?

7 A Yes.

8 Q This is a Capital case because the State is making
9 accusations through indictments against Mr. Jones. He is
10 presumed innocent. The State has got to prove in the
11 first stage the five accusations of murder. The State
12 doesn't meet its burden of proof in the case beyond a
13 reasonable doubt the case ends there. If the State meets
14 that burden of proving the five indictments then the case
15 could go to phase two. And at that time the jury
16 considers the State's proof beyond a reasonable doubt of
17 aggravating factors, has got to prove at least one and
18 then all the mitigating factors which could be considered
19 by the jury, received during the entire trial. Now, would
20 you be able to listen appropriately, meaningfully consider
21 all the testimony in accordance with the instructions on
22 those aspects of the law and act as a fair and impartial
23 Juror?

24 A Yes, sir.

25 Q Now, I sent another summary of three types of

1 potential jurors, in Capital cases the Courts observe. It
2 is type one, type two, type three. And did you read that
3 form?

4 A Yes sir, I did.

5 Q Did you understand it?

6 A Yes, sir.

7 Q It is kind of hypothetical. Presuming that the State
8 has met its burden of proof in the first phase and then
9 yet again, consider all the facts and circumstance, can
10 you find yourself as a potential Juror type?

11 A After reading through the three I find it a little
12 bit of difficulty defining myself between type two and
13 type three. Type one is definitely not me but type two,
14 the wording seems to apply that I would not consider all
15 facts. Type three did state considering all facts very
16 clearly. So somewhere in between two and three but mostly
17 leaning on two, that would be my final answer is my type.

18 Q Okay. Would you not be able to sign a verdict for
19 the death penalty, could you do that, do you have a
20 religious or moral or personal belief that you could not
21 sign a punishment of the death penalty?

22 A I was trying to find a--

23 Q Let me tell you this. Your answers, I told y'all
24 earlier, this is part of what I was trying to suggest
25 earlier is there are no wrong answers here. I want candor

1 and so you are not going to give me a wrong answer. I
2 want you to just give me a truthful answer. Okay?

3 A I was trying to find the best answer I could to see
4 whether or not I could answer that question, whether or
5 not I could sign away on a death penalty. And to the best
6 of my knowledge, for faith reasons, belief reasons, I
7 normally would say that I am generally very opposed to the
8 death penalty.

9 Q He is type two. That is what I was looking for. Not
10 a right answer or wrong answer, I want to know about you.
11 Okay. You are free to go, thank you for coming, good luck
12 with your job.

13 A Thank you, sir.

14 THE COURT: Number 101, are y'all ready for 101?

15 MR. HUBBARD: Yes sir, Your Honor.

16 MR. YOUNG: One thing, Your Honor, and I know that,
17 Your Honor was satisfied that Mr. Brown was substantially
18 impaired and based on his answers to Your Honor. He said
19 he was leaning hard with type two, I totally get that. I
20 don't know where, in his testimony, if his response would
21 have been that he could consider in extreme circumstances.
22 I thought that is where he was going. I don't know. Of
23 course it is up to Your Honor to determine but of course
24 jurors who have objections to the death penalty can serve
25 if they say they could go to consideration which Your

1 Honor knows. I just felt like that he didn't get the
2 chance to answer.

3 THE COURT: Fair enough. I will be mindful of that.

4 MR. YOUNG: Thank you, Your Honor.

5 THE COURT: Bring him in.

6 (Whereupon, Juror David Connelly came into the
7 courtroom.)

8 EXAMINATION

9 By The Court:

10 Q Good morning, Mr. Connelly. You live out in Chapin.

11 A Yes, sir.

12 Q I remind you you are still under oath. I have got
13 several questions to ask you. As I told you, you are
14 under oath to tell the truth. Lots of questions that are
15 going to be asked in here, it is going to be regarding
16 your personal opinions, personal beliefs. So there is not
17 a right answer or a wrong answer, just looking for candid,
18 truthful answers. Okay?

19 A All right.

20 Q I ask you to take an oath Monday about not talking
21 about the case from that point forward. Has anybody tried
22 to talk to you about the case since then?

23 A Not from the public. My wife and my mother, that is
24 all, at home.

25 Q Have they discussed the case with you or discussed

1 you on jury duty?

2 A I told them I couldn't talk about that but they
3 persisted.

4 Q All right. You told them you are not going to talk
5 about the case but they are still curious?

6 A Yes, sir.

7 Q And have they influenced you or caused you to form an
8 opinion about the case?

9 A I have already got my opinion, sir.

10 Q And there has been so much publicity about this case
11 several years ago and here recently. Have you formed an
12 opinion as to what happened in this case based upon that
13 or what you have heard on the street?

14 A Yes, pretty much.

15 Q I told you facts in the original instructions in the
16 courtroom next door, that there were accusations about
17 five murders of children. So certainly I told you that.

18 A Yes, sir.

19 Q Now, can you tell me if you have formed an opinion, I
20 gave you that sheet that shows the three type of jurors?

21 A Type one, sir.

22 Q You are type one?

23 A Yes, sir.

24 Q Can I talk you out of that?

25 A No, sir.

1 Q Fair enough. That is all I needed, see you later and
2 thank you for your patience.

3 (Whereupon, the Juror was excused from the
4 courtroom.)

5 THE COURT: 125 is next. Are y'all ready for 125?

6 MR. YOUNG: Yes, sir.

7 THE COURT: Bring them in.

8 (Whereupon, Juror 125, Hope Derrick came into the
9 courtroom.)

10 EXAMINATION

11 By The Court:

12 Q Good morning, Ms. Derrick, how are you doing today?

13 A Good.

14 Q I will introduce myself, my name is Eugene Griffith
15 and I am the presiding Judge of this case. I asked you to
16 accept an oath Monday to not talk about the case, let
17 anyone discuss the case with you, try to influence you.
18 Have you talked about the case since Monday?

19 A Nope, I have not, I have tried to shut everybody
20 down.

21 Q And certainly people may know that you are a Juror,
22 but have you had questions about that from people, just
23 your family?

24 A Yes, just like family and work, are you out again,
25 that sort of thing.

1 Q And you only told them that you have been summoned
2 for to be qualified as a Juror or not?

3 A Correct, yes sir.

4 Q Now, there has been publicity in this case, a wide
5 variety of forms. Has any of that publicity that you
6 received or heard or somehow been presented, has any of
7 that publicity caused you to form an opinion as to what
8 happened in this case?

9 A I don't know much about the case.

10 Q Okay. Now, I asked you about your personal schedule.
11 I am looking for truthful answers and candor. Some of the
12 questions I am going to ask you about is opinions this one
13 is not. Once your opinions are asked for, we want candid
14 opinions. You got anything on your personal schedule
15 coming up over the next, to the end of this month to the
16 first of June which would affect your ability to serve as
17 a Juror, perhaps vacations, upcoming medical procedures or
18 family member or anything like that?

19 A Can we readdress a work question here or no?

20 Q Sure.

21 A So I had mentioned to you Monday that I was
22 self-employed. I am a realtor, I am with Keller Williams
23 but I am 1099 with Keller Williams, like I am a
24 independent agent, I don't have a team or anybody working
25 for me. So my 1099 comes from Kellor Williams, my W2

1 comes from myself. It is a big concern for me is that I
2 don't have anybody to run my business.

3 Q You consider yourself self-employed?

4 A Absolutely self-employed. I pay Keller Williams is
5 how it works to be a realtor. I pay them to park my
6 license under their name, to use their marketing, their
7 logo but they don't do--

8 Q You pay them a monthly fee?

9 A I pay them a monthly fee.

10 Q A percentage?

11 A I pay them both actually. I pay them a percentage of
12 what I would sell and I pay them a monthly fee to park my
13 license under their--

14 Q Under their brokerage?

15 A Under their brokerage, right. So my W2 is actually
16 the Derrick Team which I am the sole owner of and the sole
17 employee of. Derrick Team is messed up this week. So I
18 thought I was going to be here Wednesday--

19 THE COURT: Self-employed?

20 MR. HUBBARD: Yes, sir.

21 THE COURT: I am going to excuse you from being
22 self-employed and I am going to thank you for your
23 patience and your participation.

24 JUROR: Thank you.

25 THE COURT: Don't talk about the case.

1 JUROR: Absolutely.

2 THE COURT: Thank you, Ma'am.

3 JUROR: Thank you.

4 THE COURT: Good luck, Ms. Derrick.

5 JUROR: Thank you.

6 THE COURT: Who am I missing.

7 BAILIFF: Number 373.

8 MR. YOUNG: They didn't show up at all?

9 THE COURT: Pretty much. Number 226, bring them in.
10 (Whereupon, Juror 226, Desiree Jordan came into the
11 courtroom.)

12 EXAMINATION

13 By The Court:

14 Q Good morning, Ms. Jordan.

15 A Good morning.

16 Q How are you doing today.

17 A Okay.

18 Q My name is Eugene Griffith, I am the presiding Judge
19 in this case. I introduced myself Monday and I ask you
20 take an oath, you are under oath now, remind you again.

21 And I asked you not to discuss the case with anyone, has
22 anybody discussed this case with you. Have you done that?

23 A No, but somebody did say something to me about that
24 there were five involved.

25 Q I did too.

1 A Other than that I don't know anything.

2 Q Has anybody questioned you about the case?

3 A No.

4 Q Now, other than that one brief discussion or telling
5 somebody or whatever, that you got summoned into court,
6 any other discussions about the case?

7 A No.

8 Q Now there has been media attention, publicity in this
9 case. Has any of that publicity caused you to form an
10 opinion in this case?

11 A I have not seen any actually.

12 Q Now, this, I asked you about your work schedule or
13 personal obligation schedule, whatever that may be. If
14 you were selected as a Juror and you were put on the jury
15 could you serve, this case may last a couple of weeks, may
16 not start for another week or so. But the month of May is
17 probably a pretty safe estimate from my perspective of how
18 long it may take but don't know yet. Do you have anything
19 on your calender which would create a huge inconvenience
20 for you if you were selected as a Juror?

21 A I don't think so.

22 Q Okay. Now, also I ask you about a witness list, did
23 you review the witness list?

24 A Yes, I looked at the witness list.

25 Q Do you know any of witnesses?

1 A No, not that I know of.

2 Q You are connected to any of them?

3 A Not that I know of.

4 Q Now, I read a statement to you, a brief summary of
5 some criminal procedures, definition of a few terms
6 including murder and the statutory definition for murder
7 and explained a little bit about a Capital case and how a
8 Capital case procedure works, understanding there is phase
9 one and if there is a verdict reached unanimous by the
10 jury, either not guilty or guilty. Not guilty the case
11 ends. If it is guilty it goes to phase two where the
12 sentencing of the Defendant would be considered by the
13 jury and the jury imposes two choices, life without parole
14 or death. No other choices available for the jury.
15 Understanding the State has got to prove an aggravating
16 circumstance beyond a reasonable doubt and there will be a
17 multiple other testimony to consider including testimony
18 regarding mitigating factors or reasons to not give the
19 death penalty but impose life without parole. Now, you
20 understood that explanation that I gave?

21 A Yes.

22 Q And realize now it is a two-step process. Step one
23 guilt or innocence, step two considering mitigating and
24 aggravating factors which the State has got to prove the
25 aggravating factor beyond a reasonable doubt, considering

1 those factors before the jury makes a determination of the
2 sentence, life or death. The death penalty is not
3 automatic, some people have that misconception. Now, I
4 have explained that procedure to you and I also gave you a
5 summary of three types of potential jurors. You don't
6 have any other facts right now before you other than five
7 and children. Mr. Jones is presumed innocent right now.
8 he remains under that presumption and will remain until a
9 verdict is reached, if at all, okay. Can you identify
10 yourself as one of those three types of jurors?

11 A Yes, probably number three.

12 Q Probably number three. I want to discuss that with
13 you a little bit further because, this is where the
14 truthful answers involve opinions perhaps because you
15 don't know the facts, you know generalities right now and
16 that is where I am going to stay. So understanding there
17 are general facts, nothing specific is going to be given
18 to you today, other than five and they are children,
19 generalities. Now, I am going to describe stage one of
20 the trial, the guilt or innocence side. That has got to
21 be resolved first. If it gets resolved not guilty the
22 case is over, ends right there. During that phase of the
23 trial Mr. Jones has entered a plea, claiming an
24 affirmative defense, an affirmatively defense means he has
25 got to say it up front. He can't not tell the State he is

1 going to seek that and he has done that. There are other
2 defenses that testimony may prove and at that time then
3 the jury would consider those defenses. I am going to
4 read you the statutory defenses. Part of our outline in
5 that instruction was, until the testimony is presented we
6 don't exactly know all the particular facts that may be
7 presented, or the Court consider and yet for the jury to
8 consider. Until we have all the testimony I can't tailor
9 my instructions on what aspects of the law you will need
10 to know or consider. I have an idea of some of them but
11 some of them are unknown to me yet. And once the
12 testimony is presented and then I add to my instructions
13 and that is what the jury gets to hear at the very end.
14 Okay.

15 A Okay.

16 Q Potential defenses we could hear testimony to, I am
17 going to read them all but some of them will not be
18 applicable and you will, they are pretty obvious and I
19 will explain that later. But potential defenses can
20 include identification, accident, involuntary
21 intoxication, self-defense, insanity, guilty but mentally
22 ill, defense of habitation, entrapment, duress and alibi.
23 All of those won't apply, some of them could. Could you
24 give meaningful consideration to any and all testimony,
25 instructions of the Court to consider any of those

1 defenses which the Court has outlined and I will define
2 those in my instructions, but consider the testimony and
3 evidence and apply the law as properly as you can and act
4 as a fair and impartial Juror in this case?

5 A I would try.

6 Q Like you say, the instructions on the law confuses a
7 lot of people, mostly what jurors need is an open mind and
8 commonsense. All right.

9 A Okay.

10 Q Now, here is another question for you, if the first
11 phase is found guilty and the second phase includes the
12 State's duty and responsibility to prove an aggravating
13 factor. Aggravating factors are these and these are not
14 all of them but a few of them. The State has got to prove
15 at least one beyond a reasonable doubt. Rape in murder,
16 kidnapping and murder, murder of a police officer, murder
17 of children, murder of more than one victim. If the State
18 proves one of those beyond a reasonable doubt they have
19 done the aggravating factor responsibility to then to say,
20 we would like you to consider the death penalty. Once in
21 the sentencing phase, the jury is deciding the sentence,
22 you only got two choices, no in between, life without
23 parole. If the jury reaches a unanimous verdict on that,
24 that is the sentence carried out. If they reach a
25 unanimous verdict on the death then that sentence is

1 carried out. Now, potential mitigating factors that
2 jury's, the jury must consider would be and not all of
3 these apply but if testimony is presented in these the
4 jury gets to consider. Okay.

5 A Okay.

6 Q The Defendant has no significant history of prior
7 criminal history involving the use of violence against
8 another person. The murder was committed by the Defendant
9 while the Defendant was under the influence of mental or
10 emotional disturbance. The victim was a participant in
11 the Defendant's conduct or consented to the act. The
12 Defendant was an accomplice in the murder committed by
13 another person and his participation was relatively minor.
14 The Defendant acted under duress under the domination of
15 another person. The capacity of the Defendant to
16 appreciate the criminality of his conduct or to conform
17 his conduct to the requirements of law was substantially
18 impaired. The age or mentality of the Defendant at the
19 time of the crime. The Defendant was provoked by the
20 victim in committing the murder. The Defendant was below
21 the age of 18 at the time of the crime. The Defendant had
22 mental retardation at the time of the crime. And perhaps
23 even other facts testified to and presented to the jury
24 the jury can consider like family history of the Defendant
25 or how he was raised up, broken family, that type of

1 thing. Obviously the one under 18 at the time, that would
2 not be a mitigating factor because that wouldn't be a fact
3 to present. Those are a variety of the mitigating factors
4 which the jury considers. Now, when considering those
5 factors at the time, in the sentencing phase, if we get to
6 that point, can you give meaningful consideration to all
7 of the testimony whether it be about the crime and
8 elements, aggravating factors, mitigating factors,
9 potential defenses, testimony involving all of that. Can
10 you give meaningful consideration to that type of
11 testimony and accept and apply the law as instructed by
12 the Court and be a fair and impartial Juror. Can you do
13 that?

14 A I would try.

15 Q And are you hesitant because you are not certain you
16 understand all the aspects of the law?

17 A Well, I don't even watch crime things so that kind of
18 stuff really bothers me anyway.

19 Q Well, let me ask you this question. One of my other
20 questions is, this subject matter involves the death of
21 five children. The testimony may be graphic, it is going
22 to be unpleasant, it may be very unpleasant at times.
23 Would considering and evaluating testimony and evidence of
24 that type of subject matter cause you not to be fair and
25 impartial to both the State and the Defense?

1 A No, but it would probably haunt me for the rest of my
2 life, that kind of thing.

3 Q I don't know the facts other than the brief facts
4 that have been presented to me and get ready for trial
5 either. I don't want to represent to you that the facts
6 are going to be okay at all. The lawyers has told me that
7 they are difficult facts. So with that in mind can you be
8 fair and impartial to both sides?

9 A Yes but I won't like doing that. Does that make
10 sense.

11 Q Yes, ma'am. It does. You are willing but--

12 A Yes.

13 Q In most cases the jury service, jury's don't
14 volunteer. But civic duty is sometimes imposed upon
15 people but you could do that?

16 A If I am imposed upon, yes.

17 Q Now, do you have any moral, religious belief, any
18 reason whatsoever that you could not, after considering
19 all the facts and testimony and evidence, appropriate
20 instruction on the law from the Court give meaningful
21 consideration to all of those things, could you, do you
22 have a reason you could not impose a death sentence?

23 A I have never been faced with that so I just don't--

24 Q I will ask you another way too. Do you have a
25 religious, moral or personal belief that you could not

1 consider a life without parole sentence?

2 A No, I could do that.

3 Q So you could consider that type of sentence?

4 A Yes.

5 Q Now, the converse is, could you consider a death
6 sentence?

7 A Under the right circumstances, yes.

8 Q All right. Now, you understand the death penalty is
9 not automatic?

10 A Yes.

11 THE COURT: Mr. Secor.

12 MR. SECOR: Yes, sir.

13 EXAMINATION

14 By Mr. Secor:

15 Q Ms. Jordan.

16 A Yes.

17 Q How are you?

18 A Fine.

19 Q Good. I just want to ask a few things of you. And I
20 just tell you that I understand and appreciate the
21 difficulty of this to consider. Just a few things
22 regarding how jurors are to come to their decision in
23 these cases. I would like to go over with you and just
24 ask you if these are principles that you agree with,
25 whether or not you think that you could comply with if you

1 did, in fact, end up on the jury in this case. Is that
2 all right?

3 A Sure.

4 Q Okay. And the primary thing that I want to tell you,
5 I guess, is that in South Carolina and in the United
6 States the death penalty is never required for any case,
7 not this case, not any case, not the worst case you can
8 possibly imagine. Does that sound like that is right to
9 you?

10 A Well, you are telling me it is.

11 Q And I promise you that it is the law but I guess,
12 what I would like to know is your personal feelings on
13 these things. The Judge has asked you whether you could
14 comply with the law and of course that is his job and that
15 is appropriate. I am sort of interested more what Ms.
16 Jordan thinks about these things. And if you disagree
17 with them I encourage you to tell me, if you think it
18 should be different, that is kind of what I am interested
19 in.

20 A Okay.

21 Q But as I said, in South Carolina death penalties are
22 never required for any case and that is because the law is
23 always satisfied with the sentence of life without parole
24 in any case, the worst case you can possibly imagine.
25 Does that sound like how it should be to you?

1 A That would be fine.

2 Q Okay. And in the penalty phase, as the Judge told
3 you, you would hear evidence of aggravating circumstances
4 and mitigating circumstances. And just to make sure you
5 and I are talking about the same things. Aggravating
6 circumstances would be presented to you by the State and
7 they have to prove them beyond a reasonable doubt and
8 unanimously to all jurors. And they are factors that they
9 are offering to you to try to convince you that death is
10 the appropriate sentence. Does that make sense?

11 A Yes.

12 Q And then the Defense would present to you what is
13 called mitigating factors. And those are, those have no
14 burden of proof, they don't have to be proven to you, to
15 any degree of satisfaction other than what you determine
16 yourself. And doesn't have to unanimous. And the term,
17 mitigating factor, sounds like kind of a fancy word but it
18 just means any reason to vote for life without parole.
19 Does that make sense to you?

20 A Yes.

21 Q Okay. And it is important that the potential jurors
22 that mitigation is never offered as an excuse or a
23 justification for the crime for which you would have found
24 the person guilty at that point. So it doesn't have to
25 necessarily be tied to what happened, to the murders that

1 occurred. It could be completely separate, it could be
2 something about the guilty murderer's childhood, about his
3 family. And one Juror might say, I think it is mitigating
4 that he has a good relationship with his dad and another
5 Juror would say, I think it is mitigating because I
6 believe he has some mental health problems. And those two
7 jurors could disagree with one another's findings on
8 mitigation but it doesn't matter because you find
9 mitigation for yourself. And mitigation also does not
10 have to be something that is presented to you. You are
11 allowed to find mitigation in any way that you determine,
12 you are empowered to do that as a Juror. Does that sound
13 appropriate to you?

14 A Yes.

15 Q Okay. And the reason that you are empowered to find
16 it yourself is because the law says that a Juror may vote
17 for a life sentence for any reason, no reason or based on
18 mercy alone. So any reason might be something like we
19 talked about, he has a good relationship with his dad or
20 he has a mental health problem. No reason means, I as a
21 Juror have heard everything, I have considered everything
22 according to my oath and in this case I don't have a
23 reason, but I am voting life, that is your power you have.
24 You are never required to explain it or justify it or even
25 articulate it to anybody. If you consider everything and

1 you just feel life is the appropriate punishment that is
2 what you do. Does that make sense?

3 A Yes.

4 Q And then finally mercy, meaning that you can hear all
5 the evidence and you could have a Court House full of
6 aggravating evidence and you might even, and say I haven't
7 even found any mitigating evidence, nonetheless I am
8 empowered to bestow mercy and I find it appropriate, and I
9 find it appropriate in this case and that is what I am
10 going to do. Does that sound fair to you?

11 A Yes.

12 Q Okay. Ultimately when it comes to deciding what
13 verdict you are going to render because each Juror is a
14 Judge in and of themselves in the penalty phase. You come
15 to your own individual moral judgment about what the
16 penalty is. And once you come to your own individual
17 moral judgment you are required to maintain that. You
18 would, of course, talk to other jurors in the penalty
19 phase deliberations and share your thoughts but you have
20 to come to that decision about the penalty of life or
21 death based on your own individual moral judgment and you
22 cannot allow that to be made by somebody else. Does that
23 make sense to you?

24 A Yes.

25 Q There is times in my life when I have found it hard

1 to stand up for myself.

2 MR. HUBBARD: Your Honor, I believe he can't
3 personalize.

4 THE COURT: I sustain that, rephrase that.

5 MR. SECOR: Yes, sir.

6 THE COURT: I have heard you ask the question before
7 so rephrase that.

8 Q Some people find it hard to stand up for themselves.
9 But it is very important in this process that there is
10 mutual respect between jurors, particularly at that stage
11 where the decision is made between life or death. And
12 that requires that jurors respect and accept one another's
13 verdicts even if they are not the same. Does that make
14 sense?

15 A Yes.

16 Q And the law also requires that these proceedings be
17 conducted with dignity and respect and that no Juror
18 should be bullied or threatened into changing their
19 individual moral judgment. And the law empowers you that
20 if you were being bullied or if you saw another person
21 being bullied you have the power to alert the Judge of
22 that by telling the bailiffs that you need to speak to the
23 Judge or sending out a note because the only way for a
24 lawful sentence in this case to be imposed is that each
25 Juror comes to their own individual moral judgment. Does

1 that make sense?

2 A Yes.

3 Q Okay. Obviously jurors brought into make a decision
4 of this gravity is a tremendous thing to be asked. And I
5 just want to be sure and of course the Judge wants to be
6 sure as well that if you sat as a Juror on a case and you
7 heard a quality and caliber of evidence that convinced you
8 beyond a reasonable doubt that the person was absolutely
9 guilty of a malicious killing of an innocent person and
10 then you went to the penalty phase and you found
11 absolutely that the aggravating circumstances were found
12 beyond a reasonable doubt and that after that you went
13 into deliberations and you talked with your fellow jurors
14 and then you turned inward to arrive at your own
15 individual moral judgment on penalty. And if those
16 circumstances all lined up and in your heart of hearts
17 your individual moral judgment was that death was the
18 appropriate penalty you could vote for the death penalty?

19 A Under the right circumstances but it would be hard.

20 Q I understand that and I would hope that it would be
21 hard for anybody. And in South Carolina the verdict forms
22 for a death sentence has twelve lines on it and that is
23 the way that the law impresses upon jurors, the gravity of
24 the decision that they are making, that is how we know
25 that it is an individual moral judgment, it is not, the

1 Foreman doesn't just sign it. The verdict that indicates
2 that the sentence would be death requires that each Juror
3 take the pen and sign their name to it. And, again, if
4 all the circumstances were as we just discussed and you
5 were convinced in your heart of hearts, your own
6 individual moral judgment was that death was the
7 appropriate punishment you could sign your name even
8 though it would be difficult?

9 A Yes.

10 Q Thank you, I appreciate your time.

11 THE COURT: Mr. Hubbard.

12 EXAMINATION

13 By Mr. Hubbard:

14 Q Thank you, Your Honor. Ms. Jordan, I am Rick
15 Hubbard, how are you doing?

16 A Fine, thank you.

17 Q Have you ever served on a jury before?

18 A No.

19 Q And so all the times to get drawn for a jury, this
20 was a big one.

21 A Well, yes. I have gone, yeah, but never been
22 selected for jury.

23 Q Okay. Ms. Jordan, I just want to follow-up on some
24 of the answers you have given and, again, there is no
25 right or wrong answer, more of just you looking inward and

1 saying what you think you can do and what you believe you
2 can do because should you sit over here, you understand
3 that would be a major job?

4 A Yes, I do understand.

5 Q And I think you probably agree with me it is kind of
6 unfair in some ways to bring you in here and just have you
7 search your soul and answer questions in a short period of
8 time. Do you agree?

9 A It is hard, yes.

10 Q On the issue of the death penalty, have you given a
11 lot of thought to that prior to getting a summons on this
12 case?

13 A Probably really not.

14 Q Now, in this case I want to go back and draw on some
15 of the things that you discussed with the Judge and some
16 of your very honest answers. When he talked about
17 aggravating circumstances, there are two primary ones,
18 murder of children under eleven and then more than one
19 murder. Murder plus other murders. Do you understand
20 that?

21 A Yes.

22 Q And the Judge went on beyond that and said there is
23 going to be testimony that will get quite graphic,
24 difficult, frankly brutal, brutality towards those
25 victims, maybe what you hear from witnesses, maybe what

1 you actually see. Just determining whether you can take
2 that oath and sit and be that Juror and give both sides a
3 fair trial, can you do that or is that, you think, and you
4 have really searched your soul, going to be too hard for
5 you?

6 A It is that, I don't want to have to see those things
7 and experience that. Does that make any sense?

8 Q Yes Ma'am, absolutely.

9 A That would just bother me for a long time, I am sure.

10 Q Absolutely and I believe you had mentioned that it
11 might haunt for the rest of your life?

12 A I am sure once things get into your head sometimes
13 you can't get them out.

14 Q Absolutely, absolutely. That is just being human,
15 being a caring human. With that in mind, knowing that
16 this case could have an impact on you in your words for
17 the rest of your life, is this the case where you could be
18 that Juror and listen to these things?

19 A I really don't want to have to, I am being honest
20 about that. I don't want to have to.

21 Q And, again, right now there are no wrong or right
22 answers so it is not a question you have to, right now,
23 today, right now, what we are talking about is just trying
24 to figure out where you are. And, again, I go back to the
25 unfairness of that because we bring you in that door right

1 there, you walk about ten feet and all of a sudden you are
2 having to think about things and the Judge said, this
3 trial is going to go on for weeks and weeks, it is going
4 to be long and it is going to be a lot of stuff. We just
5 want to know, all of us need to know, if this is the case
6 where you could be that fair and impartial Juror or if you
7 think in your heart of hearts this is going to be too much
8 for you. We just need to know that, that is something
9 only you can answer.

10 A I would try to be fair and impartial but I don't want
11 to do it because I don't want to experience that. Does
12 that make any sense.

13 Q It does.

14 A I am trying to tell you the truth.

15 Q You are and I don't want you in any way, want you to
16 think I am trying to question that. We are just trying to
17 make sure that once you get here in one of these chairs
18 that you don't go, you know what, I have thought about it
19 more, I can't do this. That is all I am trying to do.

20 A I don't want to do it but, you know, you have also
21 asked the other question, would I try to be fair and
22 impartial, yes. But, no, I don't want to do it because of
23 the circumstances. But just being honest.

24 Q And that is good. That is all we can ask you to do.
25 And then the final thing that is really, say that you and

1 these other eleven jurors are in that back room, we are in
2 that second phase, y'all decide that death is appropriate.
3 There is a line for each Juror to put their names on there
4 and it is a verdict form, but as the Judge said, it is
5 like a death warrant. Can you put your name on that?

6 A If I came to that conclusion, if I didn't I couldn't.

7 Q I guess that is all we can ask of you. Thank you,
8 Ms. Jordan, I know it has been very difficult but I
9 appreciate you for answering those questions.

10 THE COURT: Ms. Jordan, step out read quick and we
11 will have you right back in here.

12 (Whereupon, the Juror was excused from the
13 courtroom.)

14 THE COURT: You want to be heard on her?

15 MR. YOUNG: No, Your Honor.

16 THE COURT: The State?

17 MR. HUBBARD: No, Your Honor.

18 THE COURT: We are good. Bring her back in.

19 (Whereupon, the Juror came into the courtroom.)

20 THE COURT: Ms. Jordan, the lawyers and I have
21 discussed very briefly, you are found qualified as a
22 Juror. You are not on the jury panel, you are qualified
23 as a potential Juror so here is the way it works. The
24 website you can check to find out when to come back in.
25 You are now going to be listed, you are a qualified Juror

1 so you are going to look at that directions of when I need
2 you to come back. It may be late next week but monitoring
3 that box early next week when I need you to come back.
4 Until that time remember my request under your oath, you
5 are not to talk about the case, don't let anybody question
6 you about the case, do not let anything influence you
7 about the case. Minimize the publicity contact, there is
8 publicity out there, it is not relevant to what you need
9 to know in here. Everything you need to know will be in
10 here. The lawyers, witnesses, instructions of the Court
11 will be consistent. Thank you and good luck to you.

12 JUROR: Yes, sir.

13 THE COURT: We have 169. And for the record, this
14 Mr. Griffith is not kin to me to my knowledge. Bring him
15 in.

16 MR. HUBBARD: Your Honor, did y'all say Juror 373,
17 Ms. Sawyer, is not here?

18 THE COURT: Right. And I have discussed it briefly
19 with the Clerk's staff, I am going to wait until this
20 afternoon and see if we hear from her before I decide what
21 to do. We may get a call momentarily and say, oh by the
22 way, I had an incident that prevented me from attending.
23 So I am not going to jump the gun on that. Are y'all
24 ready on Juror 169?

25 MR. HUBBARD: Yes, sir.

1 THE COURT: Bring him in.

2 (Whereupon, Juror 169, Jeffrey Griffith came into the
3 courtroom.)

4 EXAMINATION

5 By The Court:

6 Q I am going to remind you you are under oath from this
7 point. Your name is Mr. Griffith?

8 A Yes sir, Mr. Jeffrey Griffith.

9 Q Mine too. I see you are from New Jersey?

10 A Yes, sir.

11 Q Never been there. To my knowledge you and I are not
12 related so that is fine, not required to be. You are
13 under oath since Monday when I asked you to take the oath
14 and leave and come back. Didn't know when we would get
15 you back in here but here it is Friday so it has been
16 several days. Part of this was, please do not talk about
17 the case, please do not let anybody talk to you about the
18 case. Have you been able to live up to that part of the
19 oath?

20 A Yes, sir.

21 Q No one has talked to you?

22 A No, sir.

23 Q You have not talked to anyone other than maybe
24 notifying your employment?

25 A I notified my employment that I had to come back

1 today.

2 Q Fair enough. Now, there has been publicity about
3 this trial and I gave facts Monday, here are the
4 allegations made by the State which have not been proved
5 or presented to which Mr. Jones has plead not guilty. Has
6 any of those factors, publicity, the Court publishing the
7 facts, the indictments, has that caused you to form an
8 opinion as to what happened in this case?

9 A No, sir. I did not know about this case until last
10 weekend.

11 Q Really. Okay, fair enough. Do you have anything on
12 the horizon personally on your schedule, vacation,
13 retirement dinner?

14 A No, sir.

15 Q Grandchild coming, something coming along that if you
16 were such a Juror it would impose on you personally?

17 A No, sir.

18 Q Other than an inconvenience?

19 A It wouldn't be an inconvenience either. I would be
20 paid still, it wouldn't be a hardship but I do know
21 somebody on the list.

22 Q Okay. I am getting to that. The jury list, I am
23 sorry, potential witness list, I said jury list, you were
24 on the jury list. Potential list was given to you moments
25 ago to review and you reviewed it?

1 A Yes, sir.

2 Q And you found somebody that you may have a connection
3 to?

4 A Yes, sir.

5 Q Who is that?

6 A Michelle Gorski, she was also my Guardian Ad Litem.

7 Q She was your Guardian Ad Litem?

8 A Yes.

9 Q Did you go through a domestic matter?

10 A I had an uncontested custody case.

11 Q So she was on behalf of the child?

12 A Yes, sir.

13 Q Fair enough. That matter is now resolved?

14 A It is still ongoing but yes sir. It was suppose to
15 be resolved but attorney didn't turn the paperwork in so I
16 had to hire another attorney.

17 Q Now, you said uncontested matter. So this involves a
18 child of your's?

19 A Yes.

20 Q And you are not being challenged by the other parent?

21 A No.

22 Q This is, I did a little domestic practice. You were
23 trying to get secured custody and guardianship of this
24 child so that you can maintain and get the benefit for it
25 and be a parent and that sort of thing?

1 A Yes, sir. I have had the baby.

2 Q And you are the parent?

3 A Yes, sir.

4 Q Fair enough. That is Lexington County Family Court
5 is dealing with that for you?

6 A Yes, sir.

7 Q And Ms. Gorski is the Guardian Ad Litem on behalf of
8 that child?

9 A Yes, sir.

10 Q Would the fact that she is going to be a witness
11 create an issue for you being fair and impartial in this
12 case?

13 A No, sir. I thought she was fair with our reports.

14 MR. HUBBARD: Your Honor,--

15 THE COURT: Yes. It might not be the same one.

16 (Whereupon, a bench conference was held in the
17 presence of the Juror but out of the hearing of the
18 Juror.)

19 Q Let me ask you another question. Did you, the last
20 four of your social?

21 A What is the last four, [REDACTED]

22 Q Tell me this. I have got a history here, did you
23 have an occasion to have a plea in New Jersey some years
24 ago?

25 A Yes, sir.

1 Q And was that matter now resolved?

2 A Yes, sir.

3 Q Okay.

4 A That was 25 years ago.

5 Q Now, I ask a question, some people don't understand
6 it but part of the questions I have to do, one of the
7 disqualifications, is that you?

8 A A simple assault.

9 Q Did you, no matter what the sentence is imposed, it
10 is my understanding that this, but it was a plea to
11 endangerment of the welfare of children. Is that what you
12 plead to?

13 A Contributing to the delinquency of a minor.

14 Q Were you held before you made bond before this case
15 was resolved?

16 A Yes. Under a year, I believe, around then let go and
17 I was told everything was gone after ten years.

18 Q Well, unfortunately that is not the case. South
19 Carolina looked it up.

20 A I put it down on my paperwork.

21 Q Okay. I take you on your word. Considering the
22 criminal history which has been provided and it is the
23 correct social security and date of birth, [REDACTED]

24 [REDACTED]?

25 A Yes.

1 Q Okay. Y'all want to be heard further on this? I
2 believe this would disqualify you as a Juror.

3 A Okay.

4 Q Anyway, thank you for coming in. You are free to go.
5 Thank you. This creates an issue for me that I need to
6 deal with. You are off the list.

7 A No problem.

8 Q Thank you.

9 A Have a good day.

10 (Whereupon, the Juror was excused from the
11 courtroom.)

12 THE COURT: We will take our lunch break now. We
13 will be back in an hour, 1:30.

14 (Whereupon, a lunch break was taken.)

15 THE COURT: I am going to the second one on the list
16 of this panel. The first one also, we are not calling him
17 out quite yet, not decided what to do with that one, 411.

18 MR. HUBBARD: You said 411?

19 THE COURT: 411, yes. Are y'all ready to bring the
20 entire panel in?

21 MR. YOUNG: One, I guess, would be that you just go
22 ahead and tell the whole panel about the cameras,
23 everything being off.

24 THE COURT: Bring them in.

25 (Whereupon, 411, Scott Spigener; 242, Andrew Lewis;

1 286, Joe Medlock; 306, Franklin Nelson; 272 Jeremy
2 Mason; 260, Carmen Lucas; 179, Tonya Harmon entered
3 the courtroom.)

4 THE COURT: Good afternoon. Again, I am going to
5 introduce myself, my name is Eugene Griffith. I am
6 presiding over this case. Now, the Clerk is going to
7 place y'all, as a group, under oath. And then each time
8 you come into the courtroom to come give individual
9 presentation, answers these questions, I will remind you
10 you are under oath. Okay. Madam Clerk.

11 (WHEREUPON, the jury panel five was sworn at
12 approximately 1:37 a.m.)

13 THE COURT: A few preliminary things. As y'all know,
14 I am going to ask you to not discuss the case back in the
15 jury room before you came out. Just what you, when you
16 need to discuss the case I will let you know. I told you
17 that Monday, I want that to be a continuing instruction,
18 don't discuss the case. It is just not fair to discuss
19 the case without everyone present. We are trying to
20 determine whether or not y'all can be qualified as jurors
21 in this case. Additionally, there are a lot of cameras in
22 the courtroom, they are all off. Jurors photographs and
23 names are not allowed to be published or anything like
24 that. So don't worry, rest easy on that, nobody's name is
25 in the paper. The purpose of my instruction today is to

1 bring you in and give you a brief overview and I say,
2 brief, it is, of the criminal process and a few aspects of
3 the criminal law that y'all will be dealing with in this
4 case. And then you come back in and will give you a list
5 of preliminary witnesses and another sheet for you to
6 review and then you will come in and be questioned about
7 some of your opinions and ideas and explanations. So what
8 we are looking for are truthful answers and candid
9 answers. Some of them are your opinions, I say this and
10 perfectly fine to have an opinion to pull for Clemson
11 Tigers. I would disagree with the opinion, I pull for
12 Carolina Gamecocks. That is an opinion, you can do what
13 you want. It is your individual decision, that kind of
14 thing. That is an example, you are not wrong, you are
15 just truthful. Now, you, as a group have been summoned as
16 potential jurors in the case of the State versus Timothy
17 Ray Jones, Jr. As I said, my name is Eugene Griffith, Jr.
18 and I am the presiding Judge for this trial, I will be
19 presiding over it until it is concluded. Mr. Jones is
20 charged with five counts of murder. And in South Carolina
21 murder is defined as the killing of another person with
22 malice aforethought. Malice is defined as a person with a
23 wicked or depraved heart, intent on wrongdoing, hatred,
24 ill-will or hostility. The definition of murder
25 particularly excludes any just cause or excuse for the

1 killing. When the State alleges the defense of murder, it
2 must prove murder beyond a reasonable doubt. And when the
3 State alleges the offense of murder with certain
4 aggravating circumstances the State can seek the death
5 penalty. Now before and during the trial a person accused
6 such as Mr. Jones is presumed innocent and he is presumed
7 innocent of each and every element of the crime which he
8 is accused and charged. The State must prove all of the
9 elements of the crime charged by a standard of proof
10 called beyond a reasonable doubt. I will give more of a
11 particular definition later on that, at the appropriate
12 time. In most cases Judges determine the punishment upon
13 a conviction. But in a Capital penalty case the jury
14 determines punishment. In a Capital case the trial is
15 divided in two parts potentially. The guilt or innocence
16 phase and then if necessary the punishment phase. The
17 first portion of the case the State must prove the
18 Defendant's guilt of murder beyond a reasonable doubt. If
19 a jury finds an accused person guilty of murder then the
20 trial proceeds into the second phase. In the second
21 phase, if the State proves an aggravating circumstance
22 beyond a reasonable doubt then the jury considers
23 aggravating and mitigating evidence in deciding the
24 punishment. Those two punishments, are the only two, are
25 life without the possibility of parole or death. Our law

1 in South Carolina does not allow the State to seek that
2 execution if a person is convicted solely of the murder.
3 The State must prove an aggravating factor and the State
4 must prove one of the statutory aggravating factors to the
5 standard of proof beyond a reasonable doubt. Now even if
6 the State proves murder and an aggravating circumstance
7 jurors are required to consider any mitigating evidence or
8 circumstances. Jurors must consider any mitigating facts
9 that would support a sentence other than death. Even if
10 no mitigating circumstances exist jurors are not required
11 to impose the death penalty. In order for a sentence of
12 death to be imposed the verdict must be signed by all
13 twelve jurors. If jurors unanimously decide to sentence a
14 Defendant to life without parole sentence then a sentence
15 of life without the possibility of parole will be imposed.
16 In this case the State has indicted five counts of murder
17 and has notified Mr. Jones that it intends to seek the
18 death penalty. Mr. Jones has entered a plea of not guilty
19 by reason of insanity. In this case you may hear much
20 testimony and evidence showing many different things. A
21 wide variety of testimony may be presented to you in the
22 trial. I will instruct you as to how to consider and
23 evaluate the testimony, whether the testimony is defined
24 as evidence of an aggravating factor, evidence of
25 mitigation, that would be any reason to vote for a

1 sentence of life without parole. Evidence of any
2 defenses, evidence of any affirmative defenses such as
3 accident, guilty but mentally ill and not guilty by reason
4 of insanity. Until the testimony is presented in full I
5 am not able to tell you exactly what my instruction of the
6 law will be on which of these, but can you and will you be
7 able to accept an oath to meaningfully consider all the
8 testimony and all of the evidence, apply the law as I
9 instruct it and consider the evidence consistent with my
10 instructions. Can y'all do that. That will be the
11 question that I will reask you again when you come back
12 into the court. Now that is a preliminary overview of the
13 procedures and some of the law. Some aspects of law will
14 be defined more later. We will get to that as on as
15 needed basis. But step back in the jury room and we will
16 call out the first potential Juror. And I will ask you
17 aspects about your schedule, what vacation schedule, that
18 kind of thing. Okay.

19 (Whereupon, the jurors were excused from the
20 courtroom.)

21 THE COURT: All right, the first Juror will be 411,
22 are y'all ready for Mr. Spigener.

23 MR. HUBBARD: Yes, sir.

24 THE COURT: He was already reviewing when I came
25 through so I know he has reviewed.

1 MR. YOUNG: Is there a Juror missing from that panel.

2 THE COURT: There was and that was the first one,
3 110, the first one on the list. That is the one now also
4 waiting to hear from as the panel four.

5 MR. YOUNG: Okay.

6 THE COURT: I am going to accept suggestions on what
7 to do with these folks. Because the Captain over here
8 wants to know what he should do when I direct him to, but
9 decided, but we have got to do something. Bring in 411.

10 (Whereupon, Juror Scott Spigener came into the
11 courtroom.)

12 EXAMINATION

13 By The Court:

14 Q All right, Mr. Spigener, how are you?

15 A Doing well.

16 Q My name is Eugene Griffith, once again, and I placed
17 you under oath Monday as a group. And my request at the
18 oath was that you and all the jurors not seek out
19 information or be questioned or ask questions about this
20 case. Has anyone asked you any questions?

21 A No.

22 Q Have you asked anyone questions?

23 A No.

24 Q Now understanding there is a great deal of publicity
25 out there, been going on before you were called in and

1 since and during. Has any of this publicity impacted your
2 ability to be fair and impartial, have you formed an
3 opinion as to what happened.

4 A No.

5 Q I understand, I read the indictments, I presented
6 some facts, the allegations the State made and Mr. Jones
7 is presumed innocent. Have you formed as to what happened
8 in this case already?

9 A No, not based on the facts, certainly.

10 Q Has any of the media attention, publicity of the
11 media cause you to form an opinion as to what happened in
12 the case?

13 A No.

14 Q Now, I am going to ask you about your work schedule,
15 personal schedule. This jury selection proceeds I hope to
16 conclude next week. The trial may start the Monday
17 following and that is just a guess, that is my hope. The
18 trial will take, sometime after that, probably going close
19 to June. Is that going to impact anything you have
20 scheduled, perhaps any family obligations, work, vacation
21 trips. I want to know, if you are called to serve as a
22 Juror can you reasonably manage that?

23 A Work, I am at a busy point in, negotiated a very
24 large project and starting another. One is HUD project,
25 lots of paperwork. Another is a private construction

1 project.

2 Q You and I had a personal conversation about your, you
3 are an engineer, coordinating construction manager type.
4 And so you deal with a variety of contractor,
5 subcontractors, people putting big projects together.

6 A Yes, sir.

7 Q And so you deal with a lot of folks?

8 A Yes, sir.

9 Q Now, assuming you are qualified today, next week you
10 are probably free to work because I am going to let you
11 check in on the internet so next week is probably, whether
12 you are qualified or not, you will probably be able to
13 work and just watch the computer when I need you back.
14 Will that help you some and give you about a week's lead
15 time?

16 A It will, it will at least help me to start buyout on
17 one project. The other project is in HUD review right
18 now.

19 Q As I understand, those will probably involve one more
20 review?

21 A About sixty days probably.

22 Q Okay. Fair enough. You keep us apprized of that if
23 you are qualified and we will try to see what we can do.
24 That is the only thing over your head is your obligation
25 at work?

1 A That and my wife's birthday but other than that, no.

2 Q When is her birthday?

3 A It is on the [REDACTED] which is [REDACTED]

4 Q Okay. She has her birthday on [REDACTED]
5 occasionally?

6 A Every year as a matter of fact.

7 Q Oh. I understand. All right. Now, I gave you a
8 list of potential witnesses to review. Did you review
9 that list?

10 A I did.

11 Q Did you notice anybody on there that you know?

12 A I did not.

13 Q You connected in any way to any of those witnesses?

14 A Not that I am aware of, no.

15 Q And all the answers you gave on your questionnaire,
16 those are true and correct?

17 A Yes.

18 Q The lawyers get to review those and I haven't
19 reviewed them all verbatim so I don't know exactly what
20 all of your answers are. Now, I gave you a brief overview
21 of criminal procedure, a few aspects of criminal law and
22 some elements, the charge of murder and whatnot. I have
23 given you, read the indictments into the record on Monday
24 so you know a little bit about the allegation the State is
25 making. I gave you also three types of jurors. And that

1 presumes a couple of different things but presumes that a
2 case gets to stage two and then there is the question of
3 how to impose sentence. Assuming those facts, did you
4 review that?

5 A Yes, sir.

6 Q Did you, did you understand my instructions earlier?

7 A Yes, sir.

8 Q Did you understand that sheet of three types of
9 jurors?

10 A Yes, sir.

11 Q After reviewing that and studying, did you find or
12 could you find yourself as typically falling into one of
13 those three categories?

14 A Probably the three.

15 Q Probably three?

16 A Yes.

17 Q You say probably, people are very often don't
18 consider those things but kind of putting you on the spot.
19 I want you to consider it.

20 A Yes, sir.

21 Q Because, you know, you are at the point now that it
22 is, potentially you could be seated as a Juror sometime
23 next week?

24 A Yes, sir.

25 Q So you reviewed that but you would classify yourself

1 as a three?

2 A Yes.

3 Q And that means, you want to hear everything, facts in
4 aggravation, facts in mitigation, facts of defenses,
5 testimony, evidence, see it all?

6 A Yes, sir.

7 Q And you don't have any preconceived notion of what
8 the punishment should be?

9 A No, sir.

10 Q But you do understand that if the jury goes to the
11 sentencing phase, the murders are proven, the sentence
12 would be up to the jury. They have got two choices, life
13 or death. Nothing in between, live the balance of your
14 life in jail, executed?

15 A I understand.

16 Q Those are the two choices?

17 A Yes, sir.

18 Q Now, I am going to go back and deal with some
19 defenses. There are some defenses I read in my
20 presentation. And there are other defenses and my
21 instruction of the law, which is my job to instruct the
22 law, they can be changed or tailored particularly to a
23 case, depending on how the testimony goes because I have
24 not heard the testimony either. The testimony could go
25 and bring in some aspects of the laws that I have not yet

1 predicted and not knowing that I can't say, okay, I have
2 already got my instructions to the jury ready on this
3 case. I can't say that because I haven't heard the
4 testimony. When the testimony is presented the jury can
5 consider, my instructions would change and be kind of
6 addressing those aspects. I am going to read all of the
7 defenses that are outlined in the statutes right here
8 behind me. Potential defenses that you may hear, I may
9 read one that is not applicable but I am going to read
10 them all. Identification, accident, involuntary
11 intoxication, self-defense, necessity, insanity, guilty
12 but mentally ill, defense of habitation, entrapment,
13 duress and alibi. Now, if testimony is presented where
14 some of those aspects of those defenses are presented and
15 one of them will because Mr. Jones has tendered a plea,
16 entered a plea of not guilty beyond reason of insanity.
17 So certainly testimony could be heard in that aspect of
18 the law. Testimony is presented, evidence is presented.
19 The jury will consider that. Can you, I am sorry, there
20 are four potential verdict forms because of that plea.
21 Guilty, guilty but mentally ill, not guilty by reason of
22 insanity and then not guilty at all. Those are the four
23 potential verdicts in phase one of the trial, the guilt or
24 innocence phase. Presentation of testimony, aspects of
25 the defenses, elements of the crime, State's burden, proof

1 beyond a reasonable doubt. Can you give meaningful
2 consideration to all the testimony and the instructions of
3 the law by the Court, give consideration to all the facts
4 and testimony, can you find any reason you could not
5 consider, meaningful consider entering or finding one of
6 those four potential verdicts if the evidence supports it?

7 A I could find any one of the four.

8 Q Any one of the four. Now, if not guilty is found in
9 phase one or not guilty by reason of insanity the case
10 ends right there. If he is guilty there is a phase two.
11 Then the State is under the responsibility of proving one
12 of the statutory aggravating factors beyond a reasonable
13 doubt. There are several but some examples are death of a
14 policeman, murder of children, multiple victims, rape of
15 murder, kidnapping of murder, things of that sort are
16 considered under our laws aggravating factors. The State
17 has got to prove at least one of those beyond a reasonable
18 doubt. In stage two considering the punishment, also
19 presented consideration and there is no actual burden of
20 proving mitigating factors but mitigating factors are
21 presented. Mitigating factors can be any reason to vote
22 for life, any reason whatsoever. Here are some statutory
23 reasons that jurors can find. The Defendant has no
24 significant history of a prior criminal history involving
25 the use of violence against another person. The murder

1 was committed by the Defendant while under the influence
2 of mental or emotional disturbances. The victim was a
3 participant in the Defendant's conduct or consented to the
4 act. The Defendant was an accomplice in the murder
5 committed by another and his participation was relatively
6 minor. The Defendant acted under duress under the
7 domination of another. The capacity of the Defendant to
8 appreciate the criminality of his conduct or to conform
9 his conduct to the requirements of law was substantially
10 impaired. The age or mentality of the Defendant at the
11 time of the crime. The Defendant was provoked by the
12 victim in committing the murder. The Defendant was below
13 the age of 18 at the time of the crime. The Defendant had
14 mental retardation at the time of the crime. And other
15 non-statutory mitigating factors such as their walk in
16 life, how they were raised, came from a broken home.
17 Anything that the testimony has presented, jurors
18 consider. I read some, some of those obviously wouldn't
19 be applicable like age, over 18. Understanding that
20 jurors consider mitigating factors as reasons to not give
21 the death penalty, give a life penalty, can you give
22 meaningful consideration to mitigating factors considering
23 the testimony presented, the State's testimony regarding
24 aggravating factors, all of the testimony. Can you give
25 meaningful consideration to factors such as that and make

1 a decision fairly and impartially, considering my
2 instructions on the law.

3 A Yes, sir.

4 Q Now, do you, you understand now that the death
5 penalty in the sentencing phase is not automatic?

6 A Yes, sir.

7 Q The jury has got to decide it?

8 A Right.

9 Q And that is a decision the jury makes, a unanimous
10 finding for life, life will be imposed. If they
11 unanimously decide for death, death will be imposed. Do
12 you have any religious, moral, personal beliefs which
13 would prevent you from considering the death penalty?

14 A No, sir.

15 Q Do you have any religious, political, personal belief
16 which would prevent you from entering a sentence of life
17 without parole?

18 A No, sir.

19 Q Can you give fair consideration, meaningful
20 consideration to all aspects of the jury's instructions
21 and the testimony presented by anyone?

22 A Yes, sir.

23 Q Okay.

24 THE COURT: Mr. Secor.

25 MR. SECOR: Your Honor, may we approach briefly?

1 THE COURT: Sure, you may.

2 (Whereupon, a bench conference was held in the
3 presence of the Juror but out of the hearing of the
4 Juror.)

5 THE COURT: We have been asking a series of questions
6 and I try to ask all of them, I forgot one factor and the
7 lawyers remembered I didn't do it. It is a very good
8 question. The allegations in this case involve the death
9 of five children. The testimony in that subject matter, I
10 am informed, will be graphic, unpleasant, perhaps harsh.
11 It will be difficult to see and consider. Nevertheless it
12 has got to be done. And so as, if you are selected as a
13 potential Juror would the fact that that subject matter,
14 very unpleasant testimony, unpleasant facts create an
15 issue for you of not being able to be fair and impartial
16 to both the State and to Mr. Jones?

17 JUROR: No, sir.

18 THE COURT: Mr. Secor.

19 EXAMINATION

20 By Mr. Secor:

21 Q I just want to make sure I have got the pronunciation
22 of your last name, it is Spigener?

23 A Spigener, yes.

24 Q How are you, sir?

25 A Well.

1 Q I appreciate you being here, I know it is taking up
2 your time and we apologize for that. I just wanted to ask
3 you some things, I am really just looking for your
4 personal feelings and opinions. As it is appropriate, the
5 Judge is asking the questions about you as a Juror and if
6 you were selected for this jury. I want to switch gears a
7 little bit and just ask you your own personal feelings. I
8 don't want you to be incumbered by the thoughts of like
9 you were suppose to do if you are on the jury. I just
10 really want to know how you personally feel. Is that all
11 right with you?

12 A Understood.

13 Q When, do you recall when this case originally
14 happened?

15 A It was a while back, it was several years ago, I
16 think.

17 Q Do you remember hearing about it?

18 A Yes, sir.

19 Q And do you remember how you felt when you heard about
20 it?

21 A It is a very sad thing that happened. I mean, no
22 child should ever die.

23 Q I would agree. And so sadness, that was your
24 primary--

25 A That would probably be, yes sir.

1 Q Okay. The Judge talked to you about the possible
2 different verdicts in this case based on the plea that has
3 been entered. Guilty, not guilty, not guilty by reason of
4 insanity and guilty but mentally ill, those are the
5 possible things you would be asked to consider. And the
6 verdicts of guilty and guilty but mentally ill and not
7 guilty by reason of insanity would mean that you found
8 that the person had committed the act. So in the case of
9 a murder, for those three verdicts you would have found
10 that the person killed with malice an innocent person.
11 And what I want to know, because some people, if they
12 believe that the person did the act, killed an innocent
13 person without any excuse, justification or defense, that
14 the verdict of not guilty by reason of insanity somehow
15 sounds like an excuse or that they wouldn't being held
16 accountable. Some people have a biased against the
17 possibility of considering that verdict. And I am not
18 suggesting that you do. I just want to know how you feel
19 about that, does that sound like something you would be
20 open to or does it sound like it would be difficult to
21 consider?

22 A Well, we would be charged to consider them all and I
23 would do so.

24 Q And I don't doubt that you would. I guess I am
25 asking on a personal level, does that strike you something

1 that is reasonable or--

2 MS. MAYES: Objection, Your Honor, asked and
3 answered.

4 THE COURT: I am going to let him go ahead, that will
5 be the last on that subject matter. Go ahead.

6 MR. SECOR: Yes, sir.

7 Q I am not trying to give you a hard time, I hope that
8 you don't feel that I am. I just want to know, Juror
9 versus your own personal self. You would consider as a
10 Juror, I understand that. Your personal opinions about
11 that, do you have any feelings about it personally about
12 that, considering that verdict in a case?

13 A There is, I am sure there is a situation where
14 someone is so insane they don't know what they are doing.

15 Q Okay. I appreciate that. I would like to in a
16 little bit about your feelings about the death penalty if
17 that is all right. Or not necessarily just the death
18 penalty but about punishment for crime.

19 A Okay.

20 Q But I would like to start with a question about the
21 death penalty. If you had the power, for instance, if you
22 were the Governor for a day in South Carolina and you were
23 given the option as the Governor to decide whether or not
24 South Carolina had the death penalty or did not, which
25 would you choose?

1 A That would be an appropriate sentence in some cases
2 so it should be available.

3 Q And so to you the death penalty serves a purpose in
4 society?

5 A Yes, sir.

6 Q Okay. And what types of things comes to mind, the
7 purpose that it serves?

8 A I think it is an appropriate sentence in some cases.
9 It could be potentially in some cases be also a deterrent.

10 Q Okay. I would like to go a little bit more
11 specifically to the category of case that we are here to
12 talk about. And as the Judge told you, the charge in
13 these cases, five counts of murder of children. And as
14 the Judge said, murder in South Carolina is the malicious
15 intentional killing of an innocent person. Malice, of
16 course, being hatred, wickedness, evil. And so in this
17 case or in a case of this category, if a person were found
18 guilty it would mean that the jury, of course, that it
19 happened, five innocent children brutally murdered. And
20 what I would like to know is, personally, how do you feel
21 about the death penalty as being the only appropriate
22 penalty for a person who is found guilty.

23 MS. MAYES: Objection, Your Honor, to the form of the
24 question and the word, only.

25 THE COURT: Rephrase that, I sustain that objection.

1 Q Knowing the death penalty is never automatic and that
2 the law never requires death. Okay. And knowing in a
3 Capital case a jury has the option of life or death. What
4 I would like to know is personally for you, do you start
5 off at one penalty when you have determined that a person
6 is guilty of the malicious killing of five children?

7 A I think you need to listen to the case and understand
8 and then make an appropriate decision following that. You
9 are asking if I have predetermined a view of it and the
10 answer is no.

11 Q And I really, I don't want to think that I am trying
12 to get you to say that you are predetermined. I am really
13 just trying to find out personally whether you think when
14 you hear just those facts, I know those are extremely
15 limited, but if you start off thinking that one of them is
16 appropriate, one of the punishments is appropriate just
17 based on that.

18 A Well, given the fact that someone has been convicted
19 of murder, certainly in my opinion, is that what you are
20 asking for.

21 Q Yes, sir.

22 A Certainly life in prison is a given. In that case
23 that is the starting point. However should a situation
24 occur where there was, I may not use the right words, a
25 great deal of malice then Capital punishment is also an

1 option, it needs to be considered.

2 Q Yes, sir. And in those circumstances do you believe
3 it is possible that a sentence that life without parole
4 could be a sufficient punishment for somebody who
5 maliciously killed five children?

6 A It could be.

7 Q It could be, okay. And can you tell me, based on
8 some of the information that the Judge gave you, the types
9 of things that weigh your decision one way or the other,
10 between life or death?

11 A It would totally depend on the facts of the case. I
12 mean, suppositions is probably not a good thing, it would
13 have to depend on what the facts of the case are.

14 Q Yes, sir. And one thing that I just want to make
15 sure I understand. When you say the facts of the case, do
16 you mean exclusively the facts of the killing or do you
17 mean things beyond the facts of the killing?

18 A I think you start with the facts of the killing and
19 then consider those things outside of that. But in an
20 answer to your question. I deal with contracts and facts
21 and figures and those sorts of thing. So in my world we
22 deal with what the contract says. In this case I would
23 believe that to be law.

24 Q Okay.

25 A And then if there are other factors to be considered

1 then we need to consider those also.

2 Q Right. And I don't question that you would do that
3 at all. Again, going back to your opinion though, do you
4 think that the background of a person, how a person grew
5 up, how they were raised, other things about their
6 character, do you believe personally that those types of
7 things are relevant to how somebody should be punished
8 once they have been found of maliciously killing five
9 children.

10 MS. MAYES: Objection, Your Honor, to the form of the
11 question and the question about relevant.

12 THE COURT: I am going to overrule your objection and
13 it can be revisited when you get your opportunity. Go
14 ahead, answer the question.

15 A Would you reask it, please.

16 Q Yes, sir. Again, putting yourself in the position
17 where you believe this person is unequivocally guilty of
18 murdering five children. For you personally does the
19 character, background, how the guilty murderer grew up,
20 things about his life, to you is that relevant to how they
21 are punished?

22 A Only as, again, I may use the wrong words. Only as a
23 mitigating factor. First we need to decide if the, if the
24 crime was actually committed and he is guilty of said
25 crime. Above and beyond that that would be a mitigating

1 factor as I understand from the Judge's instructions that
2 we would be charged to consider.

3 Q And if I have been unclear about this I apologize but
4 I do, I want you to think about that you have heard all
5 the evidence and you know beyond any reasonable doubt that
6 the person is guilty. There is no question in your mind
7 at this point. For you do those things matter, the
8 background, character, experience of the guilty murderer
9 to you, in your opinion do they matter about how the
10 person is punished.

11 MS. MAYES: I would object again at this point, Your
12 Honor, I believe that has been asked and answered.

13 THE COURT: I think it has been asked and answered
14 too. His answer was in the affirmative.

15 Q I just want to go over a few things about how the
16 penalty phase operates in a Capital case and just find out
17 whether these things, these are principles that you agree
18 with or disagree with, just your opinion about these
19 things. Did you know that in South Carolina that a
20 sentence of death is never required for any case, not even
21 the worst case you can possibly imagine. Did you know
22 that?

23 A Yes.

24 Q And do you think that that is appropriate?

25 A That it is not a requirement, yes.

1 Q That it never can be automatic?

2 A Yes.

3 Q And that no Juror ever has to sentence somebody to
4 death based on the facts of the case or anything presented
5 at trial.

6 A I understand that, that it is not a requirement.

7 Q Okay. And the process in the penalty phase, of
8 course the State presents evidence of aggravation, as the
9 Judge told you. It doesn't have to be proven beyond a
10 reasonable doubt to all the jurors unanimously, right.
11 And those are things that the State is offering you as a
12 way of trying to convince you that death is the
13 appropriate punishment, right. And then on the other side
14 you have mitigation, mitigating evidence as you brought up
15 and essentially the definition of mitigating evidence is
16 any reason to vote for life. And this is, of course,
17 after the conviction, right?

18 A Right.

19 Q But the law empowers each Juror to find mitigation
20 themselves, it doesn't have to be unanimous and it doesn't
21 have to be proven to any standard. So for instance a
22 Juror might say I believe he had a good relationship with
23 his father and that is mitigating to me. No one else has
24 to agree that that is mitigating but that Juror can hold
25 on to that and say, this is a reason I am voting for life.

1 Another Juror might say, the Defendant has a mental health
2 problem and that is mitigating to them and nobody else has
3 to agree. But they can say that is my reason for life and
4 I am voting for life for that reason. And another Juror
5 might say, I have no reason, I am sorry.

6 MR. SECOR: I drank too much coffee today, may I get
7 some water?

8 THE COURT: Sure.

9 Q So jurors don't have to agree on mitigation, does
10 that make sense to you?

11 A Yes.

12 Q And a Juror doesn't even have to have a reason that
13 they can articulate or to put into words or justify. They
14 can just say, I have heard everything, I have considered
15 everything and for me in this case, what is right for me
16 is life without parole and they are entitled to that
17 verdict or to that finding in mitigation. Okay. And
18 jurors, when it comes to the ultimate decision of whether
19 it is a sentence of life without parole or the death
20 penalty, jurors have to make that decision based on their
21 individual moral judgment. And just as sort of an analogy
22 of what an individual moral judgment is, it is sort of the
23 type of thing, like the decision you make of the faith
24 that you follow in your life. That is your individual
25 moral judgment. And other people have individual moral

1 judgments that are different from yours but you respect
2 them because it is their individual moral judgment.

3 A Yes.

4 Q And you demand respect for your own individual moral
5 judgment from people even though they may disagree with
6 it?

7 A Yes.

8 Q Some people in situations like this, where there is a
9 very heavy decision to be made and they have to rely on
10 their own individual moral judgment, some people are
11 stronger about standing up for themselves than others. Do
12 you agree with that?

13 A Yes.

14 Q Okay. And the law regarding penalty phase
15 deliberations says that once a person arrives at their
16 individual moral judgment they may not abandon it. You,
17 of course, talk to your fellow jurors during deliberations
18 but you have to make the decision yourself based on your
19 own individual moral judgment and you can't have that
20 determination made by somebody else and you can't be
21 bullied into what your individual moral judgment is and
22 you can't be bullied out of what your individual moral
23 judgment is. Does that make sense to you?

24 A Yes, it does.

25 Q And it is important for the process to go according

1 to law that jurors demand respect to their own opinions
2 but they also watch out for people who may not have the
3 same fortitude as you have. Does that make sense?

4 A Yes, sir.

5 Q And if you saw somebody being pressured or bullied
6 out of their individual moral judgment could you stand up
7 for that person and say, no, they are entitled to it, we
8 have to follow the law and make sure that they weren't
9 bullied out of their individual moral judgment.

10 A I think we have to follow the laws so in the answer
11 to your question, yes.

12 Q Okay. Can you, again, I know we are operating on
13 very little information. I apologize for that but that is
14 how the restrictions we have on us right now. Can you
15 envision a case where the character and background of a
16 Defendant could be a reason to give life, in your opinion,
17 even though you found him guilty, the character and
18 background could move you to say, yes, life is the
19 appropriate punishment?

20 A It could.

21 Q Okay. Just one last question, sir. Correct me if I
22 am wrong but I think when the Judge was asking you about
23 the type one, type two and type three. I believe your
24 response to him that you are probably a three?

25 A The phrase would be this situation -- three would be

1 the answer.

2 Q Three would be the answer. And is it, if you were, I
3 know you are a three and I accept that. But when you were
4 deciding between whether you were three and whether you
5 were a one or a two, were you leaning -- the possibility
6 of being one or the other?

7 MS. MAYES: Objection, Your Honor, asked and
8 answered.

9 THE COURT: I will let him answer it.

10 Q Does that make sense?

11 A No, I was, I clearly made a decision that I was a
12 type three Juror, according to that description.

13 Q Okay. Thank you, sir.

14 THE COURT: All right, Ms. Mayes.

15 EXAMINATION

16 By Ms. Mayes:

17 Q Good afternoon, Mr. Spigener, just a couple of
18 questions for you. And my name is Suzanne Mayes and as a
19 Deputy Solicitor we represent the State in this case. As
20 the Judge explained, if this case gets to a second phase
21 of the trial there will be two options, that being life
22 without parole and that being the death penalty. After
23 you have heard all the evidence, if you felt that the
24 death penalty was appropriate could you give the death
25 penalty?

1 A Yes, ma'am.

2 Q With the death penalty, if that were to ultimately be
3 a decision reached in the jury room, with that verdict
4 form there is a sheet where each Juror must sign
5 acknowledging that, their decision is to render a sentence
6 of the death penalty. Could you sign your name to that
7 form?

8 A Yes, ma'am.

9 Q Thank you, Mr. Spigener.

10 THE COURT: Anything further for Mr. Spigener?

11 MR. SECOR: No, sir.

12 THE COURT: Anybody want to be heard on Mr. Spigener?

13 MR. HUBBARD: Nothing from the State.

14 MR. SECOR: No, sir.

15 THE COURT: I didn't think so. Mr. Spigener, the
16 Court has determined, based upon your responses that you
17 can be and now are determined to be a qualified Juror.
18 What happens from this point forward, remind you you are
19 under oath and stick to it, don't talk about the case,
20 don't allow anybody to talk to you about the case. Do not
21 do any independent research. I understand you have got a
22 busy job. Don't do any research. There is a lot of
23 publicity out there, minimize the impact of that by not
24 paying attention to it, not reading articles on it, not
25 listening to the news broadcast of it. I will ask when

1 you come back has that affected you, can you still
2 maintain an open mind and not form an opinion. It will be
3 a week or so before I see you.

4 JUROR: Right.

5 THE COURT: Watch the county website and you are now
6 under the listing as a qualified Juror, qualified jurors
7 please report back on or please check back. Sometime next
8 week you will see when I may need you. When the website
9 says come back in please come back in. Can you do that?

10 JUROR: Yes, sir.

11 THE COURT: Thank you very much.

12 (Whereupon, the Juror was excused from the
13 courtroom.)

14 THE COURT: 179, bring them in.

15 (Whereupon, Juror 179, Tonya Harmon came into the
16 courtroom.)

17 EXAMINATION

18 By The Court:

19 Q Good afternoon.

20 A Good afternoon.

21 Q You are Tonya Harmon.

22 A Yes.

23 Q My name is Eugene Griffith once again. I have got
24 several questions. I remind you you are under oath. I
25 gave you those instructions on Monday. Many of the

1 questions you may be asked now will be personal opinions
2 you may have. There is no right or wrong answers. The
3 Court and the lawyers are looking for candid, to be candid
4 and truthful.

5 A Okay.

6 Q Since Monday has anybody tried to contact you about
7 the case?

8 A No, sir.

9 Q Has anybody asked you any questions about the case?

10 A No, sir.

11 Q Have you asked or sought out any information or
12 talked to anybody about the case other than telling
13 somebody you had to report to the Court House?

14 A No, I just told my husband I was returning.

15 Q Fair enough. Now, you have anything on the calendar
16 over the next several weeks because if you are qualified
17 as a potential Juror, we might start the trial Monday a
18 week. I have got more jurors to talk to next week. So
19 about a week later.

20 A Nothing that would keep me.

21 Q So your calendar is fairly open?

22 A Yes.

23 Q Subject to the inconvenience of being a Juror,
24 everybody will have that. But you don't have any vacation
25 plans that you have prepaid?

1 A No.

2 Q Fair enough. So you could do it if selected?

3 A Yes.

4 Q Very well. Did you have an opportunity to review the
5 potential witnesses. I have one right here if you need to
6 look over it.

7 A I have reviewed the list, yes.

8 Q Anybody on the witness list that you know?

9 A No, I don't recognize any of the names.

10 Q So none of those names are familiar to you?

11 A No, sir.

12 Q I gave an overview of the criminal process,
13 procedure, aspects of some of the law. I also published
14 Monday the indictments to which Mr. Jones is presumed
15 innocent of all of those accusations made by the State and
16 that presumption of innocence stays with him until a jury
17 reaches a verdict. So he is presumed innocent sitting
18 right there.

19 A Yes, sir.

20 Q Now, a Capital case is a two step process. Step one,
21 phase one of the trial, only determine guilt or innocence
22 of murder. Guilty or not guilty. If it is a not guilty
23 verdict or not guilty by reason of insanity the case is
24 over, it ends, it stops right there. If the burden of
25 proof is met by the State and there is a guilty verdict,

1 guilty but mentally ill it goes to step two, the
2 sentencing phase. At that time the State presents
3 evidence of the aggravating factors which they must prove
4 one of those. There are several things that make the
5 State to prove, in order to seek the death penalty, murder
6 of a police officer, rape of murder, kidnapping of murder,
7 murder of children, multiple murders. Those are
8 aggravating factors defined by our statutes. The State
9 must prove at least one of those in order to be able to
10 say, please sign, issue a verdict of the death penalty.
11 They have got to prove that aggravating factor beyond a
12 reasonable doubt. And during that sentencing side there
13 is also consideration by the jury of other testimony
14 called mitigating factors. Now, some mitigating testimony
15 may come out in the guilt phase. Testimony can come from
16 any type. During the sentencing side, more mitigating
17 factors will be presented, maybe the Defendant's
18 background, how he was raised, things like that.
19 Mitigating factors are any reason whatsoever to not give
20 the death penalty because, give the life without parole
21 sentence. Now, understanding that will be in front of you
22 if you are selected as a Juror during the sentencing
23 phase, we have very, very slim facts, accusations of five
24 murders, not guilty, presumed innocent. Assuming the
25 State proves the guilt of the murders and then yet again

1 has to prove a aggravating factor. I have a list of three
2 types of potential Juror types. Have you been able to
3 read that potential jury type?

4 A Yes, I read all three.

5 Q Can you identify yourself as being one of those three
6 types?

7 A Yes, I can.

8 Q What type would you be?

9 A I am type three.

10 Q You are type three. Type three means you can't make
11 up your mind until you hear everything?

12 A Correct.

13 Q That is how you are?

14 A I believe every situation is different and so you
15 can't umbrella a blanket.

16 Q Now, another aspect in this case that makes it
17 slightly different. Mr. Jones has entered a plea of not
18 guilty by reason of insanity. There are defenses allowed
19 in criminal cases. I am going to read a few of them. The
20 reason I am doing this, sometimes testimony comes out that
21 would allow for a defense to be submitted to the jury and
22 so I have got to instruct on some of the aspects. Some of
23 these may not be out there at all. But these are the
24 statutory defenses that he may have that are allowed if
25 the testimony can support, the Court will instruct and the

1 jury can consider. Knowing there are some aspects of the
2 testimony, which I am not aware of yet, I have to wait and
3 hear the testimony to then tailor my instructions to that
4 jury as to what they have heard and what they may
5 consider. Okay. Potential defense may be identification,
6 accident, involuntary intoxication, self-defense,
7 necessity, insanity, guilty but mentally ill, defense of
8 habitation, entrapment, duress and alibi. Those are all
9 allowable potential defenses. If there is testimony
10 presented and the Court gives appropriate instructions you
11 can consider those types of defenses. In this case can
12 you consider all of the aspects of the instructions,
13 fairly evaluate the testimony and evidence and reach a
14 verdict on any one of guilty, not guilty by reason of
15 insanity, I am sorry, guilty but mentally ill, not guilty
16 by reason of insanity or not guilty. All four of those
17 verdicts are on the table in this trial. Can you consider
18 them all?

19 A Yes, sir.

20 Q And follow the instructions of the Court?

21 A Yes, sir.

22 Q All right. If not guilty is found the case ends. If
23 a guilty verdict is proven by the State beyond a
24 reasonable doubt it goes to phase two. Then there is, the
25 jury gives consideration of mitigating factors. That is

1 testimony, facts you may see or hear during either part of
2 the case but you can consider. Jury's can consider
3 mitigating factors, the State has got to prove a statutory
4 aggravating factor in order to say, please consider the
5 death penalty. If they do then the jury considers the
6 testimony of the aggravating factors, makes a decision but
7 also they can consider mitigating factors. Mitigating
8 factors potentially you could hear, some of these aren't
9 always shown in the trial. I will give them to you and
10 then come back and ask you a question. The Defendant has
11 no significant history of prior criminal conviction of the
12 use of violence against another person. The murder was
13 committed while the Defendant was under the influence of
14 mental or emotional disturbances. The victim was a
15 participant in the Defendant's conduct or consented to the
16 act. The Defendant was an accomplice to a murder
17 committed by another and his participation was relatively
18 minor. The Defendant acted under duress under the
19 domination of another person. The capacity of the
20 Defendant to appreciate the criminality of his conduct or
21 to conform his conduct to the requirements of the law was
22 substantially impaired. The age or mentality of the
23 Defendant at the time of the crime. The Defendant was
24 provoked by the victim in committing the murder. The
25 Defendant was below the age of 18 at the time of the

1 crime. The Defendant had mental retardation at the time
2 of the crime or any aspect of, being raised, a broken
3 home, any aspect whatsoever in their walk in life. Those
4 are reasons or mitigating factors, the jury can consider
5 all of that. So can you give meaningful consideration to
6 aggravating factors as well as mitigation factors,
7 considering my instructions on the law and evaluate those
8 in that type of testimony and evidence.

9 A Yes, sir.

10 Q You can?

11 A Yes.

12 Q Now, do you have any religious, moral, personal
13 belief or any reason whatsoever you cannot find a person
14 for the punishment of the death penalty?

15 A I do not have any religious opposition.

16 Q To the death penalty?

17 A To the death penalty.

18 Q No opposition?

19 A No.

20 Q Do you have any religious, moral or personal belief
21 that given, that you could not find, if appropriate under
22 the circumstances, a life without parole sentence? Could
23 you do that?

24 A Yes, I could.

25 Q And so can you be a fair and impartial Juror and

1 consider all of the testimony and instructions of the
2 Court and fairly and impartially give the State a fair
3 trial and Mr. Jones a fair trial?

4 A Yes, sir.

5 Q Okay. I gave you the allegations, this is
6 accusations made by the State regarding the death of five
7 children. There will be testimony, evidence consistent
8 with that type of subject matter, it will be graphic,
9 perhaps harsh, unpleasant, difficult. Would that subject
10 matter and hearing testimony about that subject matter
11 make it difficult for you to give the State and the
12 Defense a fair trial in this matter?

13 A No, it would be difficult to hear but, it would not.

14 Q You could still be fair and impartial?

15 A I would be fair and impartial.

16 Q Very well. All right, Mr. McGuire.

17 EXAMINATION

18 By Mr. McGuire:

19 Q Good afternoon, Ms. Harmon. This is Ms. Harmon,
20 right?

21 A That is correct, yes.

22 Q And my name is Bill, Bill McGuire, I am one of the
23 lawyers in the case and this is the opportunity the Judge
24 gives us to have a conversation with you about your views
25 of the death penalty for the offense of aggravating

1 murder.

2 A Yes, sir.

3 Q If you found yourself to be Governor for a day and
4 you had a Bill on your desk and the Bill would say we
5 could either have the death penalty, keep it around or not
6 have the death penalty. Which way would you sign?

7 A Not have the death penalty.

8 Q Okay. So you have some reservations about the death
9 penalty?

10 A In certain circumstances, yes.

11 Q I mean do you think it has been mis-implied or used
12 too much or maybe in a racial discriminatory manner or
13 something like that?

14 A It is a possibility but I don't know of any specific
15 cases but the potential is there.

16 Q Okay. Well that is true. It is there. But if I
17 heard you correctly with the Judge you could, under the
18 current law, which is we have the death penalty, you could
19 consider a death sentence?

20 A I would consider, yes.

21 Q Could you consider a life sentence?

22 A Yes.

23 Q And with regard to the concept of mitigation, the
24 Judge talked to you a little bit about, mitigation is
25 really just any reason to vote for the life penalty if you

1 want to. Does that make sense?

2 A Yes.

3 Q And in a Capital case the Judge talked to you about
4 the first phase, the guilty, not guilty part. It is just
5 like any regular trial you see on TV or in the news, it is
6 just plain ole, do they have the right guys. Okay. And
7 the sentencing phase is an extremely unique and different
8 procedure and it involves a lot of individuality. And I
9 am going to explain that part to you now if that is okay.

10 A That is fine.

11 Q And if I lose you you just stop me and say, could you
12 repeat that or I didn't quite understand it.

13 A Okay.

14 Q And when I say individuality, the sentencing decision
15 is not a question of fact, it is sort of a moral judgment.
16 That is how the law describes this, individual's moral
17 judgment. And twelve jurors are allowed to have their own
18 individual moral judgment. Does that sound fair?

19 A Yes.

20 Q Even if they are all different?

21 A Yes.

22 Q Or you could have, one person here could say, I saw
23 something in the case and I saw a spark of humanity there,
24 hope of redemption, maybe a Defendant's relationship with
25 his dad. And that person could say that resonated with me

1 and I am going to give him the whole weight of voting for
2 life. And that is my position, I am not going to sign a
3 death warrant for this person. And that is my individual
4 moral judgment. And then another Juror, a different Juror
5 could say, well, I saw a mental health issue and I am not
6 going to vote for death for somebody who I think has got a
7 broken mind, I am not going to -- that is my individual
8 moral judgment, that is my position, I am going to vote
9 for life and you can see how their reasons are different.
10 Does that make sense?

11 A Yes, it does.

12 Q Okay. And they don't have to agree, all twelve
13 jurors don't have to agree that somebody has this certain
14 piece of mitigation evidence or not. Each individual
15 Juror can pick anything they want and that is their reason
16 and they are allowed to have it. Does that make sense?

17 A Yes.

18 Q Okay. And once a Juror reaches their individual
19 moral judgment, if it would harm their conscious to change
20 that position they are required under the law to stick
21 with their individual moral judgment, their position and
22 not give it up, not abandon it. Does that make sense?

23 A It does.

24 Q Okay. And it would specifically be wrong and
25 unlawful and against the Juror oath for somebody to

1 abandon their individual moral judgment just to go over to
2 the majority side, just for the sake of joining a
3 majority. Does that make sense.

4 A It does.

5 Q And that would be wrong?

6 A Yes.

7 Q Does that sound wrong to you?

8 A No.

9 Q It does sound wrong?

10 A It does not sound wrong.

11 Q So if you were in a situation where eleven other
12 people wanted to go one way and your position was--

13 MR. HUBBARD: Objection to this question and this
14 goes to exactly where my position has been.

15 THE COURT: He said he is going to ask a different
16 question. I sustain your objection, ask that question
17 again.

18 MR. HUBBARD: Thank you, Your Honor.

19 Q If there are eleven people and they had a position
20 and you were one and you had a different position would
21 you say, even though my moral judgment is here there are
22 eleven people over here so I am going to join them because
23 they must be right. Does that sound like something you
24 would do or does that sound right?

25 A No. You stick by what you decided, that is required.

1 Q I probably just-

2 A I got a little confused. No, you stand by your
3 decision.

4 Q Okay. We are on the same page. Sorry if I got a
5 little confusing. Okay. So we can agree that once a
6 Juror reaches their individual moral judgment, even if
7 they are in the minority, you would say stick to it, you
8 have to stick to it, just abandoning your position just to
9 join the majority, that would be wrong. You and I are on
10 the same page there.

11 A Yes.

12 Q And in jury deliberations we expect civil discourse.
13 But if you saw a Juror who came to their position, let's
14 just say they wanted to vote for the life penalty and
15 others were being coercive, trying to force the person to
16 come over to their side could you stop that?

17 A That would be the same thing they are doing.

18 Q What do you mean by that?

19 A If they are trying to convince someone to do
20 something and then I try to convince someone to do
21 something I am doing the same thing they are doing.

22 Q Well, actually what I am asking is. If you saw a
23 Juror and they say, you know what, I have my own reason, I
24 do not want to sign a death warrant, I don't want to put
25 my name on it, it is not right for me, my individual moral

1 judgment is life. And you saw people, despite the fact
2 that they said, I have my individual moral judgment, it
3 would harm my conscience to change it. And you saw people
4 being coercive, trying to get that Juror to basically
5 violate the Juror oath and join the majority for the sake
6 of joining the majority, would you stop that act?

7 A If they were not following the guidelines and
8 breaking their oath then I am sure there is a way to bring
9 it to someone's attention.

10 Q And actually what you could do is, you could write a
11 note out to the Judge--

12 MR. HUBBARD: Your Honor, we need a question.

13 THE COURT: Ask a question.

14 Q You just said if there was a way to do that. If you
15 were able to, and I am telling you that you are, if you
16 are able to write a note out to the Judge and just say,
17 Judge, it has gotten beyond civil discourse, it is
18 coercive in here. There is an effort to get somebody to
19 harm their consciousness and give up their position.
20 Could you help us get civility back in here and dignity
21 back in the courtroom or the deliberations room. Could
22 you do that?

23 A Yes, that could be done, yes.

24 Q You would be comfortable doing that?

25 A Yes.

1 Q Would you agree with me that it would be wrong to
2 force a Juror to cause the death of a another human being
3 when they did not want to kill somebody?

4 A That is just the same thing again. Trying to
5 convince someone of something against their morals and
6 that would be against the oath, correct?

7 Q Exactly. So, right, so if somebody said I do not
8 want to cause the death of a human being and you saw an
9 effort to try to get them--

10 MR. HUBBARD: Your Honor, ask and answered.

11 THE COURT: That has been asked and answered. She is
12 comfortable with her responsibility.

13 Q So one of the rules, the procedures in South Carolina
14 is if the jury does render a death penalty verdict all
15 twelve jurors have to sign their name to a piece of paper
16 saying they all, that is the verdict of all of them.
17 Could you do that?

18 A Yes, sir.

19 Q That is all I have. Thank you.

20 THE COURT: Solicitor.

21 EXAMINATION

22 By Mr. Hubbard:

23 Q Ms. Harmon, I am Rick Hubbard.

24 A Yes, sir.

25 Q Thank you for coming in today. Just have a few

1 questions. I noticed and you are just giving honest
2 answers so there is no right or wrong answers. We are
3 just trying to get to know you and also you are kind of
4 getting to see the process. So we are all getting to know
5 one another and what is going on. When you were asked
6 that if you were Governor for a day and you had two
7 options. A Bill that said we are just going to have life
8 sentences from now on or one that said we will continue to
9 have death penalty as an option. I believe your answer
10 was you would do away with the death penalty or did I
11 misunderstand you?

12 A I think it was, I presented it like it was like an
13 either/or.

14 Q Okay.

15 A To give a choice of this one or that one.

16 Q I see. Let me ask it a different way. If you were
17 Governor and you could keep the law that we have now,
18 where we have the option of life or death or just life.
19 What would you choose if you were Governor and in control?

20 A I would leave the law as it is now.

21 Q Okay. That clears that up for me. I appreciate
22 that, thank you. I may very well have misheard that. Now
23 we understand one another. I appreciate that, thank you.
24 You were asked about would you consider life, would you
25 consider death and then a lot of discussion went into what

1 would you do as a Juror with your own personal moral
2 beliefs and your own opinions. But as a Juror, would you
3 also be willing to enter into discussions to find out what
4 everybody else's views were?

5 A Yes. To discuss, to voice opinion and open table and
6 discussions as far as, just discussions, absolutely.

7 Q And obviously on difficult issues sometimes people
8 have, you know, a lot of ideas but would you be willing to
9 give your opinions and your thoughts?

10 A Yes.

11 Q Would you be willing to listen to those of others?

12 A Yes.

13 Q And sometimes, without bullying, people might learn
14 something from one another. Is that fair to say?

15 A Yes, it is.

16 Q Would you go into the jury room with a hard opinion
17 or would you listen to others before you finally make a
18 decision?

19 A I tend to make my decision and usually stick by it.
20 In this case it would be the facts and the verdict and
21 then you have the, what is it, the mitigating evidence to
22 consider. But generally I don't get talked out of my
23 decision. I generally know after the facts.

24 Q Okay. So you are not the type of person who would
25 really have to be persuaded to have an opinion?

1 A No, sir.

2 Q Whether it was really persuaded to go with life or
3 really persuaded to go with death?

4 A No, I don't tend to be persuaded.

5 Q And knowing that, let me ask you this because I don't
6 really know if it was asked in this way. If you thought
7 life was appropriate would you actually vote for life?

8 A If it was appropriate, yes sir.

9 Q And if you thought death was appropriate could you
10 not only consider that but actually vote for death?

11 A Yes, sir.

12 Q And as you were asked, what is unique about a death
13 penalty case is, when there is a death verdict all twelve
14 jurors have to signify that so we all know all twelve
15 people came to that unanimous decision. Could you put
16 your name on there with other jurors?

17 A Yes, sir.

18 Q That is all I have for you. Thank you so much for
19 coming in today.

20 MR. MCGUIRE: Nothing further, we don't have anything
21 further.

22 THE COURT: All right. Ms. Harmon, thank you for
23 coming today. Now, I will give you a few more
24 instructions. The Court has determined that you are a
25 qualified Juror. So the website you were checking to find

1 out when to come back in, you are now under the qualified
2 Juror. So you look at that, it may say next week, it may
3 say please check back. You are qualified so you will
4 follow the direction of please check back or please report
5 back to the courtroom on such and such a date. Until that
6 time do not let anybody contact you about the case, do not
7 ask questions to anybody about the case. Do not do any
8 independent research, do not, minimize the viewing of
9 publicity, the perusing of that. I know that is difficult
10 but I want you to be influenced and make your decision
11 solely on what is presented here. As a group, jurors, the
12 Court, lawyers get to see all at one time. I want you to
13 be impacted and influenced and make your decision as your
14 oath requires based on what is here. Can you do that.

15 JUROR: Yes, sir.

16 THE COURT: I wish you well and we will see you back
17 probably Monday a week.

18 (Whereupon, the Juror was excused from the
19 courtroom.)

20 THE COURT: We will take a break.

21 (Whereupon, a short break was taken.)

22 THE COURT: All right, are y'all ready for 247?

23 MR. SECOR: Yes, sir.

24 THE COURT: Bring him in.

25 (Whereupon, Juror 247, Andrew Lewis entered the

1 courtroom.)

2 EXAMINATION

3 By The Court:

4 Q Good afternoon, Mr. Lewis. My name is Eugene
5 Griffith once again. I am the presiding Judge of the
6 case. When you were here Monday in the other Court House,
7 I asked everyone to take an oath and when you came back I
8 am asking about your communication about the case. The
9 oath was, please do not communicate about the case with
10 anybody. Have you lived up to that oath?

11 A Yes, I have.

12 Q Has anyone tried to communicate with you about the
13 case?

14 A No.

15 Q Have you communicated in any fashion?

16 A No.

17 Q Considering this case, there is multitude amounts of
18 publicity. Has any of that publicity caused you to form
19 an opinion about this case?

20 A No, sir.

21 Q There were facts that I gave regarding the
22 indictments and allegations made in the indictments. So
23 you know a little something about the case. The State has
24 made accusations of five counts of murder in this case.
25 Have you formed an opinion as a result of knowing those

1 accusations?

2 A No sir, I don't know much.

3 Q Now, I ask you now, hoping to get the jury organized
4 by the end of next week. Do you have anything on your
5 calendar upcoming, the trial will start Monday a week,
6 Monday after Mothers Day. You got anything on your
7 schedule, personal or business or family or whatever.

8 A Memorial Day, that is about it.

9 Q Memorial Day, everybody has that. You planning on
10 going out of town?

11 A Yes, sir.

12 Q Where are you going, the beach?

13 A Yes, I am going to Savannah and St. Augustine.

14 Q Okay. It sounds like honeymoon?

15 A No.

16 Q Okay. Now, other than that, you got anything else
17 that would prevent you from being a Juror in this case?

18 A No, sir.

19 Q I gave you a list of witnesses, potential witnesses
20 in this case. Did you review that witness list?

21 A I did.

22 Q And those witnesses all will not be called, most of
23 them will be but not all of them. Potential witnesses
24 have to be disclosed so that jurors can say, I am not
25 connected to them or I am connected and that may create a

1 problem. Did you know anybody on the list?

2 A The eight pages I read I knew nobody.

3 Q And you are not from South Carolina?

4 A No, sir.

5 Q You are from Dallas?

6 A Yes.

7 Q You are a Cowboy's fan?

8 A I actually don't watch sports at all which is weird
9 but I don't.

10 Q Okay. No contact with any of the witnesses
11 whatsoever?

12 A No, sir.

13 Q Now, I gave you some preliminary instructions in the
14 group a moment ago. Did you understand those
15 instructions, kind of the broad picture, criminal
16 procedure, aspects of the law, how a Capital case can be
17 divided into the phases. Phase one, guilt or innocence.
18 Phase two, sentencing?

19 A Yes, sir.

20 Q Did you understand those instructions?

21 A Yes, sir.

22 Q Now, I also gave you a list of three types of
23 potential jurors. I gave kind of a hypothetical assuming
24 these facts versus found guilty and aggravating factors
25 found beyond a reasonable doubt. The State has got to

1 prove both of those.

2 A Right.

3 Q At that point then the jury would be tased with
4 imposing sentencing, two possibilities, life or death.
5 Nothing in between, no other options. One of the two.

6 A The options that I saw I am going to say I am
7 identified with the type three.

8 Q Type three?

9 A Yes.

10 Q And that would be somebody who was, understand the
11 State has proven the murder, proven the aggravating
12 circumstance but they want to hear everything?

13 A Right.

14 Q Before they can commit themselves to either verdict?

15 A Right.

16 Q And that is how you describe yourself?

17 A Yes, sir.

18 Q Now, in the guilt or innocence phase there is
19 perhaps, the State has got to prove that case of murder
20 beyond a reasonable doubt. And Mr. Jones in this case has
21 tendered a plea of not guilty by reason of insanity which
22 brings potential defenses into the case which means the
23 jury may have to consider some potential defenses in its
24 deliberation of the guilt or innocence phase. And because
25 of his plea there could be four potential verdicts. There